

DailyGrain Online Grain Trading Platform

User Agreement

1. Introduction

This User Agreement applies to all use of DailyGrain's Services. By accepting this User Agreement you agree to be bound by the terms of this User Agreement and the Policies ("**Agreement**"). If you do not accept the terms of this Agreement, you must not use the Services.

2. Definitions and Interpretation

2.1 Definitions:

In this Agreement the following terms have the following meanings:

"**Business Day**" means a day on which banks are open for regular business in Western Australia, but does **not** include Saturday, Sunday or any public holiday;

"**Buyer**" means a grain buyer that has registered to use the Services;

"**Buyer Bid**" has the meaning given in clause 7(h)(ii);

"**Buyer Forward Bid**" means a Buyer Bid which offers to forward buy either a fixed grade or a specific grade from a fixed multi grade spread on the Platform within a future delivery period;

"**Buyer's Terms**" has the meaning given in clause 7(k)(ii);

"**CBH**" means Co-operative Bulk Handling Ltd (ABN 29 256 604 947) and its Related Bodies Corporate (where applicable) (together the "**CBH Group**");

"**CBH Delivery and Warehousing Terms**" means the CBH Delivery and Warehousing Terms available on the CBH website at www.cbh.com.au;

"**Claim**" means any claim, demand, action, suit or proceeding of any nature, howsoever arising and whether present or future, fixed or unascertained, actual or contingent and whether at law, in equity, under statute, contract, tort or otherwise;

"**Consultant**" means an agricultural consultant or representative that has been appointed by a Seller to use the Platform to buy or sell grain on the Seller's behalf as the Seller's agent;

"**DailyGrain**" means CBH and its Related Bodies Corporate (where applicable), trading as DailyGrain;

"**Direct Loss**" means, to the extent permitted by any applicable law, any damage, loss (excluding consequential loss), liability, compensation, cost, charge expense or other obligation, whether at law, in equity, arising under contract, statute, tort or otherwise;

"**Force Majeure Event**" means any event beyond our reasonable control including equipment failure;

"**LoadNet**" means the CBH Group's online grain management interface available to registered users at www.cbh.com.au;

“Loss” means Direct Loss and any indirect or consequential loss including loss of profits, loss of business revenue, lost opportunity or incidental loss, whether caused directly or indirectly;

“Member” means a person that has registered to be a member of DailyGrain under clause 3.1 and has paid the applicable membership fee;

“Off-Platform Transactions” has the meaning given in clause 7(c)(i);

“On-Platform Contract” has the meaning given in clause 7(h)(iii);

“On-Platform Transactions” has the meaning given in clause 7(c)(ii);

“Optimise” or **“Optimisation”** means the blending of loads of wheat of various varietal segregations in accordance with instructions received by DailyGrain from Users;

“OptimiserPlus” means DailyGrain’s online system that evaluates a mix of load quality, existing contracts, cash and pool prices and calculates the optimal way to blend and allocate loads of grain;

“Optimisation Rules” means the guidelines, rules or terms of Optimisation made available to Users via Loadnet which may be amended by DailyGrain upon 7 days’ prior notice;

“Quality Optimisation Services” means the services provided by DailyGrain to Users as governed by the CBH Delivery and Warehousing Terms and Optimisation Rules available to Users at www.cbh.com.au;

“Platform” means the website operated by DailyGrain at <http://www.dailygrain.com.au> (and all sections of the website including OptimiserPlus) and mobile applications operated by DailyGrain to facilitate trading of grain sales between Seller and Buyers;

“Policies” means DailyGrain’s policies displayed on the Platform, including the “Privacy Policy”, the “Operational Policy” and Collection Statement;

“Receival Standards” has the meaning given to that term in the CBH Delivery and Warehousing Terms;

“Related Bodies Corporate” has the meaning given to the term in section 50 of the *Corporations Act 2001*;

“Season” means the period between 1 October one year and the next 30 September;

“Seller” means a grain grower or a Consultant appointed by that Seller (if applicable);

“Seller Forward Offer” means a Seller Offer which offers to forward sell a fixed grade or a fixed multi grade spread on the Platform within a future delivery period;

“Seller Offer” has the meaning given in clause 7(h)(i);

“Service Fee” means a fee of \$650 plus GST per Season;

“Services” means the access to and use of the Platform, including but not limited to the use of OptimiserPlus and the Quality Optimisation Services;

“User” or **“you”** means a Member that uses the Services;

“User Information” means any item or information a User posts on the Platform as well as any information a User provides to us or other Users, via any method, platform or forum made available by or connected to the Platform and includes any express or implicit representation that a User has made at any stage during formation or performance of a contract that was formed using the Platform with another User; and

“we”, “us” and **“our”** mean DailyGrain.

2.2 Interpretation

In this Agreement unless inconsistent with the context:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a person includes a reference to an individual, firm, partnership, government or public body, company, association or unincorporated body;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (e) **“under”** includes by, by virtue of, pursuant to, and in accordance with;
- (f) if an individual person enters into this Agreement on behalf of a corporation, that individual will be agreeing to be bound by this Agreement as though they were the corporation and their obligations and undertakings to us were joint and several with those of the corporation; and
- (g) a reference to an agreement, document or policy means that agreement, document or policy as amended from time to time.

3. Membership

3.1 Membership Eligibility and Registration

- (a) The categories of membership are:
 - (i) Basic (Grower)
 - (ii) Premium (Grower)
 - (iii) Buyer;
 - (iii) Consultant;
 - (iv) Corporate Member; and
 - (v) such other categories as may be determined by us from time to time.

- (b) To become a Member, a person must select the category of membership that they want to apply for and:
 - (i) complete the relevant online registration form on the Platform; and
 - (ii) pay any applicable membership fee set out in our pricing.
- (c) Membership is not transferrable and may not be dealt with any way. In particular, Member's must not allow others to use their membership and must not transfer or sell their membership to another party.
- (d) Members must ensure that their registration details are true, complete and accurate at all times and must notify us of any change in their registration details.
- (e) Members must pay any annual membership fees set out in our pricing. Failure to pay any annual membership fee may result in a Member's membership being suspended or terminated by us.

4. Consultant

- (a) A Seller may appoint a Consultant. Once a Seller has appointed a Consultant the identity of the Consultant will be displayed under the MyAccount section of the Platform.
- (b) A Seller may cancel a Consultant's authority to buy or sell grain on the Seller's behalf at any time on the MyAccount section of the Platform.
- (c) A person may be appointed as a Consultant by more than one Seller.
- (d) When a Seller appoints a Consultant, that Consultant will be able to do everything that the Seller can do on the Platform. A Seller should not provide its own User login information to its Consultant.
- (e) A Seller is responsible for all actions of its Consultant acting in its capacity as Consultant for that Seller including where the Consultant makes an error in buying or selling grain on the Seller's behalf.
- (f) If a Consultant makes an error in buying or selling grain the Seller hereby releases us from any Claim connected with the use of the Platform and the Services by the Consultant unless the error arose solely and directly as a result of gross negligence, fraud or wilful misconduct by DailyGrain.

5. Buyer

- (a) Buyers are required to pay a fee for using the Services as set out in the Operational Policy or as otherwise agreed with us.
- (b) If a Buyer fails to pay an invoice by the date set out in the invoice, the Buyer will be liable to pay interest to us from the date the payment was due until payment is made. The terms of payment of the interest and the rate of interest are set out in the invoice sent to the Buyer.

6. General Obligations of Users

- (a) Users must keep their login information confidential and safe.

- (b) A User is responsible for any actions of an unauthorised user using that User's login information on the Platform unless the unauthorised user gained access to the Platform as a direct result of any gross negligence, fraud or wilful misconduct by DailyGrain.
- (c) If a User considers that its user name or password may have been compromised or made public the User may update the password on the Platform or immediately inform us so that we may re-issue the User with new login details.
- (d) All intellectual property, including the DailyGrain logo, in the Platform vests in us and Users have no ownership in any intellectual property in the Platform. Users must not copy, reproduce, alter, modify, create derivative works, or publicly display any intellectual property in the Platform without our prior written permission.
- (e) Users are responsible for paying all fees associated with using the Platform and all applicable taxes (including any goods and services or value added taxes, which will be added to amounts billed to Users, if applicable).
- (f) If we introduce a new service, the fees for that service are effective at the launch of the service. Unless otherwise stated, all fees are quoted in Australian dollars.
- (g) Users must only use the Platform for business purposes, and must not use the Platform for any personal, household or domestic purposes.
- (h) Users must not copy, distribute, modify, transmit, or revise the contents of the Platform or any part of it without our prior written permission. This includes copying, forwarding or otherwise distributing emails or reports that are part of our Services. Anything Users download from the Platform with our permission is under a grant of license and we do not transfer title to Users.

7. The Contracting Process

Overview

- (a) The Platform acts as an online venue that facilitates transactions between Users for the sale and purchase of grain.
- (b) Users acknowledge that we:
 - (i) are not a party to any contract formed between the Users;
 - (ii) do not act as an agent in any capacity for any User;
 - (iii) are not responsible for the performance by either the Buyer or the Seller of a contract formed using the Platform; and
 - (iv) do not own, sell, resell, provide, control, offer, deliver, or supply any grain.
- (c) The Platform facilitates grain transactions in two ways:
 - (i) by allowing Users to notify other Users of the price and other contract specifications upon which that User is willing to buy or sell grain, which may lead to a binding contract being formed off the Platform (**Off-Platform Transactions**); and

- (ii) by allowing Users to make binding offers to other Users to buy or sell grain on the Platform, which may lead to a binding contract being formed between the Users on the Platform (**On-Platform Transactions**).
- (d) Both Off-Platform Transactions and On-Platform Transactions, are subject to the rules set out in this Agreement and to the contract formation process set out in our Operations Policy. A copy of the Operations Policy may be found at www.dailygrain.com.au/policies. Users must read and understand the Operations Policy before using the Platform to buy or sell grain.

Off-Platform Transactions

- (e) The Platform facilitates Off-Platform Transactions by allowing:
 - (i) a Buyer to notify Sellers of price and other contract specifications upon which the Buyer will consider offers to buy grain; and
 - (ii) a Seller to notify Buyers of price and other contract specifications upon which the Seller will consider offers to sell grain.
- (f) A notification referred to under clause 7(e) is an invitation to treat, which may be withdrawn at any time, and does not constitute a contractually binding offer capable of acceptance. A User that intends to form a transaction based on a notification under clause 7(e) is responsible for making its own binding offer to the relevant party off the Platform.
- (g) Users acknowledge and agree that we are not involved in the formation or execution of any contract for any Off-Platform Transaction. We have no control over the quality, quantity, state, location, or source of grain offered for sale for an Off-Platform Transaction, or the accuracy of any statement or representation made by any User in relation to a proposed Off-Platform Transaction. The Buyer will be solely responsible for ensuring that the grain it purchases is delivered to the Buyer and that title in the grain passes to the Buyer free of any encumbrance.

On-Platform Transactions

- (h) The Platform facilitates On-Platform Transactions by:
 - (i) allowing a Seller to post an offer to sell grain on the Platform to one or more Buyers nominated by the Seller (**Seller Offer**);
 - (ii) allowing a Buyer to post an offer to buy grain on the Platform (**Buyer Bid**); and
 - (iii) automatically matching a Seller Offer to a corresponding Buyer Bid so as to create a legally binding contract for the sale and purchase of grain between the relevant Seller and Buyer (**On-Platform Contract**).
- (i) If a Seller Offer is entered onto the Platform before the matching Buyer Bid, then for the purposes of the On-Platform Contract formed through that match:
 - (i) the Seller Offer is a contractually binding offer to each Buyer nominated by the Seller, and each offer to a Buyer incorporates the Buyer's Terms of that Buyer; and

- (ii) the Seller Offer is accepted by a Buyer by entering a matching Buyer Bid onto the Platform, with the acceptance communicated to the Seller through the matching functionality of the Platform.
- (j) If a Buyer Bid is entered onto the Platform before the matching Seller Offer, then for the purposes of the On-Platform Contract formed through that match:
 - (i) the Buyer Bid is a contractually binding offer to each Seller, and each offer to a Seller incorporates the Buyer's Terms of that Buyer; and
 - (ii) the Buyer Bid is accepted by a Seller by entering a matching Seller Offer onto the Platform, with the acceptance communicated to the Buyer through the matching functionality of the Platform.
- (k) Each User acknowledges that:
 - (i) the terms of each On-Platform Contract will include the Seller Offer, the Buyer Bid and the relevant Buyer's Terms;
 - (ii) before entering a Seller Offer on the Platform, the Seller must first access, read and understand the applicable purchase terms posted on the Platform for each Buyer nominated by the Seller for that Seller Offer (the **Buyer's Terms**). Each Buyer is responsible for ensuring that their Buyer's Terms are kept up to date, and must promptly notify us of any material changes to their Buyer's Terms;
 - (iii) a Seller Offer or Buyer Bid may have a limited validity period. If the validity period for a Seller Offer or Buyer Bid expires, or if the Seller Offer or Buyer Bid is otherwise removed from the Platform, then any offer constituted by that Seller Offer or Buyer Bid is retracted and may no longer be accepted by any other User;
 - (iv) other than where a Seller Forward Offer or Buyer Forward Bid is entered, each On-Platform Transaction must relate to an entire parcel of grain that has been delivered to a CBH site and made available on LoadNet – it is not possible to enter into an On-Platform Transaction for part of a parcel of grain or for any grain that has not been made available on LoadNet; subject to paragraph (v) below, the Platform will only match a Seller Offer with a Buyer Bid if (1) the price and other relevant contract specifications (including as to grain quality, location and delivery window, if applicable) in the Seller Offer and Buyer Bid are the same and (2) the Buyer Bid was entered by a Buyer nominated by the Seller when entering the Seller Offer;
 - (v) the Platform may match a Seller Offer to a Buyer Bid even if the Seller Offer is for a smaller quantity of grain than specified in the Buyer Bid, provided that the price and other contract specifications are the same. In this case, the On-Platform Contract formed through the match will only apply to the quantity of grain specified in the Seller Offer. The remaining unmatched quantity of grain specified in the Buyer Bid may subsequently be matched against other Seller Offers to create other On-Platform Contracts until the entire quantity of grain specified in the Buyer Bid has been matched; and

- (vi) subject to paragraph (vii) below, once an On-Platform Contract is formed by the Platform matching a Seller Offer with a Buyer Bid, title in the relevant parcel of grain that is the subject of that On-Platform Contract will pass in accordance with the Buyer's terms. To reflect the change of ownership in Loadnet, the Seller must manually nominate the grain the subject of the On-Platform Contract in Loadnet. If the Seller does not manually nominate the grain the subject of the On-Platform Contract in Loadnet by 7.45am on the day following the communication of the match, the grain will automatically be nominated in Loadnet.
- (vii) An On-Platform Contract formed through a Seller Forward Offer or Buyer Forward Bid matching will be for grain that is not available on Loadnet. This will require the Seller to deliver and nominate grain to the Buyer in Loadnet within a defined future delivery window, and title in the grain will pass to the Buyer in accordance with the Buyer's Terms.

Responsibilities of Buyers and Sellers

- (l) A Buyer is responsible for ensuring that:
 - (i) any grain that it purchases from a Seller is fit for its purposes; and
 - (ii) it has limits on LoadNet at levels that are sufficient to handle grain that is transferred using the Platform.
- (m) If a User breaches its obligations under a contract with another User (whether formed using the Platform or otherwise), the other User must take its own action to enforce or protect its rights under that contract. We will not be involved in any dispute regarding the contract other than to provide details of any information exchanged on the Platform.
- (n) We cannot ensure and do not guarantee that a User will actually complete a contract or act lawfully in using the Platform.
- (o) We do not offer any insurance or other protection for Users that enter into contracts using the Platform.
- (p) Users must obtain their own legal or financial advice in respect of an intended contract formed using the Platform.
- (q) Users are responsible for conducting their own due diligence in respect of an intended contract formed using the Platform.

8. OptimiserPlus

- (a) It is a condition precedent to the performance of the OptimiserPlus Service by DailyGrain that:
 - (i) Users have registered as a 'Premium' Member and paid the applicable Membership fee; and
 - (ii) Users have linked their LoadNet account to OptimiserPlus.

- (b) In consideration for the OptimiserPlus Service, Users agree to pay the Service Fee which is payable per Season upon confirmation by Users to DailyGrain that Users wish to use the OptimiserPlus Service for that Season.
- (c) The OptimiserPlus Services will be made available to Users for the relevant Season (or any remaining part of the Season) upon payment of the Service Fee.
- (d) Users must only use the OptimiserPlus Service for its authorised purposes as instructed by DailyGrain.
- (e) Users agree to comply with and be bound by clauses 7.1 to 7.5 (inclusive) of the CBH Delivery and Warehousing Terms as if those terms were set out herein and with the necessary changes and the Optimisation Rules.
- (f) The OptimiserPlus Service is not a fully managed grain marketing advisory service. Accordingly, DailyGrain does not:
 - (i) provide price guarantees;
 - (ii) analyse User's production history and production estimates for the coming year;
 - (iii) assess User's current price risk management needs;
 - (iv) provide User's with information to help Users ascertain grain marketing objectives;
 - (v) provide Users with position reporting to assist in keeping track of grain contract obligations;
 - (vi) provide grain broker services nor does DailyGrain act as your agent in any context;
 - (vii) provide any advice or recommendation as to the suitability or profitability of any Optimisation and to the extent permitted by law, DailyGrain does not make any representations or warranties that the information is accurate, current or complete or guarantee any financial outcome; and
 - (viii) provide legal advice, nor does DailyGrain act as agents in relation to grain contracts or negotiations.
- (g) Users acknowledge and agree that financial and grain markets are subject to a range of risks, and as a result, prices can drop in value as well as rise. This market volatility may cause sharp and unpredictable fluctuations in grain prices which may result in significant changes to the information and calculations being provided by DailyGrain. In this context Users acknowledge that calculations provided by DailyGrain are time sensitive, and that Users will consult with DailyGrain immediately before seeking to rely on DailyGrain's information.
- (h) Users authorise DailyGrain to maintain a transaction log consisting of a copy of all instructions received from Users via OptimiserPlus. Except in the case of

manifest error, the log will be conclusive evidence of the details of User instructions.

9. User Information

- (a) A User is solely responsible for its User Information that is displayed on the Platform.
- (b) User Information must not, in any way whatsoever, be potentially or actually harmful to us or any third party, where "harm" includes, but is not limited to non-economic loss that will or may be suffered by us.
- (c) Without limiting any provision of this Agreement, a User must, at all times, ensure that its User Information is current and:
 - (i) is not false, inaccurate or misleading or deceptive;
 - (ii) is not fraudulent or involve the sale of grain that is:
 - (A) stolen; or
 - (B) unfit for sale, or otherwise not in a condition that meets CBH's Receival Standards;
 - (iii) does not infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or intellectual property rights, rights of publicity, confidentiality or privacy;
 - (iv) does not violate any applicable law, statute, ordinance or regulation (including, but not limited to, those governing export and import control, consumer protection, unfair competition, criminal law and trade practices/fair trading laws);
 - (v) is not defamatory, libellous, threatening or harassing;
 - (vi) is not obscene or contain any material that, in our sole and absolute discretion, is in any way inappropriate or unlawful;
 - (vii) does not contain any content that is prohibited or that, in our sole and absolute discretion, may be prohibited content for the purposes of the Broadcasting Services Act 1992 (Cth) (for more information about this legislation, please refer to the Internet Industry Association's Codes of Practice located at <http://www.iiia.net.au>);
 - (viii) does not contain any malicious code, data or set of instructions that intentionally or unintentionally causes harm or subverts the intended function of the Platform, including, but not limited to viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, modify, delete, detrimentally interfere with, surreptitiously intercept, access without authority or expropriate any system, data or personal information; or
 - (ix) does not create liability for us or cause us to lose (in whole or in part) the services of our ISPs or other suppliers.

- (d) Solely to enable us to use User Information, so that we are not violating any rights the User might have in that User Information (including any intellectual property rights), Users agree to grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to do and authorise the doing of all acts comprised in the copyright and to exercise the publicity, and database rights (but no other rights) Users have in their User Information, in any media now known or not currently known, with respect to the User Information.

10. Access and Interference

Users must not take any action that imposes an unreasonable or disproportionately large load on the infrastructure connected with the Platform. Much of the information on our Platform is updated on a real time basis and is proprietary or is licensed to us by our Users or third parties.

11. Breach and suspension

11.1 Suspension

If:

- (a) you have, or we believe that you have, breached this Agreement or any of our Policies in any way;
- (b) we are unable to verify or authenticate any information you have provided to us;
- (c) we believe that your actions may cause Loss to or otherwise unlawfully harm another User, third parties or us, our related bodies corporate or affiliates, our directors, employees or agents;
- (d) we believe that any aspect of your User Information is materially inappropriate, incorrect or misleading; or
- (e) we suspect or believe, or are informed by a government authority or an apparently reputable source, that you have engaged or are likely to engage in fraudulent activity in connection with your use of the Platform,

without limiting other remedies available to us at law, in equity or under this Agreement, we may, without notice and in our sole discretion (which shall be exercised reasonably, having regard to the circumstances):

- (f) delay posting your User Information on the Platform;
- (g) alter or remove your User Information from the Platform;
- (h) issue you a warning;
- (i) restrict your activities on the Platform; or
- (j) temporarily suspend your membership or use of the Platform. Where reasonably practicable, we will notify you prior to suspending your Platform access. Where not reasonably practicable, notice will be given after the suspension.

11.2 Breach

If:

- (a) you have, or we have reasonable grounds to believe that you have, breached this Agreement or any of our Policies in any way and, if that breach is capable of being remedied, that breach has not been remedied within 7 days of us providing notice to you of the breach;
- (b) we have reasonable grounds to believe that your actions may cause Loss to or otherwise unlawfully harm another User, third parties or us, our related bodies corporate or affiliates, our directors, employees or agents;
- (c) we have reasonable grounds to believe that any aspect of your User Information is incorrect or misleading; or
- (d) we have reasonable grounds to believe, or are informed by a government authority that you have engaged or are going to engage in fraudulent activity in connection with your use of the Platform,

without limiting other remedies available to us at law, in equity or under this Agreement, we may, on 2 days' notice and in our sole discretion (which shall be exercised reasonably, having regard to the circumstances):

- (e) terminate your membership or use of the Platform; or
- (f) refuse to provide the Services to you.

12. Privacy

- (a) DailyGrain has a Privacy Policy which applies to all Users and forms part of this Agreement. Our current Privacy Policy is located at <https://www.dailygrain.com.au/policies>. Users must read and accept our Privacy Policy upon registration in order to use the Platform, and Users will continue to be bound by its provisions (including any reasonable amendments we make to it) while using the Platform.
- (b) User Information may be de-identified and aggregated so that DailyGrain may use User Information as material for any purpose, including reproduction, transmission, publication, broadcast, and posting.
- (c) During commercial dealings, DailyGrain may make telephone recordings of telephone conversations, with or without automatic tone warning devices. DailyGrain may use such recordings, or transcripts from such recordings, for DailyGrain's commercial records, for internal compliance or training related purposes and for other purposes permitted by law that DailyGrain reasonably determines to be appropriate, including as evidence in any dispute between Users and DailyGrain. DailyGrain agrees to make available to Users, upon written request, a written transcript copy of any existing recording pertaining to Users' dealings with DailyGrain, within 90 days of the making of the recording. In such circumstances, Users agree to pay the reasonable costs of DailyGrain providing a copy of any relevant recording prior to Users' receipt of the transcript.

13. No Warranty

- (a) The Platform is available for use by Users on an "as is" basis, and without any warranty or condition, express or implied.

- (b) We make no warranties about the accuracy or completeness of any information, or the time within which the information will be posted on the Platform or sent by us to Members by email or SMS. Certain information (including price indications/comparisons) is prepared from a wide variety of sources and from third parties and we take no responsibility for the accuracy of such information. We have not reviewed the sites that might be linked to the Platform, and we are not responsible for the content of any of those sites.
- (c) We do not warrant and cannot ensure the security of any information which is transmitted to us or posted by User on the Platform. Accordingly, any information which is transmitted to us or posted on the Platform by Users is transmitted and posted at Users own risk.
- (d) We do not guarantee continuous, uninterrupted or secure access to the Platform, and operation of and access to the Platform may be interfered with by a Force Majeure Event.
- (e) The Platform is partly dependent on access to third party data (such as LoadNet). DailyGrain takes no responsibility for the accuracy, timeliness or availability of such data.
- (f) No part of the Services or the Platform constitutes a recommendation in respect of a User. Users acknowledge and agree that we have not conducted or are responsible for any due diligence with respect to any other User.
- (g) We provide the contents of the Platform and Services for general informational and convenience purposes only which means it does not account for a User's specific needs, financial situation or objectives. Users should make their own enquiries about the information contained on the Platform, in particular any price or comparison information, and we strongly suggest Users seek independent advice before acting upon any information supplied by us. We shall not be liable for any Direct, incidental, consequential, indirect, or punitive damages arising out of access to or use of or reliance upon any content of the Platform or Services or the content of any site or sites linked to the Platform.

14. Liability Limit

- (a) Each User releases and discharges us from all liability for all Claims the User may have or all Losses suffered or incurred by the User howsoever arising, including by any negligence on our part, except for any Losses suffered or incurred by the User because of our fraud or wilful misconduct, in connection with the Services or us suspending or terminating the User's use of the Services.
- (b) For the purposes of this Agreement, parts 1A to 1F of the Civil Liability Act 2002 do not apply.
- (c) To the extent permitted by law, any condition or warranty which would otherwise be implied into this Agreement is hereby excluded. Where legislation (including the Competition and Consumer Act 2010 (Cth)) implies any condition, guarantee or warranty, and that legislation prohibits us from excluding our liability under, any such condition, guarantee or warranty, that condition, guarantee or warranty will be deemed included but our liability will be limited, where it is fair and reasonable to do so, to one or more of the following:
 - (i) in the case of goods, any one or more of the following:

- (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (C) the payment of the cost of having the goods repaired; and
- (ii) in the case of services:
- (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (d) The Services provided to Users under this Agreement are provided solely for your use and DailyGrain does not accept any liability whatsoever in relation to third parties.
- (e) Neither party will be liable for any consequential loss or damage arising out of or in relation to the use of the Platform or in relation to the provision of the Services by DailyGrain pursuant to this Agreement.

15. Indemnity

- (a) Each User indemnifies and holds DailyGrain and our respective officers, directors, agents, and employees, harmless from and against any and all Claims made against us and all Direct Losses suffered or incurred by us due to or arising out of or in connection with:
- (i) the User's breach of this Agreement; or
 - (ii) violation of any law or the rights of a third party by the User; or
 - (iii) reliance by the User on any information on the Platform.
- (b) DailyGrain is not entitled to recover loss or obtain payment more than once in respect of any liability of loss that gives rise to more than one claim by DailyGrain under this Agreement.

16. No Agency

No agency, partnership, joint venture, employee-employer, franchisor-franchisee or other similar relationship is intended to be or is created by this Agreement. In particular Users have no authority to bind us in any way whatsoever. Users hereby acknowledge that we have no fiduciary or similar obligation to them.

17. Procedure for handling errors and disputes

- (a) Users should notify DailyGrain immediately if Users become aware that Users may have made an error in any information that Users send to DailyGrain or if Users did not authorise a change to User records and such a change has taken place. Users may notify DailyGrain by:
- (i) telephoning us on (08) 9416 6244;
 - (ii) writing to DailyGrain, GPO Box L886, Perth WA 6842;
 - (iii) faxing (08) 9422 9255; or

- (iv) emailing info@dailygrain.com.au
- (b) If Users think there is an error in any information provided on OptimiserPlus Users must notify DailyGrain immediately using the details provided in clause 17(a).
- (c) DailyGrain will advise Users of the steps you must take so that an investigation can commence. Users must give us full details of the information Users are querying.
- (d) If DailyGrain is unable to resolve the matter immediately Users may lodge a complaint in writing and DailyGrain will advise you in writing of the steps we will take to investigate the matter further.
- (e) Within 21 days of receiving from Users the full details of the complaint, DailyGrain will advise Users in writing of either:
 - (i) the outcome of our investigation; or
 - (ii) the need for more time to complete our investigation.
- (f) On completion of our investigation DailyGrain will advise Users in writing of the outcome and our reasons, with reference to the relevant provisions of this Agreement.

18. Notices

- (a) Any notices to be served on us must be given by registered post to DailyGrain care of 240 St Georges Terrace, Perth WA 6000 or any other address advised by us from time to time.
- (b) Any notice to be served on Users may be sent to the email address Users provide to us during the registration process or by certified post to the address provided to us during the registration process, or as updated by Users as relevant.
- (c) Users are responsible for notifying DailyGrain of changes to Users' email address or other contact details and DailyGrain takes no responsibility for any Losses Users may suffer as a result of failing to notify DailyGrain.
- (d) Any notice shall be deemed given:
 - (i) if sent by email, at the time it sent, unless the sender receives an automatic response stating that the transmission was not complete; and
 - (ii) if sent by pre-paid post, ten Business Days after the date of posting.

19. Amendment

- (a) We may amend the terms of this Agreement from time to time. Amendments to this Agreement will be effective:
 - (i) immediately upon us posting a notice of those amendments on the Platform if the amendments are required by law or we determine, acting reasonably, that the amendments are likely to benefit you or have a neutral impact; or
 - (ii) otherwise upon 30 days' notice.

- (b) Users continued use of the Platform following the posting of such a notice on the Platform will represent an agreement by Users to be bound by the Agreement as amended.

20. Miscellaneous

- (a) This Agreement will be governed in all respects by the laws of the State of Western Australia.
- (b) Users and DailyGrain irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.
- (c) The provisions of this Agreement are severable, and if any provision of this Agreement is held to be invalid or unenforceable, such provision may be removed and the remaining provisions will be enforced.
- (d) This Agreement may be assigned by us to a third party without Users consent in the event of a sale or other transfer of some or all of the assets of DailyGrain. In the event of any sale or transfer, Users will remain bound by the Agreement.
- (e) Subject to clause 20(d) neither party shall assign, transfer or otherwise dispose its rights and obligations under this Agreement without the other party's prior written consent. 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.
- (f) Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.
- (g) A party's failure to act with respect to an anticipated or actual breach by the other party does not waive its right to act with respect to subsequent or similar breaches.
- (h) This Agreement may not be construed adversely against us solely because we prepared it. This Agreement sets out the entire understanding and agreement between the Users and us with respect to its subject matter.
- (i) In the case of an inconsistency between this Agreement and the Policies or the Terms and Conditions, this Agreement takes priority to the extent of the inconsistency.
- (j) Clauses 10, 14, 15 and 16 of this Agreement will survive any termination or expiration of this Agreement.
- (k) DailyGrain may share information provided by Users with its Related Bodies Corporate in order to better provide services to you.