



# **GRAIN 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**

(ABN xxx)  
of 'insert address'  
("Customer")

## RECITALS

- A. CBH operates grain storage and handling facilities in Western Australia.
- B. The Customer purchases 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 of this Agreement.

## THE PARTIES AGREE AS FOLLOWS:

### 1 COMMENCEMENT AND TERMINATION

#### 1.1 Commencement

- (a) This Agreement will apply to all Services (except Port Outturning Services) provided by CBH during the Term, unless otherwise agreed in writing between CBH and the Customer. Port Outturning Services are provided by CBH under a Port Terminal 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 contained in this Agreement notwithstanding the fact that the Customer has not executed this Agreement.
- (c) This Agreement comes into effect on the Commencement Date and from that date supersedes any previous agreement between CBH and the Customer.

#### 1.2 General Termination

- (a) Subject to clause 1.2(b), this Agreement will terminate on the End Date and the Customer must ensure that prior arrangements are made to Outturn all Grain held by CBH prior to this date otherwise the Customer will be bound by the terms and conditions of any superseding standard Grain Services Agreement.
- (b) CBH will not provide Grain Acquisition Services under this Agreement after 31 August of the Ending Calendar Year.

#### 1.3 Immediate Termination

CBH may terminate this Agreement by notice to the Customer with immediate effect if:

- (a) the Customer acts in such a way as to bring (or in the reasonable opinion of CBH may bring) CBH into disrepute;
- (b) the Customer commits a Material Breach of this Agreement;
- (c) an Insolvency Event occurs; or
- (d) the Customer repudiates this Agreement.

If the Agreement is terminated with immediate effect in accordance with clause 1.3, CBH may require that all Grain must be Outturned as soon as possible, and the terms of this Agreement will

continue to apply until all Grain has been Outturned.

#### 1.4 Survival of Terms

Clauses 2 (Definitions), 3 (Interpretation), 4.5 (Warranties), 7.7 (Shrinkage), 19 (Remuneration), 20 (Lien and Right to Withhold Grain), 22.2 (Liability for agent's actions), 23 (Grain Removed Before 30 September Each Season), 24.1 (Stock Reconciliation and Adjustments), 25 (CBH Liability), 27 (Force Majeure Event), 30 (Confidentiality), 32 (Entire agreement), 32(g) (anti-bribery and corruption), 33(d) (prevention of modern slavery), 35 (Notices), 37 (Waiver), 38 (No partnership) and 39 (Governing Law and Jurisdiction) shall survive the termination of this Agreement.

## 2 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.

**"Adjustment Note"** includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises.

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

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

**"Allocated Port Facility"** means, in relation to each Site, the Port Facility nominated as the usual export port for that Site allowing for the most efficient movement and Outturning of Grain.

**"Average Weights"** means an estimation determined by CBH, acting reasonably, as to how many tonnes are loaded into a grain transportation vehicle.

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

**"Booking Procedure"** means the relevant procedure for the type of Outturn as contained in Schedule 2.

**"Bulk Transfer of Ownership Form"** means the form available from CBH (either electronically or physically) that requests the transfer of all or part of the Customer's Grain Entitlement from one party to another.

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

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

**"Capacity"** means the capacity of a Port Facility, to put grain on board a vessel at a Port Facility during a Shipping Window, measured in tonnes.

**"CBH Group Entity"** means, as the case requires, CBH or any one or more of CBH's Related Bodies Corporate.

**"CBH Logistics Customer Service Manager"** means the manger from time to time available for contact at: customersupport@cbh.com.au.

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

**"Code"** means the Port Terminal Access (Bulk Wheat) Code of Conduct.

**"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 Receive Standard.

**"Container Loading Services"** means the services provided by CBH pursuant to clause 12.

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

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

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

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

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

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

**"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.

**"Domestic Outturn Guidelines"** are as specified in Schedule 2.

**"Domestic Outturn Request"** means an Outturn Request in relation to Domestic Outturning Services.

**"Domestic Outturning Services"** means the services provided by CBH pursuant to clause 11.

**"Domestic Priority Site"** means a Domestic Site nominated by CBH which is designed to be used for Domestic Outturn Services for any volume of Outturn requested by the Customer.

**"Domestic Site"** means any Site designated by CBH for the provision of Domestic Outturning Services, which may include a Site Entitlement Site or an Integrated Site.

**"End Date"** means 30 September of the Ending Calendar Year.

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

**"Entitlement Transfer Request"** means a request made by the Customer for the transfer of all or part of the Customer's Grain Entitlement to another customer of CBH.

**"Export Fee"** has the meaning given in schedule 1.

**"Export Nomination"** means a nomination of a vessel to Outturn Grain to the Nominated Tonnage onto a Nominated Vessel within a Shipping Window held by the Customer under this Agreement on the relevant Export Nomination Form or online via LoadNet® for Marketers™.

**"Export Nomination Form"** means the form available from CBH or online via LoadNet® for Marketers™ on which all Export Nominations must be made.

**“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.

**“Fees and Charges Schedule”** means the schedule of fees and charges published by CBH setting out the fees and charges that are due and payable under this Agreement as consideration for the Services as amended, from time to time.

**“Force Majeure”** has the meaning given in clause 27.1.

**“Forecast Submission Period”** has the meaning given in clause 2.1 of Schedule 2.

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

**“Freight”** means the rate charged by CBH to transport Grain by road or rail or a combination of both.

**“Freight Fund”** means the fund managed by CBH to manage the costs and risks of the freight costs and income arising from moving grain between CBH Sites.

**“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, in relation to Grain, a quality grade specified in the Receival Standards or Outturning Quality Specifications that is objectively assessable.

**“Grain”** means all wheat, grains, pulses and oil seeds received into Sites and held by CBH pursuant to this Agreement on behalf of the Customer.

**“Grain Acquisition Services”** means the services provided by CBH pursuant to clause 5.

**“Grain Bagging Services”** means the services provided by CBH pursuant to clause 13.

**“Grain Cleaning Services”** means the services provided by CBH pursuant to clause 14.

**“Grain Dust Deduction”** has the meaning set out in clause 7.8.

**“Grain Entitlement”** has the meaning set out in clause 7.4.

**“Grain Receival Services”** has the meaning set out in clause 3.6.

**“Grain Storage Services”** means the services provided by CBH pursuant to clause 7.

**“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.

**“Grower Delivery Card System”** means the identification system whereby registered Growers are issued individual identification cards for presentation when delivering to a Site.

**“Grower Freight”** means the Freight determined by CBH and posted on LoadNet® for Growers™ and the CBH website which allows for the movement of Grain from the Receival Site to the Site Nominated by the Grower.

**“Grower Freight Adjustment Amount”** means that amount determined by CBH for a Site and posted on the CBH website within 10 Business Days of 1 October of the Starting Calendar Year.

**“Grower Freight Differential”** means, in relation to two Sites in the same CBH port zone, the absolute value of the difference between the Grower Freight of each of those two Sites as finalised no later than the Grower Freight Differential Finalisation Date.

**“Grower Freight Differential Finalisation Date”** means 28 February of the Ending Calendar Year (or, if the Ending Calendar Year is a leap year, 29 February of the Ending Calendar Year).

**“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.

**“Harvest Set Up Form”** means the form available from CBH on which all Customer harvest service requests for the Season are made.

**“Harvest Shipping Incentive Payment”** means an incentive payment which CBH may pay to customers that ship certain types and quantities of Grain during the Harvest Shipping Period. The types of shipment which qualify for this incentive payment will vary between each of CBH's zones.

**“Harvest Shipping Period”** means the period from 16 October of the Starting Calendar Year to 31 January of the Ending Calendar Year.

**“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.

**“High Moisture Grain”** means Grain that exceeds the moisture content set out in the Receival Standard that applies to that particular Grade of Grain.

**“HMMS”** means the Harvest Mass Management Scheme and includes the rules approved by the Minister for Transport and the Commissioner for Main Roads, set out in the “Harvest Mass Management Scheme Business Rules”.

**“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"** means the Customer's Grain Entitlement recorded in CBH's systems (in tonnes) to which the Customer is entitled in a particular CBH port zone, excluding any Site Entitlement in that same port zone.

**"Integrated Site"** means every Site in the CBH Network whereby title in Grain can be transferred from Growers to Acquirers on a delivered to port basis for which an Acquirer will obtain Integrated Entitlement .

**"Integrated Only Site"** means those sites designated by CBH as Integrated Only Sites on the CBH website from time to time.

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

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

**"Level 3 Contaminant"** means a contaminant identified as Level 3 in the CBH Contaminant List published by CBH for the 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.

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

**"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).

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

**"Material Breach"** means a breach which:

- (a) in the reasonable opinion of CBH, is not capable of being remedied; or
- (b) the Customer has failed to remedy after being given at least 14 days written notice by CBH to do so.

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

**"Minimum Notice"** has the meaning given in item 4.1 of Schedule 2.

**"Moisture Management Services"** means the services provided by CBH pursuant to clause 10.

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

**"NCV"** means no commercial value.



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

**"NGRF"** means the Non-Grower Receival Form.

**"Non-Grower Receival"** means Grain which is delivered to a Site by or on behalf of the Customer (including by a Grower on behalf of the Customer) and which is received by CBH in accordance with clause 4.4 of this Agreement.

**"Nomination"** means the choice by a Grower of an Acquirer to whom the Grower wishes to transfer title to grain either online via LoadNet® for Growers™ or through CBH's Grower Service Centre.

**"Outturning Quality Specifications"** means the specification nominated by the Customer on the Outturn Request Form or Export Nomination Form.

**"Outturn"** means to cause Grain to exit:

- (a) the delivery spout at a Site into a Grain transportation vehicle; or
- (b) a silo onto a conveyor, in the instance where the Grain is being transferred to the Customer or third party by way of conveyor.

**"Outturn Request"** means a request by the Customer to Outturn Grain on the relevant Outturn Request Form, online via LoadNet® for Marketers™ or online via any application for mobile devices.

**"Outturn Request Form"** means the form available from CBH (either electronically or physically) on which all Domestic Outturn Requests are to be made.

**"Payment Method"** means the method by which the Customer contracts with a Grower delivering Grain to the Customer and includes daily cash price, contracted price, pool or other method of payment specified by the Customer.

**"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.

**"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.

**"Port Grain Holdings"** means the information required to be published about quantities of grain held at a Port in accordance with the Code or Port Terminal Rules.

**"Port Outturning Services"** has the meaning given in the Port Terminal Services Agreement.

**"Port Terminal Rules"** means the port terminal rules published and amended by CBH from time to time.

**"Port Terminal Services Agreement"** means the agreement between CBH and the Customer for the provision of services at Port Facilities.

**"Port Zone Entitlement Stock"** means the quantity of Grain recorded in CBH's systems (in tonnes) to which the Customer is entitled in a particular CBH port zone and which represents the sum of the Customer's:

- (a) Integrated Entitlement stock; and
- (b) Site Entitlement stock.

**"Quality Management Plan"** means a plan agreed between the Customer and CBH in accordance with clause 8 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.

**“Quarter”** means the respective periods of 1 October to 31 December, 1 January to 31 March, 1 April to 30 June and 1 July to 30 September during the Season.

**“Receival Site”** means the Site at which a Grower delivers a load of Grain into CBH’s custody.

**“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)*.

**“Season”** means the period 1 October of the Starting Calendar Year to 30 September of the Ending Calendar Year.

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

**“Short Notice”** has the meaning given in item 4.3 of Schedule 2.

**“Shrinkage”** means the allowance for loss in weight of Grain that occurs during the storage and handling and transport process.

**“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 may include a Port Facility, MGC, Integrated Sites and Site Entitlement Sites.

**“Site Entitlement”** means the quantity of Grain recorded in CBH’s systems (in tonnes) to which the Customer is entitled at a particular Site.

**“Site Entitlement Fee”** means the fee payable for the Customer to retain Site Entitlement at a Site Entitlement Site from 1 March of the Ending Calendar Year as determined by CBH from time to time and as set out in the Fees and Charges Schedule.

**“Site Entitlement Site”** means a Site (not including Integrated Only Sites) where title in Grain may be transferred from Growers to Acquirers (or between Acquirers) on the basis of Site Entitlement.

**“Special Conditions”** means any special conditions set out in Schedule 5.

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

**“Surge Fee”** means the fee payable for the Customer to access surge capacity as determined by CBH from time to time.

**“Taxable Supply”** has the meaning given in the GST Legislation.

**“Tax Invoice”** or **“Recipient Created Tax Invoice”** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises and/or 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 its terms.

**“Third Party Test Facility”** has the meaning given in item 1.3.2 of Schedule 3.

**“Ticket Amendment Policy”** means the CBH policy on the amendment of details of Grower deliveries to CBH as amended by CBH from time to time. The current Ticket Amendment Policy is available online through LoadNet® for Marketers™.

**“Transport Operator”** means the person owning or operating a vehicle that has been engaged by the Customer to transport Grain to or from a Site and who uses a vehicle that is registered with CBH including to participate under HMMS.

**“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.

"VRL" has the meaning given to that term in the HMMS.

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

"**Work Instruction Form**" means the form available from CBH on which all Container Loading Services, Grain Bagging Services and Grain Cleaning Services requests are to be made.

### 3 INTERPRETATION

In this Agreement:

#### 3.1 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) nothing is to be construed adversely against a party just because that party prepared this Agreement or any part of it;
- (e) "including" means "including, but not limited to";
- (f) 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; and
- (g) a reference in this Agreement to a thing (including an amount) is a reference to the whole and each part of it (but nothing in this clause 3.1(g) implies that performance of part of an obligation is the performance of the whole) and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

#### 3.2 Documents and Parts of Documents

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

#### 3.3 Persons and Corporations

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

#### 3.4 Time, Money and Measurement

- (a) a reference to an amount of money is a reference to the amount in the lawful currency of Australia;
- (b) a reference to time is a reference to the local time in Perth, Western Australia (unless otherwise stated);
- (c) where any matter or thing is required to be attended to or done on a day which is not a Business Day, it will be attended to or done on the first day thereafter which is a Business Day; and

- (d) measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth).

### 3.5 Discretions and Approvals

- (a) Whenever 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 the Port Facility.
- (c) CBH's refusal to accept a request for Service will not be a breach of the Agreement for making a decision where the refusal is made in compliance with the provisions of the Port Terminal Rules.

### 3.6 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.

## 4 GRAIN RECEIVAL SERVICES

**Service Description:** This service provides Grain quality assessment, storage segregation assessment, weight measurement and Grain handling at the point of receipt into a Site.

### 4.1 Service Availability

CBH agrees to make Grain Receipt Services available at Sites in accordance with the terms and conditions of this Agreement. CBH may at its discretion choose at which Sites it offers Grain Receipt Services and that some or all Grain Receipt Services may not be available at all Sites.

### 4.2 Receipt Procedures

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

- (a) sample the load in accordance with CBH's current Grain sample collection and preparation methods;
- (b) assess the quality of the Grain in accordance with Receipt Standards;
- (c) determine the Grade of the Grain;
- (d) determine the Common Stack Segregation into which the Grain will be placed;
- (e) weigh the Grain delivered;
- (f) store the Grain in accordance with the Grain Storage Services set out in clause 7 and any specific additional storage and handling requirements as agreed to in writing between the Customer and CBH;
- (g) furnish to the person who tendered the load a weighbridge statement that specifies grain type, Grade, variety, weight and any other relevant details or specifications; and
- (h) at manned weighbridges, furnish CBH's standard test results in addition to the matters listed in clause 4.2(g).

### 4.3 Receipt Standards

Receipt Standards will be used for assessing all deliveries into the CBH storage system.

### 4.4 Non-Grower Receipt Services

- (a) In any period CBH may, at its discretion, receive non-Grower delivered Grain, subject to prior agreement being reached with CBH including as to the:
  - (i) location of delivery;

- (ii) method of delivery;
  - (iii) sampling method to be applied; and
  - (iv) provision by the Customer of one or more representative pre-delivery samples to CBH as reasonably required by CBH.
- (b) The pre-delivery sample will be tested for pesticides and other residues on a provisional basis with delivery being allowed if there is a nil result for residues of any chemical assessed. Acceptance of the Grain by CBH is not a waiver of CBH's rights in relation to a breach of warranty by the Customer. The Guidelines for Non-Grower Receivals are annexed to this Agreement.

#### 4.5 Warranties

Subclauses 4.5(a)(i) to 4.5(a)(x) inclusive apply in relation to any Grain delivered by the Customer or its agent and are not intended to apply to Grain delivered by Growers under the CBH Delivery and Warehousing Terms which is subsequently transferred to the Customer.

- (a) The Customer represents and warrants that:
- (i) it owns any Grain tendered for delivery by or on behalf of it;
  - (ii) the full particulars of the variety of the Grain disclosed on any NGRF is true and correct;
  - (iii) it has not manipulated or loaded any delivery in any way to prevent the making of an accurate assessment by CBH of the quality of the Grain using CBH's standard sampling procedures;
  - (iv) Grain being tendered for delivery will not:
    - A. include any Contaminant; or
    - B. be in breach of the *Bulk Handling Act 1967 (WA)* or the *Bulk Handling Act Regulations 1967 (WA)*;
  - (v) all of the Grain was grown between the May and September immediately prior to the Season;
  - (vi) all of the Grain in a delivery has been or is only contained in equipment, bags, farm implements, farm storages and bulk grain motor bodies that have:
    - A. not previously contained any grain product and are free from insects and vermin; or
    - B. previously contained a grain product, but have been freed of all previous grain product and is free from insects and vermin;
  - (vii) any vehicle that has previously transported non-grain or contaminated grain products:
    - A. is clean, dry and free of any remaining materials and odours from previous loads;
    - B. has been washed under high pressure prior to delivering any Grain; and
    - C. has the details of previous loads disclosed on the relevant form;
  - (viii) if any of the Grain has been treated with substances for the control of insects, details of the substances and the application of those substances has been provided in writing to CBH on the relevant form and the use of any other chemical in the process of planting, growing and storage of Grain has been in accordance with the levels prescribed in any relevant legislation and also in accordance with the usage instructions;
  - (ix) none of the Grain in a delivery will have any inherent vice or feature that would affect the ability of CBH to Outturn the Grain at the Grade in respect of which the Grain is

received by CBH;

- (x) none of the Grain in a delivery is a Genetically Modified Organism (unless declared in writing to, and approved in writing by, CBH before the delivery enters the Site);
- (xi) any information it provides to CBH in relation to:
  - A. any Grower or Supplier Application for Registration as a Deliverer Form;
  - B. any Change of Supplier or Grower Details form;
  - C. any Grower Estimate form;
  - D. its property identification;
  - E. any NGRF;
  - F. any Work Instruction Form;
  - G. any Load Correction Request Form;
  - H. any Application for a Property ID; or
  - I. any other form provided to CBH in relation to any Service provided under this Agreement,is true and correct and not misleading or deceptive or likely to mislead or deceive.

#### 4.6 HMMS and road vehicle legislation

Subclauses 4.6(a) to 4.6(e) inclusive apply in relation to any deliveries by the Customer or its agent.

- (a) To the extent that the HMMS applies, the HMMS is incorporated as part of this Agreement in respect of any Non-Grower Receivals that may occur. All loads moved under this Agreement must comply with the HMMS.
- (b) In accordance with HMMS and applicable CBH policies and procedures, at each Site, CBH will accept forfeited Grain from a Transport Operator if that Transport Operator arrives at a Site with a load that exceeds the HMMS or legal mass limit for the vehicle and the Transport Operator elects to forfeit the amount of Grain in excess of the HMMS or legal mass limit. The Customer acknowledges that, in accordance with the HMMS and CBH policies and procedures, CBH will follow the Transport Operator's instructions regarding forfeiture of Grain.
- (c) If as part of HMMS or CBH policies and procedures, Grain is forfeited, CBH will deduct the forfeited tonnage from the delivered Grain when calculating the Customer's Grain Entitlement in accordance with clause 7.4. Title to Grain deducted under this clause vests in CBH and CBH may donate the Grain or the proceeds from its sale to a charity or local government at CBH's discretion.
- (d) The Customer acknowledges its responsibilities and liabilities under HMMS and other road transport legislation or regulation in relation to the vehicle used to deliver or outturn loads that exceed the HMMS mass or legal mass limit.
- (e) The Customer agrees:
  - (i) that it is solely responsible for ensuring that it or its Transport Operator, carrier or agent complies with all relevant mass limits prescribed by HMMS, legislation or regulation for the vehicle used;
  - (ii) it will take all necessary steps (including unloading of any mass in excess of those prescribed limits) to ensure compliance; and
  - (iii) to indemnify and keep CBH indemnified against all expenses, Loss or Damage incurred by the Customer or CBH and all actions, claims and demands which may be

made against CBH, that arise in relation to the Customer's non-compliance with any maximum mass limits prescribed by HMMS, legislation or regulation for the vehicles used by it or its Transport Operator, carrier or agent to deliver Grain to or from a CBH Site.

## 5 GRAIN ACQUISITION SERVICES

**Service Description:** This service permits the Customer to receive Grain directly from Growers by setting up services and payment methods at Integrated Sites and Site Entitlement Sites and allowing them to be turned on and off as required.

### 5.1 Service Availability

- (a) CBH agrees to make Grain Acquisition Services available at Integrated Sites to acquire Integrated Entitlement and Site Entitlement Sites to Site Entitlement in accordance with the terms and conditions of this Agreement.
- (b) CBH Grain Acquisition Services in relation to a particular segregation may be suspended or ceased at relevant Sites if that segregation reaches capacity or ceases to be offered at a Site.

### 5.2 Grain Acquisition Services Requests and Variation

- (a) In order to access the services available as part of the Grain Acquisition Services, the Customer must request that CBH provide each particular service at any one or more of its Sites via a Harvest Set Up Form. The request must set out all information required by CBH in relation to the Grain Acquisition Services required including, but not limited to specifying the type of Grain and the Payment Method.
- (b) Upon receipt by CBH of the completed Harvest Set Up Form and provided the Customer has signed this Agreement, CBH will set up a service profile for the Customer to use to control Acquisition of Grain via LoadNet® for Marketers™. All Services start with a closed status and it is the Customer's responsibility to open and close as required.

### 5.3 Grower Delivery Card System and Grower's directions

The Customer acknowledges and agrees that:

- (a) CBH will utilise its Grower Delivery Card System in respect of Grower deliveries but will not seek to verify any authorisation provided and the Customer releases CBH from any liability as a result of proceeding in this manner; and
- (b) CBH is entitled to rely on the direction of the Grower or Grower's representative (as the case may be) that the Grain be transferred to the Customer and the Customer releases CBH from any liability as a result of proceeding in this manner.

### 5.4 Receival Standards

CBH shall make available to the Customer the current Receival Standards prior to providing the Grain Acquisition Services. The Customer is responsible for checking the Receival Standards of Common Stack Segregations prior to and after requesting Grain Acquisition Services to determine the suitability of the Common Stack Segregations. The Customer acknowledges that CBH employs extended standard tolerances in the receival of Grain. This is a process which allows deliveries to be received outside the Receival Standards whilst maintaining the Receival Standards upon Outturn.

### 5.5 Payment Methods

The Customer must advise CBH on the Harvest Set Up Form of the Payment Methods available for Grower Nominations. The Customer agrees that it will ensure that any price advertised to Growers will clearly indicate whether or not it includes the Grower Freight. The following payment types can be used in CBH Grain Acquisition Services:

- (a) Contract Grower Paid Freight or Contract Marketer Paid Freight (which includes Cash Contracts and Contracted Pools) – this option requires a contract number to be nominated by the Grower at the time of Nomination. Contract numbers can be validated by the Customer online through LoadNet® for Marketers™; or

- (b) Pool type payments methods – these are delivery options where Grain is collectively marketed and payments distributed over a set period of time for which a contract number is not required; or
- (c) Other – Other specific payment methods as agreed between CBH and the Customer.

#### 5.6 Nominations

CBH will automatically accept title transfers from Growers if the Customer has an open service and has either:

- (a) indicated that it has a daily or seasonal tonnage limit and still has capacity to receive the entire tonnage indicated by the nomination; or
- (b) indicated that it has no tonnage limit.

The Customer is responsible for setting any limit and opening any Service via LoadNet® for Marketers™. If the Customer has closed the relevant Service or has insufficient capacity to receive the Nominated Grain within the relevant limit imposed by the Customer, CBH will reject the Nomination.

#### 5.7 Grower Load Reporting

CBH will provide the Customer with load details of all Grain delivered to CBH which has been Nominated to the Customer. Subject to the receipt and validation of load data from each Site, CBH will endeavour to provide this information in the manner and within the associated timeframe as elected by the Customer on their Harvest Set Up Form based on the options set out below:

- (a) Electronic transmission - 24 hours; or
- (b) Email report - 48 hours; or
- (c) Mail report - 3 Business Days.

#### 5.8 Ticket Amendment Policy

The Customer acknowledges that in order to assist the load processing requirements of CBH, the Grower and the Customer during the Harvest Period, CBH follows a Ticket Amendment Policy.

#### 5.9 Liability for Grain Acquisition Services

- (a) The Customer agrees that it is liable for all Grain acquired under Grain Acquisition Services until any service is withdrawn by the Customer in LoadNet® for Marketers™ or by CBH at the Customer's request. Depending on workload it may take CBH up to 1 Business Day to cease or alter, wholly or in part, CBH's performance of the Grain Acquisition Services on behalf of the Customer. CBH recommends that the Customer use LoadNet® for Marketers™ to close Grain Acquisition Services where the Customer no longer wishes to acquire Grain or to impose limits if the Customer has financial sensitivity to the quantity of Grain that may potentially be acquired by it.
- (b) The Customer agrees to indemnify and keep indemnified CBH from all Loss or Damage flowing from the acceptance by Growers of any offer by the Customer by virtue of the Grain Acquisition Services being available at a Site except in the case of Gross Negligence or Wilful Misconduct of CBH, its employees, agents or contractors in the posting, removal or alteration of the terms of the Customer's Grain Acquisition Services.

## 6 LOADNET® FOR MARKETERS™ SERVICES

**Service Description:** This service allows online access for the Customer to manage their Grain acquisitions and stocks.

#### 6.1 Availability

- (a) CBH agrees to make LoadNet® for Marketers™ available for Customers to view their stock, load and quality information, transfer Grain to another party, request an outturn of Grain and open or close Grain Acquisition Services. Customers are responsible for ensuring that Grain Acquisition Services are either turned off or have appropriate limits for the Customer's financial position.



- (b) Nothing in clause 6.1(a) is a warranty or guarantee by CBH that access to LoadNet® for Marketers™ will be uninterrupted or continuously available.

## 6.2 Terms and Conditions

- (a) The Customer agrees to accept the LoadNet® for Marketers™ Terms and Conditions when the Customer uses LoadNet® for Marketers™. The current LoadNet® for Marketers™ Terms and Conditions are available at [www.cbh.com.au](http://www.cbh.com.au)
- (b) CBH will notify the Customer if the LoadNet® for Marketers™ Terms and Conditions change prior to the change occurring to ensure that Customer can examine the revised terms before being bound by them. Notice may be made by:
  - (i) Notifying the customer of the revised terms at next log in by the Customer; or
  - (ii) Emailing the Customer's registered users with details of the revised terms.

## 7 GRAIN STORAGE SERVICES

**Service Description:** This service involves Grain protection and handling services for Grain stored at Sites.

### 7.1 Service Availability

The Grain Storage Services are provided at all Sites if the relevant segregation is available.

### 7.2 Common Stack Storage

All Grain will be stored by CBH in Common Stack Segregations.

### 7.3 Outturn Specifications

Subject to clauses 7.7 and 25, any Grain stored in a Common Stack Segregation will be Outturned by CBH to a quality no less than the minimum Receival Standard which applies to the Common Stack Segregation in which the Customer's Grain is stored.

### 7.4 Grain Entitlement

- (a) CBH will maintain a register of the Customer's entitlement to Grain stored at CBH Sites (the "**Grain Entitlement**"). A certificate by an officer of CBH as to the Grain Entitlement shall be prima facie evidence of quantity, type, location and Grade of Grain which the Customer is entitled to have Outturned from the CBH Facilities, subject always to the terms and conditions of this Agreement.
- (b) Upon request and subject always to clause 7.4(d), CBH will provide the Customer with information regarding the quantity and Grade of Grain held at:
  - (i) an Integrated Entitlement level; and
  - (ii) a Site Entitlement level.
- (c) The Grain Entitlement of the Customer in respect of a particular Grade and Season is calculated at any particular point in time by aggregating the weight of the Grain received on behalf of the Customer or transferred to the Customer:
  - (i) less the relevant Shrinkage factor specified in clause 7.7,
  - (ii) less the relevant Grain Dust Deduction in clause 7.8 if the Customer Outturns via Port Facility into a vessel;
  - (iii) less the weight of any Grain that is damaged or destroyed as a result of a riot, industrial dispute, civil commotion, war, act of God or any unforeseen cause not attributable to the negligence of CBH;
  - (iv) less the weight of any NCV Grain or damaged Grain in respect of which an insurance claim has been made and paid to the Customer in accordance with clauses 25.1 and 26.1;

- (v) less the weight of any Outturned Grain;
- (vi) less the weight of any Grain transferred to third parties.
- (d) Subject to clause 11.5(c), CBH warrants the accuracy of a Customer's Grain Entitlement in respect of Port Zone Entitlement Stock only, and does not warrant the correctness of data provided in relation to grain at Sites (in respect of location or quantities) that may be supplied to the Customer.

7.5 Grain Fumigation

- (a) Fumigation services will be carried out by CBH on all grain where possible in its Sites to protect the Grain. The application of fumigation services will limit availability of the Grain in accordance with standard CBH Grain protection practices.
- (b) At the completion of the first fumigation and prior to a second fumigation being carried out, there is normally a 6-8 week period where Grain is available to be Outturned or moved.
- (c) To ensure Grain is free from insect contamination, fumigation of the Grain will occur at such intervals as deemed necessary by CBH without further notice to the Customer.
- (d) CBH may provide a fumigation statement indicating any Grain treatment information following a written request from the Customer. Fumigation statements shall be in the form adopted by CBH from time to time.

7.6 Non Standard Segregations

- (a) If a Customer wishes to access a non-standard segregation it may contact CBH to request a potential arrangement, with any decision to grant a non-standard segregation at CBH's sole discretion. Any additional segregations will be deemed non-standard and additional charges may apply.
- (b) If the Customer requests CBH to isolate Grain for special treatment or handling in a non-standard segregation and CBH reasonably determines that it can comply with that request, CBH will treat that Grain as a non-standard segregation and additional charges may apply.

7.7 Shrinkage

Notwithstanding any other clause in this Agreement, CBH will apply a Shrinkage factor to all Grain received via Grower receivals, Non-Grower Receivals or warehousing reversions to determine the quantity of Grain that CBH is obliged to Outturn on behalf of the Customer.

The Shrinkage factors for Grain by type are listed below:-

| CBH Shrinkage Rates |       |            |       |            |       |
|---------------------|-------|------------|-------|------------|-------|
| Wheat               | 0.50% | Barley     | 0.50% | Oats       | 1.00% |
| Triticale           | 0.50% | Canola     | 0.50% | Lupins     | 0.50% |
| Albus               | 0.50% | Millet     | 0.50% | Lentils    | 0.75% |
| Field Peas          | 1.00% | Chick Peas | 0.75% | Faba Beans | 0.75% |

7.8 Grain Dust

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

| CBH Dust Deduction |       |            |       |            |       |
|--------------------|-------|------------|-------|------------|-------|
| Wheat              | 0.25% | Barley     | 0.25% | Oats       | 0.00% |
| Triticale          | 0.25% | Canola     | 0.25% | Lupins     | 0.25% |
| Albus              | 0.25% | Millet     | 0.25% | Lentils    | 0.25% |
| Field Peas         | 0.00% | Chick Peas | 0.25% | Faba Beans | 0.25% |

7.9 Title to surplus grain

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

and retain any proceeds.

## 8 QUALITY MANAGEMENT SERVICES

**Service Description:** This service involves engagement between CBH and Customers to develop a Quality Management Plan that CBH will use reasonable endeavours to meet.

### 8.1 Service Availability

- (a) Quality Management Services are available to the Customer provided the Customer supplies the requested information to CBH and consults with CBH during the pre-harvest and post-harvest periods in order that CBH can develop a Quality Management Plan applicable to that Customer.
- (b) If the Customer does not develop a Quality Management Plan in accordance with clause 8.1(a) then CBH will Outturn Grain on the basis of available Grain of the required Grade meeting the Receival Standard at the time of the Outturn Request.

### 8.2 CBH Deliverables

- (a) Provided Customers have an agreed Quality Management Plan with CBH, CBH will use reasonable endeavours to deliver the Customer's Grain in accordance with that plan (as modified through the year). CBH will:
  - (i) Outturn to a minimum of Receival Standard quality;
  - (ii) use reasonable endeavours to Outturn Grain in accordance with the Customer's Quality Management Plan; and
  - (iii) report on the status of the Customer's Quality Management Plan if requested by the Customer.

## 9 HARVEST SAMPLES

### 9.1 Service Availability

Customers will have two options in relation to obtaining samples from CBH:

- (a) Service Level Agreement:
  - (i) the Service Level Agreement will be a separate agreement between CBH and the Customer;
  - (ii) all sample requirements will be negotiated on a fee for service basis to be agreed by both Parties;
  - (iii) the Customer will provide a draft of its harvest sample requirements for the coming Harvest Period to CBH by the 15 September or a later date as agreed; and
  - (iv) following receipt of the requirements indicated in clause (iii) CBH will provide the Customer with revisions and estimated pricing per sample type within 10 Business Days.
- (b) Standard Sample Requests:

In the absence of a Service Level Agreement, CBH will provide physical samples of a size no greater than 100kgs on request and charge the Customer the applicable fees and charges set out in the Fees and Charges Schedule.

## 10 MOISTURE MANAGEMENT SERVICES

**Service Description:** This service permits the acquisition of Grain from Growers or the delivery of Grain by the Customer at selected Sites to manage the quality of High Moisture Grain.

### 10.1 Service Availability

- (a) Moisture Management Services are only available at Sites nominated by CBH.
- (b) The Customer will be bound by the Moisture Management Services terms if it accepts the transfer of Grain which is subject to these Moisture Management Services from a third party irrespective of whether the Customer has chosen to accept High Moisture Grain under the Grain Acquisition Services. If Customers do not wish to utilise the Moisture Management Services, CBH advises Customers to ensure that it does not buy grain subject to these services.

#### 10.2 Allocation of risk regarding storage of High Moisture Grain

- (a) Notwithstanding anything in this clause 10, at all times the Customer remains solely liable for any loss, cost or damage associated with the Outturn and market acceptance of Grain which is subject to the Moisture Management Services being at higher (and potentially variable) moisture levels.
- (b) Other than as set out in this Agreement, CBH is not liable to the Customer for any Loss or Damage (including Indirect and Consequential Loss) nor will CBH be in breach of any contractual term with the Customer for a failure to perform the Moisture Management Services or maintain Grain quality due to an event of Force Majeure.
- (c) The Customer indemnifies and will keep indemnified CBH for any Loss or Damage (including Indirect and Consequential Loss) caused by or resulting from a purchaser of Grain from the Customer not being bound by the terms and conditions set out in this Agreement.

#### 10.3 Mitigation of risk in storing High Moisture Grain

- (a) The Customer acknowledges that there are a number of risks that arise with the receipt and storage of High Moisture Grain, including:
  - (i) mould growth from Grain of high temperature and moisture content; and
  - (ii) the possible reduction in the capacity of the Grain to germinate.
- (b) To reduce these risks and allow the receipt and storage of High Moisture Grain CBH has developed a risk management strategy including:
  - (i) controlling the extent to which individual stacks that are receiving High Moisture Grain under Active Stack Management at any one time through an assessment of the overall weighted average moisture level of that grain and Grade within a port zone;
  - (ii) the installation of temperature probes; and
  - (iii) operating a centralised supervision and monitoring system.
- (c) The risk mitigation strategies set out in clause 10.3(b) endeavour to provide an early warning if a monitored parameter drifts outside the initial set point and subsequent acceptable limits. The Customer accepts that these strategies constitute Good Operating Practice in the storage of High Moisture Grain.
- (d) Nothing in this clause 10 shall oblige CBH to dry, or be construed as CBH being liable to dry, any Grain delivered to CBH in order to manage or reduce moisture levels.

## 11 DOMESTIC OUTTURNING SERVICES

**Service Description:** Domestic Outturning Services allows the Customer to Outturn their Grain into bulk rail or road vehicles or onto a conveyor at nominated Sites. The Domestic Outturning Services do not include Outturning into a ship or vessel.

#### 11.1 Integrated Entitlement - Service Availability

- (a) If a Customer holds Integrated Entitlement, Domestic Outturn Services will be made available by CBH upon request in accordance with the terms of this Agreement and CBH will select the Site at which the Outturn will take place.
- (b) The Customer acknowledges that the Domestic Outturning Services available at particular Sites may vary according to the:

- (i) storage capacity and segregation availability of each particular Site;
- (ii) total Outturning capacity of each particular Site;
- (iii) communication from the Customer and other customers of their domestic Outturn requirements;
- (iv) demand for Outturns at the relevant Site at that time;
- (v) level of non-committed or unnominated stock at the relevant Site; and
- (vi) fumigation requirements of the Customer's Grain (including to the requisite fumigation period as set out in clause 7.5).

#### 11.2 Site Entitlement - Service Availability

Subject to clause 11.5(c), if a Customer holds Site Entitlement and makes a request in accordance with the terms of this Agreement, CBH will perform the Domestic Outturn Services at the Site where the Customer holds the Site Entitlement.

#### 11.3 Outturn Requests

- (a) In order to access the services available as part of the Domestic Outturning Services for Site Entitlement or Integrated Entitlement, the Customer should first contact CBH's "Coordinator – Domestic Market" to discuss indicative availability of Grain.
- (b) If CBH's "Coordinator – Domestic Market" indicates that Grain may be available, the Customer may formalise their request via the online Domestic Outturn Request service within LoadNet® for Marketers™. For the avoidance of doubt, CBH is not bound by any indicative availability expressed by CBH (including CBH's "Coordinator – Domestic Market").
- (c) If CBH receives a formal request via the online Domestic Outturn Request service within LoadNet® for Marketers™, CBH will confirm within LoadNet® for Marketers™ whether the details of the proposed Grain Outturn are agreed to by CBH.
- (d) If the Customer complies with the Domestic Outturn Guidelines, its Outturn Requests will receive priority over those Acquirers who do not comply.
- (e) If the Customer does not have internet access, the request can be submitted on a paper Outturn Request Form.
- (f) If an Outturn request also requires CBH to arrange transport, the Customer must liaise directly with the CBH's logistics department and CBH will use reasonable endeavours to provide transport.

#### 11.4 Outturn Request Form

On receipt of an Outturn Request through LoadNet® for Marketers™ or on an Outturn Request Form, CBH will determine its ability to meet the request and advise the Customer if CBH has:

- (a) accepted the Outturn Request;
- (b) rejected the Outturn Request on any of the following bases:
  - (i) the services are not available at the requested Site;
  - (ii) the Customer has insufficient Grain Entitlement or it is not in compliance with the Customer's Quality Management Plan;
  - (iii) the requested date, time or timeframe is not acceptable;
  - (iv) the minimum required notice for the relevant Site prior to the date that the Customer requires the Outturning to be performed has not been provided;
  - (v) the Grain is unavailable as a result of fumigation activities pursuant to clause 7.5;
  - (vi) the Outturn Request contains inadequate or inaccurate information;
  - (vii) CBH cannot meet the Outturning Quality Specifications contained in the Outturn

Request; or

- (viii) an event of Force Majeure prevents the Outturning of Grain, and will provide alternatives (if any) that may be of interest to the Customer to meet their requirements.

#### 11.5 Acceptance of Outturn Request

- (a) Upon acceptance of an Outturn Request:
  - (i) if the Customer has requested to Outturn Integrated Entitlement in accordance with clause 11.1(a), it will be deemed to hold Site Entitlement at the particular Site from the date that CBH communicates its acceptance to the Customer;
  - (ii) CBH shall Outturn the Grain in accordance with the relevant Outturn Request and all other provisions of this Agreement; and
  - (iii) the Customer shall ensure that its transporter complies with the Booking Procedure and attends the relevant Site within the time allocated to collect the Grain.
- (b) If CBH agrees to Outturn Integrated Entitlement at a Domestic Site in accordance with clause 11.5(a)(i), CBH will provide a freight adjustment to the Customer equal to:
  - (i) the Grower Freight Adjustment Amount of the Grower Freight Differential per metric tonne between the relevant Port Facility and the agreed Domestic Site; or
  - (ii) an amount determined by CBH (which amount may be equal to, more than or less than the amount calculated under clause 11.5(b)(i) but in any event shall not be more than the amount CBH has received or will receive for the movement of the relevant Grain).
- (c) If the Customer wishes to Outturn from the Domestic Site at which it holds Site Entitlement in accordance with clause 11.2, and CBH rejects or is unable to comply with that request, CBH may either:
  - (i) transfer the relevant Site Entitlement to another Domestic Site and the following will apply:
    - A. if the new Domestic Site is nearer to the Allocated Port Facility, the Customer agrees to pay CBH the Grower Freight Differential; or
    - B. if the new Domestic Site is further away from the Allocated Port Facility, CBH will pay the Customer the Grower Freight Differential; or
  - (ii) if CBH cannot transfer to an alternative Domestic Site in accordance with clause 11.5(c)(i)(A) or 11.5(c)(i)(B), compensate the Customer by the provision of financial compensation for the value of the Grain shortfall to be determined at the Fair Market Price for such Grain on a Free in Store basis at the Allocated Port Facility, minus 100% of the finalised Grower Freight to the Site at which the Site Entitlement is held.

#### 11.6 Outturn Standard

- (a) CBH is obliged to Outturn Grain 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. To the extent that the Outturning Quality Specifications differ from the Receival Standard, CBH will use reasonable endeavours to meet the Outturning Quality Specification provided that the Customer has worked with CBH in accordance with clause 8 to develop a Quality Management Plan.
- (b) 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.

(c) To the extent that outturn to a higher standard 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.

#### 11.7 Sampling

CBH will sample the Grain in accordance with CBH's standard sampling methods to ensure that it meets the Outturning Quality Specifications immediately prior to Outturning.

#### 11.8 Weigh

CBH will weigh all Grain Outturned ex-silo utilising CBH certified weighers. In the absence of manifest error or fraud the CBH weight measurement will be final.

#### 11.9 Notification of Outturn Requirements

The Customer agrees to use its best endeavours to provide CBH with as much notice as possible regarding anticipated Outturns and in any event no less than the notice periods specified in clause 11.4(b)(iv).

#### 11.10 Cleanliness

(a) The Customer is responsible for ensuring that all vehicles arrive at a Site (or any other Site of Outturn) in a clean, empty and well maintained state free from any Contaminants or residue.

(b) CBH is not obliged to inspect any vehicle for cleanliness but if it does inspect, then CBH acting reasonably at all times, is entitled to reject the vehicle as unfit for the transportation of grain and to refuse to load the vehicle.

(c) CBH is not liable for any Loss or Damage caused as a result of a rejection of the vehicle.

(d) The Customer agrees to pay CBH for any costs incurred by CBH as a result of the rejection of a vehicle or container by CBH or the Department.

(e) Vehicles or containers may not be permitted to be cleaned at any Site or other Site of Outturn.

#### 11.11 Load Rejection

Where the Customer believes that a load does not meet the relevant Receival Standards, the discharge of that load is to cease immediately and CBH and the Customer will meet to discuss whether they wish to use the Load Rejection Dispute Procedure set out in Schedule 3 to resolve the dispute.

#### 11.12 Fees and charges

CBH will offer Domestic Outturning Services for the fees and charges set out in the Fees and Charges Schedule.

#### 11.13 Site Entitlement Management

If a Customer holds Site Entitlement from 1 March of the Ending Calendar Year, it will be charged the Site Entitlement Fee set out in the Fees and Charges Schedule.

## 12 CONTAINER LOADING SERVICES

**Service Description:** This service provides container transport from a nominated container depot, Outturning of Grain stored at MGC into containers, sampling, the Department Authorised

Officer inspection, 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.

12.1 Service Availability and Terms

This service will be provided pursuant to a separate agreement between CBH and the Customer.

**13 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, the Department Authorised Officer inspection, placing of bags into containers, and container transport to a nominated Container Terminal by CBH.

13.1 Service Availability and Terms

This service will be provided pursuant to a separate agreement between CBH and the Customer.

**14 GRAIN CLEANING SERVICES**

**Service Description:** Grain Cleaning Services allows Grain to be machine dressed.

14.1 Service Availability

Grain Cleaning Services are only provided at the MGC unless the Customer is notified in writing by CBH of alternative locations.

14.2 Work Instruction Form

The Customer must request any Grain Cleaning Services required on a Work Instruction Form.

On receipt of a Work Instruction Form, CBH will determine its ability to meet the request and advise the Customer within one (1) Business Day if CBH has:

- (a) accepted the Work Instruction Form in which case CBH must also nominate the date of the scheduled cleaning; or
- (b) rejected the Work Instruction Form on any of the following bases:
  - (i) the Customer has insufficient Grain Entitlement;
  - (ii) the requested date, time or timeframe is not acceptable;
  - (iii) the Customer has not provided at least 10 Business Days' notice;
  - (iv) the Grain is unavailable as a result of fumigation activities pursuant to clause 7.5 ;
  - (v) the Work Instruction Form contains inadequate or inaccurate information;
  - (vi) CBH cannot meet the quality specifications contained in the Work Instruction Form with the Grain or Grade nominated to be used by the Customer; or
  - (vii) an event of Force Majeure prevents the scheduling of cleaning.

14.3 Service Charges

The Customer agrees to pay the charges applicable as set out in the written quotation provided by CBH.

14.4 Notice

CBH may, at its absolute discretion, decide whether to accept as valid a Work Instruction Form if it is received with less than ten (10) Business Days' notice.



#### 14.5 Grain Entitlement adjustment

As a result of the Grain Cleaning Services the Customer's Grain Entitlement will be adjusted to reflect:

- (a) Grain disposed of during the cleaning process;
- (b) Grain reduced in Grade during the process; and
- (c) an additional shrinkage factor of 0.1% to reflect storage and handling losses after the cleaning process.

### 15 EXTERNAL CLEANERS AND DRYERS

When Grain is Outturned from a Site to be cleaned or dried by the Customer or third parties, and then the Grain is delivered back to the same Site, as a result of the Grain Cleaning or Drying, the Customer's Grain Entitlement will be adjusted to reflect:

- (a) Grain disposed of during the cleaning/drying process;
- (b) Grain reduced in Grade during the process; and
- (c) an additional shrinkage factor of 0.1% to reflect storage and handling losses after the cleaning or drying process.
- (d) The Customer is not permitted to return the Grain to a different Site without the prior written approval of CBH. Failure to obtain this approval will result in an additional Receival Fee being levied.

### 16 GRAIN MOVEMENT

#### Integrated Entitlement

##### 16.1 Freight and Movement

- (a) It is a condition of CBH offering the Services in relation to Integrated Entitlement under this Agreement that CBH transports the Grain between the Receival Site and the Integrated Site Nominated by the Grower or between Integrated Sites if the Customer wishes to alter Integrated Sites. CBH will be entitled to charge the Customer for the Freight whether or not the Grain has actually moved between Integrated Sites. Nothing in this clause, requires a Customer to use CBH arranged transport following the Outturn of Grain from the CBH Site.
- (b) If, in accordance with clause 16.1(a):
  - (i) CBH arranges the movement of Grain; or
  - (ii) CBH arranges the transport for a Customer requested movement,  
CBH will invoice the Customer for the transport component and payment of those transport charges is to be made directly to CBH.
- (c) The charges for Grower Freight and for movements between Sites will be listed for each relevant Site on [www.cbh.com.au](http://www.cbh.com.au) and:
  - (i) will be estimated prior to the beginning of Harvest Period; and
  - (ii) will be fixed no later than the Grower Freight Differential Finalisation Date.
- (d) The Customer acknowledges and agrees that Grower Freight rates are calculated based on the efficient movement of the harvest over the Term of this Agreement. Accordingly, the Customer acknowledges that it is not possible to move all Grain from Receival Sites to Integrated Sites within a lesser period of time. If the Customer wishes to accelerate the movement of Grain over and above the transport resources acquired by CBH utilising the Grower Freight charges, a Surge Fee may apply.
- (e) The Customer agrees:
  - (i) that Grower Freight funded transport resources are dedicated to servicing the even movement of Grain from Receival Sites to Integrated Sites and that allocation of those

resources will be made to:

- A. maintaining the ability of the CBH storage system to continue to receive Grain from Growers;
  - B. meeting the needs of Customers exporting Grain from CBH Port Facilities in the order set out in the Shipping Stem; and
  - C. meeting the regular requirements of domestic customers; and
- (ii) that to the extent that the Grower Freight funded transport resources will be insufficient to meet an increased exporting demand Customers may be required to pay a Surge Fee representing the increased freight rate per tonne required to increase transportation resources.
- (f) CBH agrees to make information about the Surge Fee available to the Customer to allow an informed choice whether to consent to the acquisition of additional transport resources. This information may be presented to Customers either through the CBH website or via the Shipping Stem.
  - (g) If the Customer wishes to ensure that Grain is available for delivery to a Port Facility for port outturning pursuant to a Port Terminal Services Agreement, the Customer must give CBH at least 22 days written notice prior to the earliest day that the Grain will be required at Port and will submit an Export Nomination in accordance with the Port Terminal Rules.
  - (h) For the purposes of this Agreement, an Export Nomination in accordance with the Port Terminal Rules is deemed to constitute notice of intention to Outturn under this Agreement but may not excuse the failure to give the required notice even if the Export Nomination is accepted at the Port Facility. If the notice required under clause 16.1(g) is not given, CBH may, but is not obliged to, use reasonable endeavours to fulfil the required transportation of Grain to the relevant Port Terminal Facility.
  - (i) When the Customer submits an Export Nomination it must make a declaration as to whether the Customer wishes to use the CBH Integrated supply chain under this Agreement, or whether it wishes to arrange its own transport to Port, in relation to Capacity acquired or intended to be acquired.
  - (j) The Customer acknowledges and agrees that its choice of supply chain under clause 16.1(i) will result in CBH relying on that declaration and incurring costs in acquiring transportation resources and subsequently transporting the Grain for accumulation at a Port Facility or in foregoing the opportunity to contract transport resources. Consequently, once this declaration has been made, the Customer may not change the declared supply chain to be used for shipping that Capacity, unless CBH, at its sole discretion, otherwise approves.
  - (k) The Customer acknowledges and agrees that the decision to accept an Export Nomination is independent of CBH's requirement to transport Grain to a Port Facility for accumulation and shipping and that acceptance of an Export Nomination is not a commitment by CBH to the movement of grain in accordance under this Agreement. Nothing in this Agreement shall be construed such that CBH has any obligation to pay Demurrage to the Customer as a result of any delay or interruption in moving Grain from a CBH Site to CBH Port.

### **Site Entitlement**

#### **16.2 Freight and Movement**

The Customer acknowledges that if it holds Site Entitlement, unless it has converted that Grain Entitlement to Integrated Entitlement in accordance with clause 16.3, it is responsible for organising movement of that Grain Entitlement away from the relevant Site. The Customer may:

- (a) request CBH to arrange the transport in accordance with clause 16.4; or
- (b) arrange its own transport in accordance with clause 16.5.

#### **16.3 Conversion of Site Entitlement to Integrated Entitlement**

- (a) A Customer who holds Site Entitlement may request that CBH convert all or a portion of that Site Entitlement to Integrated Entitlement. If the request is made prior to 1 February of the Ending Calendar Year, CBH will invoice the Customer and the Customer agrees to pay the differential in Grower Freight applicable to the relevant portion of Site Entitlement being

converted. If the request is made on or after 1 February of the Ending Calendar Year, CBH may, in its absolute discretion, agree to the conversion request and become responsible for any required transport of the Grain.

- (b) If CBH consents to be responsible for the transportation of the Grain in accordance with clause 16.3(a):
  - (i) CBH will provide the Customer with a quotation detailing the charges for conversion for acceptance by the Customer ;
  - (ii) upon acceptance of the CBH quotation in clause 16.3(b)(i) by the Customer, CBH will invoice the Customer for the agreed charges, accept responsibility for any movement of the Grain, credit the Customer the relevant amount of Integrated Entitlement and debit the relevant amount of Site Entitlement; and
  - (iii) the Customer remains liable to pay any Site Entitlement Fees accrued to the date of conversion.

#### Site Entitlement and Integrated Entitlement

##### 16.4 Customer requested movements

- (a) Following a request by the Customer to move Grain from a Site to a location outside of the CBH storage system or to transfer Grain Entitlement to another CBH Site, CBH may, in its absolute discretion, agree to arrange transport of the Grain or transfer Grain Entitlement to any location or Site specified by the Customer.
- (b) If CBH consents to arrange the transport or transfer Grain Entitlement:
  - (i) CBH will provide the Customer with a quotation detailing the applicable charges for acceptance by the Customer prior to performing any movement or transfer (as the case requires); and
  - (ii) upon acceptance of the CBH quotation in clause 16.4(b)(i) by the Customer, CBH will be responsible the movement or transfer and invoice the Customer for the agreed charges.
- (c) For the avoidance of doubt, these contestable movements will not be carried out through the Freight Fund and therefore CBH may make a margin on the freight rate obtained.

##### 16.5 Customer arranged transporters

- (a) If the Customer arranges its own transport in accordance with clause 16.2(b), it must:
  - (i) pay for the relevant freight; and
  - (ii) if transporting to a Port Facility, arrange to transport the Grain for accumulation at the relevant Port Facility, comply with the Port Terminal Rules and Port Terminal Services Agreement obligations.
- (b) The Customer is responsible for ensuring that any transport contractor arranged by it for an Outturn arrives at a Site with the grain transportation vehicle (whether road or rail) in a clean, empty and well maintained state free from any contaminants or residue.
- (c) CBH is not obliged to inspect any grain transportation vehicle for cleanliness but if it does inspect then CBH, acting reasonably at all times, is entitled to reject the vehicle as unfit for the transportation of grain and to refuse to load the vehicle.
- (d) CBH is not liable for any Loss or Damage caused as a result of a rejection of the grain transportation vehicle.
- (e) The Customer agrees to pay CBH for any costs incurred by CBH as a result of the rejection, non-attendance or late attendance of a grain transportation vehicle.
- (f) Transporters are not permitted to clean vehicles at any Site.

##### 16.6 Carryover positioning movements and access

- (a) CBH will liaise with the Customer prior to the Harvest Period to ascertain requirements to carryover Grain during the Harvest Period.

- (b) By the later of 15 September of the Starting Calendar Year and the date of execution of this Agreement, the Customer will provide to CBH a written estimate of forward shipping and domestic Outturning for September of the Starting Calendar Year to February of the Ending Calendar Year in respect of both Integrated Entitlement and Site Entitlement to assist with planning of the movement of old seasons' Grain direct to port during harvest or for the repositioning of old seasons' Grain into carryover positions up-country when required. Further, the Customer agrees to provide to CBH by 15 August of the Ending Calendar Year a written estimate of forward shipping and domestic Outturning for September of the Ending Calendar Year to February of the calendar year after the Ending Calendar Year.
- (c) To further assist in this process, the Customer will provide details of anticipated carryover Grain by Grade, and by Integrated Entitlement and Site Entitlement.
- (d) If access to carryover Grain will be required during a Harvest Period the Customer and CBH agree to discuss how access to that carryover Grain is to be obtained and whether alternative arrangements are necessary. CBH will use reasonable endeavours to access carryover grain provided the Customer has used reasonable endeavours to comply with this clause 16.6. CBH does not warrant or guarantee that access to carryover Grain will be possible during the Harvest Period and CBH will not be liable for any inability of the Customer to access that carryover Grain.

#### 16.7 Stock transfer orders

Notwithstanding any other provision in this Agreement, stock transfer orders are not recognised by CBH and accordingly CBH will not request a stock transfer order and the Customer shall not require a stock transfer order prior to any movements of Grain being performed by CBH.

- 16.8 If for any reason CBH is unable to weigh the amount of Grain loaded into a Customer arranged transporter, CBH may use Average Weights to calculate the change in the Customer's Grain Entitlement.

### 17 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.

#### 17.1 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.

### 18 TRANSFER OF GRAIN ENTITLEMENT SERVICES

**Service Description:** This service provides for the transferring of grain entitlements from one party to another via LoadNet® for Marketers™ or written forms.

#### 18.1 Entitlement Transfer Requests

The Customer agrees to use LoadNet® for Marketers™ or the Bulk Transfer of Ownership Form for any Entitlement Transfer Request.

#### 18.2 Transferee must have Agreement with CBH

- (a) It is a condition precedent to CBH agreeing to transfer all or part of a Customer's Grain Entitlement that the proposed transferee has agreed with CBH to be bound on similar terms to this Agreement.
- (b) The Customer agrees that CBH is not liable, and releases and holds CBH harmless, for refusing to recognise a Bulk Transfer of Ownership Form if the proposed transferee has not executed an agreement as required by 18.2(a).

### 18.3 Processing Period

- (a) CBH will process a valid Bulk Transfer of Ownership Form on a first-in first-out basis and will use reasonable endeavours to complete the transfer within 24 hours of receipt.
- (b) CBH will endeavour to notify the transferor and transferee within forty eight (48) hours after the Entitlement Transfer Request has been completed. Such notice shall be either on LoadNet® for Marketers™ or in writing depending on the method of communication of the Entitlement Transfer Request.

### 18.4 Outstanding charges

CBH has the right to refuse any Bulk Transfer of Ownership Form if the Customer has not paid all applicable charges.

### 18.5 Receival Standard

It is the Customer's responsibility to ensure that it is aware of any Receival Standards applicable to any grain that it intends to purchase.

### 18.6 Validity

The Customer agrees that:

- (a) CBH is entitled to assume that a Bulk Transfer of Ownership Form has been validly:
  - (i) executed by the Customer and the proposed transferee/transferor; or
  - (ii) entered into LoadNet® for Marketers™ by the Customer.
- (b) CBH is not obliged to make further enquiries to satisfy itself as to the validity of the Bulk Transfer of Ownership Form.

### 18.7 Irrevocable

The Customer:

- (a) will not request CBH to revoke or delay the processing of any Bulk Transfer of Ownership Form;
- (b) warrants that the Bulk Transfer of Ownership Form is unconditional; and
- (c) agrees that CBH is not required to comply with any additional condition, stipulation or comment purported to be included on the Bulk Transfer of Ownership Form.

### 18.8 Indemnity

The Customer will indemnify and keep indemnified CBH from all Loss or Damage or claims resulting from and connected with CBH processing a Bulk Transfer of Ownership Form issued by the Customer.

## 19 REMUNERATION

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

### 19.1 Payment of Certain Fees

- (a) Notwithstanding any provision in this Agreement to the contrary and without limiting the charges that may be levied under this Agreement the Customer agrees to pay:
  - (i) the BAMA Contributions; and
  - (ii) any charges in accordance with the current Grain Services Agreement Charges Schedule specified in Schedule 1.
- (b) The Customer acknowledges that:

- (i) the charges set out in Schedule 1 are a realistic assessment of the loss and damage that CBH will suffer as a result of a failure by the Customer to comply with their obligations under the Agreement and the Port Terminal Rules;
- (ii) 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 the Agreement; and
- (iii) CBH is entitled to invoice the Customer for any additional charges prescribed in Schedule 1 for Grain Outturned by CBH as a direct result of the actions of the Customer or the Customer's agent.

#### 19.2 Application for credit terms

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

#### 19.3 Credit terms

- (a) If CBH agrees to provide credit terms to the Customer, then CBH reserves the right, in its absolute discretion, to:
  - (i) place or vary a limit on the amount allowed to be outstanding by the Customer at any time;
  - (ii) vary the credit terms by providing not less than 60 days' written notice of the new or varied credit terms;
  - (iii) refuse to extend further credit terms to the Customer; or
  - (iv) withdraw the Customer's credit terms.
- (b) It is the Customer's responsibility to request a credit limit increase if it is going to exceed the approved credit limit. Any refusal, withdrawal or exceeding of credit terms will result in the Services being provided on a prepaid basis.
- (c) If CBH has agreed to provide credit terms prior to the Commencement Date and has not withdrawn them prior to this Agreement then those credit terms will be deemed to continue on the terms and conditions set out in this clause 19.

#### 19.4 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.

#### 19.5 Invoicing and GST

- (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 19.5(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 Statement by a Supplier form to CBH,
  - (iii) CBH may be required to withhold 49.5% (or such rate as is prevailing at the time) of the gross supply value by the Australian Taxation Office.

#### 19.6 Payment terms

- (a) If credit terms are made available by CBH at its discretion, then the Customer must pay the amount set out in any invoice provided by CBH within 14 days of the date of the invoice.
- (b) If:
  - (i) credit terms are not made available to the Customer; or
  - (ii) the Customer fails to make payment of an invoice in accordance with clause 19.6(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 provided by a CBH Group Entity prior to the performance of that service.
- (c) CBH may, in its absolute discretion, suspend the provision of any service by a CBH Group Entity (including credit) if the Customer fails to pay an invoice in accordance with clause 19.6. The suspension of the service is not a breach by CBH of its obligations under this Agreement or any other agreement between the Customer and CBH, and CBH may continue to suspend the services until such time as the invoice has been paid.

#### 19.7 Certificates

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

19.8 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.

19.9 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.

19.10 Notice

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

19.11 Set off

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

19.12 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).

19.13 Harvest Shipping Incentive Payment

CBH will pay the Customer the Harvest Shipping Incentive Payment if the Customer meets the requirements to qualify for that payment.

## **20 LIEN AND RIGHT TO WITHHOLD GRAIN**

20.1 Statutory Lien

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

20.2 Charge

The Customer acknowledges it is aware of the rights in respect of the Grain held by CBH arising



out of the provisions of the CBH Delivery and Warehousing Terms. CBH will advise the Customer if it intends to exercise any of those rights including the enforcement of any charge.

20.3 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 19.6.

**21 DUE CARE AND DILIGENCE**

21.1 CBH

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

21.2 Customer

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

**22 APPOINTMENT OF AN AGENT**

22.1 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.

22.2 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 22.1 above when performing Services on behalf of the Customer under this Agreement.

**23 GRAIN REMOVED BEFORE 30 SEPTEMBER OF THE ENDING CALENDAR YEAR**

23.1 Old Grain to be Outturned prior to Harvest Period

The Customer must, by the end of the Term, ensure that it has either:

- (a) arranged for CBH to Outturn any Grain held in a Site; or
- (b) arranged with CBH and confirmed in writing, the continuing storage of that Grain by CBH at a Site and on terms acceptable to CBH.

23.2 CBH authorised to sell Grain not Outturned prior to Harvest Period

If the Customer fails to comply with clause 23.1, the Customer agrees that CBH is entitled, in its absolute discretion, to:

- (a) continue storing the Grain and charging the Customer in accordance with this Agreement and as per the fees set out in the Fees and Charges Schedule; or
- (b) sell the Grain.

23.3 Election to Sell Grain

The election contained in clause 23.2(b) to sell Grain may be made in relation to any Grain held by CBH at such time after the Term as is acceptable to CBH.

23.4 Application of Sale Proceeds

If CBH decides pursuant to clause 23.2 to sell Grain, the Customer expressly and irrevocably authorises CBH to:

- (a) sell on such terms including price as determined by CBH;
- (b) create a Tax Invoice on behalf of the Customer who warrants it is, and at all times be, registered for GST to comply with the provisions of the GST Legislation;
- (c) retain that portion of the sale proceeds which covers all CBH charges still outstanding and CBH's costs involved in arranging for the sale of the Grain; and
- (d) pay the balance (if any) of the sale proceeds to the Customer.

## **24 STOCK RECONCILIATION AND ADJUSTMENTS**

### **24.1 Reconciliation and Adjustments**

Subject to clauses 7.7 and 24.3, a reconciliation of the Customer's Grain Entitlement will involve:

- (a) CBH reporting on tonnages Outturned to, or transferred by, the Customer on a Grade level by season as compared to their Grain Entitlement for that season;
- (b) CBH determining short delivery or over delivery (as the case may be) by Grade for the season being reconciled;

### **24.2 Adjustments**

Subject to clauses 7.7 and 24.3, if following reconciliation of the Customer's Grain Entitlement it is determined that CBH has Outturned more Grain than the Customer's Grain Entitlement, then CBH may, at its discretion, either:

- (a) transfer an equivalent value or quantity of the Customer's Grain from a previous or subsequent season to offset the excess Outturn; or
- (b) receive financial compensation from the Customer for the excess Outturn of Grain. The financial compensation will be based on the Fair Market Price for Grain of the relevant type and Grade for the applicable season.

### **24.3 Remnants and reclassification**

- (a) If the Customer's Integrated Entitlement stock or Site Entitlement of a particular type and Grade of Grain is:
  - (i) in the opinion of CBH, an uneconomical parcel of grain to retain in the bulk storage system, CBH may provide the Customer with the option to remove the parcel from CBH sites within 30 days or reclassify the parcel such that CBH can commingle it with other grain to ensure efficient storage and adjust the Customer's Integrated Entitlement stock or Site Entitlement stock accordingly; or
  - (ii) between the values of -1.00 and +1.00 tonne, that Integrated Entitlement stock or Site Entitlement will be deemed NCV Grain and will be removed from CBH's stock information systems and neither party will have any liability to the other for that amount of Grain.
- (b) CBH may reclassify the Grade of any barley held under this Agreement from malting barley to feed barley :
  - (i) at any time during the Term if the germinative quality of the relevant Grain is in the reasonable opinion of CBH less than 95%; or
  - (ii) at any time after 1 July of the Ending Calendar Year if the relevant Grain was harvested before 1 July of the Starting Calendar Year (for example, malt barley harvested in the 2020/21 season may be reclassified to feed barley at any time on or after 1 July 2022),

and the Customer's Grain Entitlement will be adjusted accordingly.

- (c) CBH may reclassify the Grade of any pulse crops (not including Lupins) that were harvested before 1 July of the Starting Calendar Year and are held under this Agreement to feed standard at any time on or after 1 July of the Ending Calendar Year and the Customer's Grain Entitlement will be adjusted accordingly (for example, pulse crop harvested in the 2020/21 Season may be reclassified to feed standard at any time on or after 1 July 2022).

(d) CBH may reclassify the Grade of any oats that were harvested before 1 July of the Starting Calendar Year and are held under this Agreement at any time on or after 1 July of the Ending Calendar Year in the following manner:

- (i) Oat1 to Oat2;
- (ii) OWAN1 to Oat2; and
- (iii) Oat2 to Feed Oats,

and the Customer's Grain Entitlement will be adjusted accordingly (for example, Oat1 harvested in the 2020/21 Season may be reclassified to Oat2 at any time on or after 1 July 2022).

(e) CBH reclassifies Grain pursuant to this clause 24.3 on the basis that these Grains naturally deteriorate over time and CBH holds the discretion to decide whether or not to reclassify, or remove Grain Entitlement, pursuant to this clause 24.3.

## **25 CBH LIABILITY**

### **25.1 Liability for Shortfall**

- (a) Subject always to clauses 25.1(b), 25.1(d), and 25.8, CBH will be responsible and liable for any shortfall if it cannot Outturn the Customer's Grain Entitlement for the relevant Grade and season of grain.
- (b) CBH's liability for a shortfall in Grain Entitlement pursuant to clause 25.1(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:
      - I 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;
    - B. subject to clause 25.1(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 or any removal or reclassification under clause 24.3.

25.2 Damage for Gross Negligence or Wilful Misconduct

Other than as set out in clause 25.1 and in clause 25.7 and subject always to clauses 25.3, 25.4 and 25.8, CBH will only be liable for loss and/or damage, which is caused by the Gross Negligence or Wilful Misconduct of CBH, its officers, employees or contractors.

25.3 Liability Cap

Other than as set out in clauses 25.1 and 25.7, CBH's maximum liability to the Customer howsoever arising shall be limited to \$100,000 for any single event and limited to a maximum in aggregate of \$250,000 for the term of this agreement, however caused including Loss or Damage resulting from:

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

25.4 Limitation of Grain Loss and Damage

Except as provided for in clauses 25.1, 25.2 and 25.7, 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) 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).

25.5 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, rail or sea 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;
- (c) delays in respect of the provision of information by CBH to the Customer pursuant to clauses 5.7 and 7.4(b),

and such delay causes any shortfall in Grain Entitlement, then CBH's liability will only extend to the remedies provided in clause 25.1(b). CBH will not be liable for any other Loss or Damage caused by such delay.

25.6 Contribution to loss

Where any express or implied term of this Agreement places on any Party (in this clause 25.6 "**Party A**") any duty of care the breach of which would, if the duty of care were imposed by the general law rather than by such express or implied term, constitute an actionable tort against any other Party (in this clause "**Party B**"):

- (a) Party B has an obligation not to commit any negligent act or omission which contributes to any Loss or Damage it suffers or may suffer as a result by any breach by Party A of such express or implied terms; and
- (b) the liability of Party A for any such breach is limited to the direct and proximate Loss or Damage of Party B arising out of such breach, less the proportion of such Loss or Damage attributable to any breach by Party B of its obligations under clause 25.6(a).

The obligations imposed on a Party in this clause 25.6 in relation to any breach by Party A of the kind the subject to this clause are additional to, and not in derogation of, any obligation of Party B to mitigate its Loss or Damage in relation to such breach.

#### 25.7 Conditional exclusion of Statutory Liability

This Agreement excludes to the maximum extent permitted by law any warranty or condition implied by common law, practice or statute. However in the case of those warranties under statute which may not be excluded, including the *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 25.1):
  - (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 25.7, "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.

#### 25.8 No Indirect or Consequential Loss

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

#### 25.9 Indemnity and Release

The Customer hereby releases and indemnifies CBH in respect of all actions, claims and demands which may be instituted by the Customer against CBH in respect of the matters dealt with under clauses 25.4 and 25.8.

#### 25.10 Exclusion of warranties

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

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

#### 25.11 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 received or 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;
- (c) the presence, in any Grain received or Outturned for the Customer, at any level or concentration, of any Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination; or
- (d) the presence, in any Grain received or Outturned for the Customer, at any level or concentration of any Genetically Modified Organisms.

#### 25.12 Indemnity

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

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

#### 25.13 Disclaimer regarding Outturning Quality Specifications

- (a) Without limiting clauses 25.11 and 25.12, 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 for the Customer's purposes, including meeting any Grain quality requirements of the Customer or its customers.
- (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 and, to the extent permitted by law, CBH disclaims all liability for such information or advice.

## 26 INSURANCE AND RISK

### 26.1 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 in the Sites; and
  - (ii) during transit organised by CBH from the Receival Site to an Integrated Site.
- (b) CBH will advise the Customer if it cannot gain insurance coverage as detailed above.

## 26.2 Transfer of risk

- (a) Subject to clause 25, the risk of loss or damage to Grain is transferred to the Customer at the point in time when the Grain exits the Outturning spout of a Site into a form of a Grain transportation vehicle with the exception of clauses 26.2(b), 26.2(c) and 26.2(d).
- (b) If the Customer has Grain loaded into:
  - (i) containers pursuant to the Container Loading Services, then risk of Grain loss or damage is transferred to the Customer:
    - A. if the Customer utilises CBH's transport services, immediately upon delivery of the container at the nominated Container Terminal; and
    - B. if the Customer does not utilise CBH's transport service, immediately upon completion of loading the container at the MGC;
  - (ii) bags and then containers pursuant to the Bagging Services, then the risk of loss or damage to the Grain is transferred to the Customer immediately upon:
    - A. if the Customer utilises CBH's transport services, immediately upon delivery of the container at the nominated Container Terminal; or
    - B. if the Customer does not utilise CBH's transport services, immediately upon completion of loading the container at the MGC; and
  - (iii) bags only pursuant to the Bagging Services, then the risk of Grain loss or damage is transferred to the Customer immediately upon loading the bags at the MGC into a form of a Grain transportation vehicle.
- (c) If the Customer utilises CBH's transport services to transfer grain from a Site to a Port Facility or MGC (as the case requires) then risk of loss or damage to the Grain remains with CBH until it is transferred to the Customer upon Outturn from the Port Facility or MGC (as the case requires) pursuant to clause 26.2(a).
- (d) If the Customer utilises CBH's transport services or other services to transfer Grain from a Site to the Customer's premises or a third party site, then risk of loss or damage to the Grain remains with CBH until the transportation vehicle (which includes road or rail transportation vehicles) arrives at the Customer's premises or the third party site, or in the case of a conveyer at the point of Outturn (unless agreed otherwise with CBH).

## 27 FORCE MAJEURE EVENT

### 27.1 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.

#### 27.2 Exemption from Force Majeure

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

#### 27.3 Relief from performance and liability

Subject to clause 27.6, 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.

#### 27.4 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.

#### 27.5 Termination

If the Affected Party is relieved from performance and liability in accordance with clause 27.3 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.

#### 27.6 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 27.4(a), including but not limited to the payment of the charges set out in Schedule 1 as modified from time to time by CBH.

## 28 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 20, 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.

## **29 SITE ACCESS**

### **29.1 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 29.2, the Customer shall not attend at any CBH 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.

### **29.2 Public Reception**

If a CBH Site has a public reception, then clause 29.1(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.

### **29.3 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 29.3.

## **30 CONFIDENTIALITY**

### **30.1 General obligation**

Subject to clause 30.2, 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 clause 30.1(h) or 30.1(i); or
- (k) if CBH is required under the Code or under the Port Terminal Rules to publish Port Grain Holdings.

### 30.2 Conditions

- (a) In the case of a disclosure under clause 30.1(a) or 30.1(b) and, where appropriate, under clause 30.1(d), 30.1(e) or 30.1(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 30.1(h), 30.1(i) or 30.1(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 30.1(h) or 30.1(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 30.1(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.
- (c) The Customer consents to CBH disclosing Port Grain Holdings to the public pursuant to clause 30.1(k). The Customer acknowledges that whilst CBH will only disclose total Port Grain Holdings, disclosure to the public in accordance with this clause 30 may enable third parties to identify the quantities of Grain stored by a Customer at a Port using this information in conjunction with other publicly available information (including the shipping stem published in accordance with the Port Terminal Rules and Code).

### 30.3 CBH Grain Pty Ltd

- (a) Unless disclosure is permitted in accordance with clauses 30.1(b) to 30.1(g), or 30.1(k), CBH will not disclose any details in relation to the Customer's Grain Entitlement which may identify the Customer (or reasonably be considered to identify the Customer) to CBH Grain

Pty Ltd (including any subsidiary of CBH Grain Pty Ltd), without the consent of the Customer.

- (b) The Customer's consent will be implied:
  - (i) if the Customer transfers Grain to CBH Grain Pty Ltd in relation to the relevant details for the quantum of Grain transferred;
  - (ii) if a Grower requests CBH provide or make available to CBH Grain Pty Ltd details in relation to that Grower's deliveries to CBH.

#### 30.4 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 30.1(d) to disclose information under clause 30.1(d);
- (b) inform all other parties as soon as reasonably practicable after information is disclosed by the party under clause 30.1(d); and
- (c) not disclose any information under clause 30.1(e) unless all other parties have been informed of the proposed disclosure.

#### 30.5 Indemnities

Subject to clause 25, 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 30.

#### 30.6 Survival of confidentiality obligations

The obligations of confidentiality imposed by this clause 30 survive the termination of this Agreement and any person who ceases to be a party continues to be bound by those obligations.

### 31 DISPUTE RESOLUTION

#### 31.1 Disputes

- (a) Save for any dispute arising under the Port Terminal Rules which shall be dealt with in accordance with the provisions of the Port Terminal Rules, all disputes arising out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 31.
- (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 Logistics Manager immediately, and before the due date of that invoice.
- (d) Any dispute relating to a breach of the terms and conditions of this Agreement shall not, of itself, amount to a dispute relating to a breach of the Code or the rules forming part of the Code.

#### 31.2 Escalation of Dispute – Executive Panel

If no resolution of the dispute can be reached in accordance with clause 31.1, 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.

### 31.3 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.

## 32 ANTI-BRIBERY AND CORRUPTION

- (a) Neither party (the applicable party being referred to in this clause 32(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 32(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 32(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 32(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 32(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 32(a) or the FCP Legislation, as the case requires.
- (g) Subject to clause 25, 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 32. 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.

## 33 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 33.
- (c) Failure to comply with this clause 33 by a party shall constitute a default by that party under this Agreement.
  - (d) Subject to clause 25, 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 33.
  - (e) In this Agreement, "Modern Slavery" has the meaning given in section 4 of the Modern Slavery Act 2018 (Cth).

### 34 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.

### 35 NOTICES

#### 35.1 Types of Notices

Except as provided in clause 35.2, all notices of any kind and all statements, forecasts, advices, policy statements, procedures manuals, guidelines and the like, and all invoices given or made under this Agreement (each a "**Communication**") shall be:

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

#### 35.2 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.

#### 35.3 Notice Takes Effect

Subject to clause 35.4, a Communication takes effect from the later of:

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

#### 35.4 Deemed Receipt

For the purposes of this Agreement:

- (a) a Communication delivered by hand to the address of a party shall be deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at that address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries), appears to be and represents himself as a manager or officer of the party to whom the Communication is addressed;
- (b) a Communication which is posted is deemed to be received by the party to whom the Communication is addressed on the second Business Day after the day of posting;
- (c) a Communication sent by facsimile transmission which is transmitted:
  - (i) prior to 4 pm on a Business Day shall be deemed to have been received by the party to whom it is addressed on that Business Day; and
  - (ii) after 4 pm on a Business Day shall be deemed to have been received by the party to whom it is addressed on the first Business Day following the date of transmission; and
  - (iii) the production of the transmission report or a printout of a transmission log generated by the sender's facsimile machine (or other facsimile transmission device) showing successful uninterrupted facsimile transmission of all pages of the relevant Communication to the facsimile number of the party to whom it is addressed and proof of confirmation by physical delivery or mailing as provided above shall constitute evidence of receipt of that facsimile transmission; and
- (d) a Communication given orally under clause 35.2 shall be deemed to have been received when first given orally.

#### 35.5 Change of Address

A party may at any time, by notice given to the other parties to this Agreement, designate a different person, street address, postal address, electronic mail address or facsimile number for the purpose of Communications pursuant to this clause 35.

#### 35.6 Electronic Mail

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

### **36 ASSIGNMENT**

#### 36.1 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.

#### 36.2 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.

### **37 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.

### **38 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.

### **39 GOVERNING LAW AND JURISDICTION**

#### **39.1 Governing Law**

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

#### **39.2 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.

### **40 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.

### **41 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.

### **42 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.

### **43 RE-NEGOTIATION OF TERMS**

#### **43.1 Change in Law**

- (a) Subject to clauses 43.1(b) and 43.2, 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 43.1(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.

#### 43.2 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.

## 44 EXECUTION AND 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 44(b).



**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

## **SCHEDULE 1**

### **Remuneration**

All fees and charges payable pursuant to this Agreement are to be paid in accordance with clause 19 (“Remuneration”) of the Agreement. As set out in clause 20 (“Lien and Right to Withhold Grain”), CBH has the discretion not to Outturn Grain until all outstanding charges have been paid.

The Fees and Charges Schedule is available at [www.cbh.com.au](http://www.cbh.com.au) and forms part of this Agreement.

The fees and charges outlined apply from 1 October of the Starting Calendar Year to 30 September of the Ending Calendar Year. All prices are quoted in AUD and are exclusive of GST.

## SCHEDULE 2

### Domestic Outturn Booking System

#### 1 INTRODUCTION

- 1.1 CBH may offer outturn services for Grain Entitlement at Domestic Sites.
- 1.2 These Domestic Sites will aim to provide guaranteed access to requested Grain, provided Customers have adhered to these guidelines and given adequate notice of their outturn plans and requirements.
- 1.3 CBH reserves the right to amend these guidelines from time to time by providing notice to the Customer.

#### 2 SERVICE AVAILABILITY

- 2.1 If a Customer wishes to utilise the Domestic Outturn Services, it must provide a forecast of the Customer's usage of Domestic Outturn Service requirements (the "**Forecast**") immediately prior to the Commencement Date of this Agreement and warrant the accuracy of the Forecast. Subsequently, the Customer agrees to update the Forecast no later than 14 days before the first day of each Quarter (each a "**Forecast Submission Period**").
- 2.2 Each Forecast, shall detail:
  - 2.2.1 the aggregate tonnage per Grade;
  - 2.2.2 the aggregate tonnage per CBH port zone;
  - 2.2.3 the aggregate tonnage per Domestic Site,that the Customer intends to outturn.
- 2.3 CBH may not be able to provide Domestic Outturn Services to Customers who do not provide a Forecast in accordance with clause 2.1 and 2.2 of Schedule 2 or who request Domestic Outturn Services manifestly in excess or below those set out in a Forecast.
- 2.4 Sites will operate a core set of hours to be determined from time to time, however CBH may consider longer hours on the basis of the Customer's Outturn Request and other Site activity or if the Customer makes a request through the CBH Domestic Activity Co-ordinator.
- 2.5 The outturn services available at particular Domestic Sites may vary depending on storage capacity and segregation availability at the relevant Domestic Site and surrounding Sites, as well as the outturning capacities of the site and/or storage facility.
- 2.6 Following the close of each Forecast Submission Period, the CBH Domestic Activity Coordinator will communicate with each Customer from whom a Forecast has been received to determine whether any stock availability issues are foreseen. The Customer acknowledges that Grades at Domestic Sites may change depending on harvest activities during the grower receival period at those Domestic Sites.
- 2.7 Where the Customer has given the Minimum Notice and complied with the Forecast requirements in clauses 2.1 and 2.2 of this Schedule 2, and CBH is unable to make Grain available at a Domestic Site, an alternative site will be sought with a freight reconciliation calculated to the alternate Domestic Site on the basis of the difference in the freight between the two sites.
- 2.8 The operating hours at the alternate Domestic Sites will be by arrangement with the Customer.
- 2.9 Outturns by rail may not be available at all Domestic Sites.

### 3 INTEGRATED ENTITLEMENT

- 3.1 To access Integrated Entitlement from a Domestic Site, the Customer must contact CBH and request to move its Grain Entitlement to a Domestic Site.
- 3.2 Moves are conditional on the level of unominated and non-committed Grain at that Domestic Site as well as the Grain available in the area, and the accumulated nominations received from the area making up the Customer's Integrated Entitlement.
- 3.3 If CBH agrees to a Customer request under clause 3.1 of this Schedule 2, it will facilitate the necessary Grain stock and the Customer will be deemed to hold Site Entitlement at the relevant Site from the time of CBH's acceptance. If CBH and the Customer do not agree, the Customer's Grain Entitlement will remain as Integrated Entitlement and CBH will provide alternative Domestic Sites (if any).
- 3.4 Where CBH agrees to allow Site Entitlement to be obtained in accordance with clause 3.3 of this Schedule 2, CBH will provide a freight adjustment back to the Customer equal to:
- 3.4.1 the relevant Grower Freight Adjustment Amount of the Grower Freight Differential per metric tonne between the relevant Port Facility and the agreed Domestic Site; or
- 3.4.2 an amount determined by CBH (which amount may be equal to, more than or less than the amount calculated under clause 3.4.1 of this Schedule 2 but in any event shall not be more than the amount CBH has received or will receive for the movement of the relevant Grain).
- 3.5 As a general rule, the relevant Grower Freight Differential will be invoiced or credited after it is confirmed no later than the Grower Freight Differential Finalisation Date.

### 4 PERIODS FOR OUTTURN REQUESTS

- 4.1 The minimum notice required for a domestic Outturn is:
- 4.1.1 if the proposed Outturn is less than 600 tonnes per day, the Tuesday prior to the week in which the Outturn will commence; or
- 4.1.2 if the proposed Outturn is greater than 600 tonnes per day, ten (10) Business Days prior to the date on which the Outturn will commence; or
- 4.1.3 ten (10) Business Days prior to the date on which the Outturn will commence for all Outturns by rail; or
- 4.1.4 if the proposed Outturn is from a Domestic Site which is not a Domestic Priority Site, 10 Business Days prior to the date on which the Outturn will commence, ("**Minimum Notice**").
- 4.2 Customers who provide the Minimum Notice will be afforded the best opportunity to be provided with Outturn from Domestic Site/s or alternate Domestic Site up to the working outturn capacity of that Domestic Site.
- 4.3 Outturn Requests received after this time will be considered ("**Short Notice**") and Grain will only be available if there is sufficient, uncommitted Grain and booking slots available at the Domestic Site being requested.

### 5 OUTTURN REQUEST PROCESS

- 5.1 If the Customer requires Grain to be Outturned from a Domestic Site they will be required to submit their initial request online via LoadNet for Marketers™ ([www.cbh.com.au](http://www.cbh.com.au)) with the following details:-
- 5.1.1 Commodity/Grade to be Outturned;
- 5.1.2 intended delivery destination (optional);

- 5.1.3 Contract/Release or Commodity Movement Order (optional);
  - 5.1.4 Site requested for Outturn;
  - 5.1.5 quantity to be Outturned;
  - 5.1.6 transport arrangements; and
  - 5.1.7 a delivery schedule.
- 5.2 If the Customer does not have access to LoadNet for Marketers™ the Outturn Request Form should be used or email notification should be given to CBH's Domestic Activity Co-ordinator.
- 5.3 When an Outturn Request is received it will be assessed by the Domestic Activity Co-ordinator who will either approve or deny the request, or liaise with the Customer for further options if there is an operational issue or the Customer has provided inadequate notice or incorrect details. Any approval may have an expiry date after which the contract / release number will be invalid.
- 5.4 When a request is approved the Customer will need to supply the contract/release or commodity movement order details to confirm the Outturn, if they have not done so previously, through LoadNet for Marketers™, by email or via an Outturn Request Form. Grain will not be released for Outturn until these details are processed and it is in the Customer's best interests to provide these to CBH in a timely manner to allow bookings for an Outturn.

## **6 BOOKINGS SLOTS FOR OUTTURN**

- 6.1 Once an Outturn Request has been confirmed and all relevant contract/release or commodity movement order details have been processed by CBH, the Customer or transporter acting on behalf of the Customer will be able to book in with the Domestic Site to pick up the Grain provided that the following procedure is complied with:
- 6.1.1 all bookings are to be made via the CBH Domestics online booking application;
  - 6.1.2 trucks need to book slots by 1pm the day before the date of scheduled pick up; and
  - 6.1.3 if trucks are late for their time slot they will be loaded in the next available booking slot or as soon as possible.
- 6.2 If trucks fail to show up for their allotted time slot and/or fail to communicate to the Domestic Site in a timely manner cancellation fees may apply.

## **7 OUTTURN FROM DOMESTIC SITES**

- 7.1 Once the booking is complete for a domestic Outturn and the Customer has provided a contract/release or commodity movement order, the Customer or the transporter will:
- 7.1.1 use any CBH online application for mobile devices in the manner directed by CBH or its staff from time to time, including by entering into the CBH online application for mobile devices any information in connection with the loading journey that may be directed by CBH or its staff from time to time;
  - 7.1.2 present at the Domestic Site with a clean, uncontaminated and dry vehicle for loading at the beginning of their allotted time slot;
  - 7.1.3 in instance of late arrival accept the next available time slot for loading;
  - 7.1.4 adhere to the relevant site safety rules and follow directions from CBH staff at all times; and
  - 7.1.5 if required, communicate to the Site Manager in a timely manner if they are unable to commit to their allotted time slot or require a cancellation.

- 7.2 CBH will:
- 7.2.1 weigh the truck/trailer when it presents at its allotted time slot;
  - 7.2.2 proceed to load the relevant Grain;
  - 7.2.3 weigh the Grain on Outturn using the CBH certified weighbridge in accordance with clause 11.8;
  - 7.2.4 sample the Grain in accordance with CBH's standard sampling methods set out in clause 11.7;
  - 7.2.5 provide physical documentation or via any CBH online application for mobile devices, detailing all load, weight and sample information to the transporter.
- 7.3 It is anticipated that each load will have a 1 (one) hour turnaround from the time the truck presents at its allotted time slot.

## 8 GRAIN UNAVAILABILITY

- 8.1 If Grain becomes unavailable at a Domestic Site without notice due to insect infestation, machinery breakdown, inclement weather or other events of similar nature, CBH will use all reasonable endeavours to notify the Customer and all relevant parties as soon as practical.
- 8.2 Alternative options will be sought and advised if Outturns are required to continue and this will be communicated the Customer.

## 9 DOMESTIC TRANSPORT ARRANGEMENTS

- 9.1 The Customer will be able to make its own transport arrangements for Outturn and must provide CBH with the name of its transporter on the Outturn Request as well as being required to use the Booking Procedure.
- 9.2 The Customer will also be able to request to utilise CBH's Domestic Transport Coordination Service, whereby CBH will use best endeavours to coordinate the Outturn to the domestic end-user or external container packing facility, as elected by the Customer.
- 9.3 As per clause 16 of this Agreement, CBH will provide the Customer with a freight rate per tonne where the Customer has indicated on their Outturn Request or liaised with CBH to organise the transport. The rate quoted will be based on full truck loads and any non-standard requests for tonnages less than the truck's volume may result in additional charges. The availability of this service is not guaranteed and will depend on the amount of notice given and the availability of resources.

## 10 WEIGHTS

- 10.1 CBH will take reasonable steps to minimise the inefficiencies caused from trucks being over or under loaded due to the amount of variability in weights that can occur on loading a truck/trailer in light of the nature of loading through portable equipment and general unavailability of trucks/trailers having self weighing mechanisms.
- 10.2 Whilst CBH will use all reasonable endeavours to load to the correct weight on direction of the transporter under its load plan, the following guidelines will be followed where trucks are over or under loaded:
- 10.2.1 if the truck/trailer is less than 0.5 tonnes below the VRL on the gross weight then that will be the final weight;
  - 10.2.2 if the truck/trailer is over the VRL, CBH will provide portable machinery to bleed the rear trailer down to the VRL; and
  - 10.2.3 exceptions may be made for the final load against a contract.

## 11 **QUALITY SPECIFICATIONS ON OUTTURN**

- 11.1 Unless otherwise requested by the Customer, CBH will ensure Grain is Outturned to a standard not less than the Receival Standard applicable to the Common Stack Segregation of the Grain at the Grade that is being Outturned.
- 11.2 Customers can request specific quality requirements in line with a Quality Management Plan agreed with CBH in accordance with clause 8.1(a).

## 12 **OUTTURNS DURING HARVEST PERIOD**

The Customer acknowledges that there will be restrictions on Outturns during the Harvest Period as it is in the interest of CBH, its Growers and other customers that all Grain is received into the CBH network as quickly and efficiently as possible.

## 13 **FUMIGATIONS**

- 13.1 Maintaining the quality of Grain in storage is a key service priority and CBH will endeavour to introduce shorter fumigation cycles at Domestic Sites to minimise the impact of fumigation on Grain availability.
- 13.2 Whilst Grain is under fumigation, CBH will use reasonable endeavours to ensure that the same Grade is either available from:
  - 13.2.1 an alternative storage at that Domestic Site; or
  - 13.2.2 another Domestic Site.

## 14 **OPERATIONAL ACTIVITIES**

- 14.1 Some Domestic Sites are required to undertake various operational activities during the Season and CBH will use reasonable endeavours to forward plan with minimal disruption to the Domestic Outturning Services offered by CBH.
- 14.2 Where operational activities conflict with proposed Outturns, CBH will alter the availability of Grain or determine an alternative Domestic Site for outturn as required to minimise the impact on Domestic Outturning Services.

## SCHEDULE 3

### Load Rejection Dispute Procedure

#### 1 DISPUTE PROCEDURE

- 1.1 If the Customer wishes to reject any load Outturned by CBH on the basis that the load fails to meet the Receival Standards, then the Customer must cease further discharge and hold the vehicle or conveyor (as applicable) and any grain at the point of detection.
- 1.2 The Customer must then give notice of the rejection to the CBH “Co-ordinator – Domestic Market” by email to [CBH.domestics@cbh.com.au](mailto:CBH.domestics@cbh.com.au) or by telephone to 08 9237 9795 (with any notice given orally by telephone to be immediately followed by confirmation of the rejection in writing by email).
- 1.3 CBH’s “Co-ordinator – Domestic Market” will, upon receiving notice of rejection, co-ordinate the procedure as below.
  - 1.3.1 A CBH representative will attend at the point of delivery to perform possible analysis of the load in question and work with the Customer to resolve the issue on site. The CBH representative will confirm sampling procedures in use by the end user are relevant and comparable to those used by CBH.
  - 1.3.2 If the dispute cannot be resolved on site then CBH will obtain three representative samples of the load for further analysis. The CBH representative is to collect the samples as follows:
    - a. one sample is to be sealed. This sample will be available for testing by a mutually agreed third party (“**Third Party Test Facility**”) if the results from AGC are disputed;
    - b. a second sample is to be collected for testing at AGC; and
    - c. a third representative sample is to be left with the Customer.
  - 1.3.3 MGC (or the closest Receival Site) will receive the grain back and the Outturn will be reversed. Replacement Grain can be arranged on the basis that costs will be allocated to the Party at fault when the result is determined.
  - 1.3.4 The second sample referred to in item 1.3.2 of this Schedule 3 will be sent by CBH to AGC for testing. If the Customer disputes AGC’s test results, the Customer must give notice to CBH within 15 Business Days of the date the results were issued by AGC. If the Customer does not give notice within 15 Business Days, then the load will be deemed to meet the Receival Standards and the Customer will be liable to CBH for the costs set out in item 1.3.5 of Schedule 3. If the Customer gives notice within 15 Business Days, CBH will send the first sample to the Third Party Test Facility for testing. The test results of the Third Party Test Facility will be final and binding on CBH and the Customer, except in the case of fraud or manifest error on the part of the Third Party Test Facility. If results obtained from the Third Party Test Facility show that the Grain does not meet the Receival Standards, CBH will be liable for the costs set out in item 1.3.6 of Schedule 3.
  - 1.3.5 If the Grain meets the Receival Standards as determined in accordance with item 1.3.4 of Schedule 3, the Customer is responsible for all reasonable costs incurred by or on behalf of CBH, including the freight, storage, Outturn, NGR, time and travel expenses of the CBH representatives involved in resolving the dispute and costs of additional testing.
  - 1.3.6 If the Grain fails to meet the Receival Standards as determined in accordance with item 1.3.4 of Schedule 3, the Site that Outturned the Grain will cover direct costs in freight for the rejected load and for the reasonable time and travel expenses of the CBH representatives involved in resolving the dispute. Weight time and freight charges are to be paid by CBH.



- 1.4 A load can only be validly rejected on the basis that it does not meet the relevant Receival Standards. If CBH has Outturned the Grain to the minimum relevant Receival Standard CBH will not be held liable for load rejections.

## SCHEDULE 4 NON-GROWER RECEIVAL GUIDELINES

### 1 PRE-DELIVERY

- 1.1 Subject to clause 1.2 of this Schedule 4:
- 1.1.1 the Customer must contact CBH to request a Site be made available to receive the grain and provide details of the proposed delivery of Grain to that Site (the “**Delivery Plan**”);
  - 1.1.2 the Customer must accurately complete and provide CBH with a Pre-Delivery Sample Analysis Form, paying particular attention to completing the section marked 'Treatment';
  - 1.1.3 if requested by CBH, the Customer must provide a one kilogram representative sample from each source of Grain that the Customer intends to deliver to the Site for placement into Storage. If the grain is from more than one storage type, the Storage identification must be clearly marked on each sample;
  - 1.1.4 the Pre-Delivery Sample Analysis Form with the sample/s for chemical and insect analysis must be couriered direct to: “Australian Grains Centre, 700 Abernethy Road, Forrestfield WA 6058”;
  - 1.1.5 CBH will use all reasonable endeavours to provide the Customer with the sample results within 2 Business Days of the sample being received;
  - 1.1.6 each acceptable sample analysis will permit the Customer to deliver the Grain to the agreed Site during the agreed time;
  - 1.1.7 if the sample contains any manageable Contaminants, the Grain must be treated before a new sample is presented for testing. The costs of assessing the new sample will be paid by the Customer.
- 1.2 CBH may waive compliance with some or all of the obligations in clause 1.1 of this Schedule 4 provided that the Customer makes an appropriate declaration in respect of each load of Grain delivered to the agreed Site (including without limitation that all warranties set out in clause 4.5(a) are true and correct).
- 1.3 The Delivery Plan provided in accordance with clause 1.1 of this Schedule 4, must:
- 1.3.1 detail whether deliveries of Grain to the agreed Site are to be made by road or rail, subject to the operational capabilities of the relevant Site to receive such deliveries, and the Sites, Grain type, Grades, daily volumes, dates of delivery, method of delivery and whether the Customer wishes to acquire Integrated Entitlement or Site Entitlement; and
  - 1.3.2 following consultation with CBH, be amended to enable the timetable for deliveries to the agreed Site to fit in with other site activities.
- 1.4 All delivery and unloading points, including any discharge grids, storage locations, and the movement of Grain following discharge will be nominated and determined by CBH in its sole discretion.

### 2 DURING DELIVERY

- 2.1 Upon arrival of each truck load containing the Customer’s Grain, CBH staff will assess the VRL of the truck delivering loads to the agreed Site. Each truck is to have a valid permit to meet the presented combination and the gross weight tendered. Unloading of non-compliant vehicles will be refused and those vehicles will be required to leave the agreed Site.
- 2.2 The indicative grade, variety and other characteristics of the Grain delivered are to be declared in writing by the Customer by no later than the time of delivery and CBH takes no responsibility for the accuracy, completeness or veracity of the information relating to the Grain declared by the Customer. If the load is found to be contaminated with Level 1

Contaminants, Level 2 Contaminants or Level 3 Contaminants or showing signs of insect infestation or activity the load will be rejected. CBH shall advise the Customer or nominated representative of the rejection as soon as practicable and in any event before the end of the day following the day of delivery.

- 2.3 If a load is found to be contaminated with a Level 1 Contaminant, the Customer will not be permitted to deliver that load or any additional load to CBH Sites until the Customer has provided CBH with evidence in the form of independent expert verification that there is no further risk of Contamination. Alternatively, the Customer may request CBH to arrange at the Customer's cost for independent expert verification that there is no further risk of Contamination.
- 2.4 Independent expert verification may involve identifying the source site of contamination and the taking of steps by the Customer to ensure that the source site of contamination is not the source site for any future deliveries or that the Customer takes remedial action to ensure that the contaminant has been effectively removed from the source site of contamination.
- 2.5 If a load is found to be contaminated with a Level 2 Contaminant or Level 3 Contaminant the Customer will not be permitted to deliver that load or any additional load to CBH Sites until the Customer has provided CBH with evidence that the Customer has taken remedial action to ensure that the contaminant has been effectively removed.
- 2.6 Following completion of the steps outlined in clauses 2.3 and 2.4 above, the Customer must produce a new representative sample from the source site of the contamination and complete the processes specified under clause 1 of this Schedule 4 confirming the absence of contamination, prior to recommencing delivery.
- 2.7 Any remedial fumigation required following delivery of contaminated grain shall be performed by CBH and the Customer shall pay the Remedial Fumigation Service Fee as prescribed in the Fees and Charges Schedule.
- 2.8 All delivery and unloading points, including any discharge grids, storage locations, and the movement of Grain following discharge will be nominated and determined by CBH in its sole discretion.
- 2.9 All road vehicles delivering Grain to a Site must be registered with CBH and CBH is not obliged to receive Grain from a road vehicle in excess of its relevant mass limits whether prescribed by law, or amended by HMMS or any other relevant scheme.

### **3 SAMPLING**

CBH will sample Grain offered for Delivery in accordance with its standard sampling procedures from time to time and, subject to clause 4 of this Schedule 4 ("Receival Quality Disputes"), **You** agree to be bound by the results of those sampling procedures.

### **4 RECEIVAL QUALITY DISPUTES**

#### **4.1 Dispute Procedures**

The Customer agrees:

- 4.1.1 to comply with the dispute resolution processes in relation to the assessment of Grain tendered for delivery at a CBH Site as are specified in clause 4.2 of this Schedule 4;
- 4.1.2 that if there is any disagreement over the assessment of Grain tendered for delivery it will select one of the methods specified in clause 4.2 of this Schedule 4 (if relevant); and
- 4.1.3 to be bound by both the process and the end result of the process.

#### **4.2 Assessment Verification Methods**

4.2.1 Infratec Re-assessment – this method involves re-performing the Infratec assessment and is only available if the Customer disputes the result produced by the use of an Infratec machine at the Site and that result:

- (a) is within 0.2% the target grade; or
- (b) in the case of colour is within 1 whole graduation of the colour target.

The Infratec re-assessment must be performed using grain from the initial sample bucket and, subject to the method in clause 4.2.4 of this Schedule 4, will be final for all parameters assessed by the Infratec (ie any previous Infratec parameter measurement will be discarded). The relevant load will then be graded in accordance with the re-assessed results.

4.2.2 Average System – this method involves a dispute over a defect identified by a sampler and is not available for results provided by the Infratec, Electronic balance, Agtator, Aerovac, Falling Numbers or any other objective assessment. The undisputed results from the first assessment are kept and the sampler will draw 2 new half litre samples from the initial sample bucket. These two new samples will be checked for the defect in dispute and the results for that defect in each of the three samples will be added together and divided by 3 to give a final result, subject to the method in clause 4.2.4 of this Schedule 4.

4.2.3 Unofficial Dispute – this method involves:

- (a) sending the defect under dispute to either the CBH district office or AGC for a final assessment and this method is not available for results provided by the Infratec, Electronic balance, Agtator, Aerovac, Falling Numbers or any other objective assessment.
- (b) the sampler placing the defect under dispute into a sealed bag which is then placed with the remainder of the half litre sample into a second bag, making sure all other defects removed are returned into the half litre sample contained in the second bag;
- (c) CBH storing the Delivery as assessed by the CBH sampler and your Grain Entitlement being adjusted (if required) so that it is in accordance with the assessment by CBH's relevant district Office or AGC (as the case requires) which result shall be final.

4.2.4 Official Dispute – this method is available if there is any dispute over an assessment provided that the Customer has not previously selected the method in clause 4.2.3 of this Schedule 4 and involves:

- (a) A new representative sample being drawn from the truck in the presence of the Customer's representative and the sample being divided into 3 equal sub-samples;
- (b) the Customer sending one sub-sample to the Western Australian government's Department of Primary Industry and Regional Development together with payment for the relevant charge;
- (c) CBH storing the Delivery as assessed by CBH's sampler and your Grain Entitlement being adjusted (if required) as assessed by the Western Australian government's Department of Primary Industry and Regional Development which result shall be final.

## 5 WEIGHING

5.1 CBH will weigh any Grain offered up for delivery by road on certified weighbridges. Grain can only be delivered by rail at a select number of CBH sites (due to the lack of appropriate equipment to receive grain by rail) and will be weighed using CBH's certified weighing equipment. CBH and the Customer may make alternative arrangements to calculate the weight of Grain being delivered.

5.2 CBH will provide the Customer with a record of weight received when its vehicle is weighed following completion of unloading and the Customer agrees that:

- 5.2.1 it or its Agent will check and confirm that the information recorded is an accurate statement of the amount and grade of Grain delivered to CBH; and
- 5.2.2 if the Customer or its Agent leaves the weighbridge without disputing the correctness of the weight determined it will be deemed to have accepted that the weight recorded is correct.

**SCHEDULE 5 SPECIAL CONDITIONS**

**N/A**