

**BULK WHEAT AND NON-WHEAT PORT TERMINAL SERVICES AGREEMENT
("Agreement")**

GRAINCORP OPERATIONS LIMITED (ABN: 52 003 875 401)

Date:

Season: 2018/2019

Parties:

GRAINCORP OPERATIONS LIMITED (ACN 003 875 401)

of Level 28, 175 Liverpool Street, Sydney, NSW, 2000 ("**GrainCorp**")

and:

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

("Customer")

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1. CONSIDERATION & TERM OF AGREEMENT

1.1 In consideration of the Customer:

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

GrainCorp agrees to supply the services to the Customer in accordance with the terms of this Agreement ("**Port Terminal Services**").

1.2 This Agreement applies to Port Terminal Services supplied by GrainCorp for or on behalf of the Customer in relation to the Customer's Wheat and Non-Wheat for the period commencing on 1 October 2018 ("**Commencement Date**") and concluding on 30 September 2019 ("**Termination Date**") ("**Term**").

1.3 GrainCorp will publish Reference Prices, as outlined in Annexure A of this Agreement, on GrainCorp's website by no later than 31 August 2018.

1.4 This Agreement shall be deemed to have been accepted by the Customer and the Customer and GrainCorp will be bound by the terms and conditions of this Agreement from the earlier of:

- (a) the later date of execution of this Agreement by either party; or
- (b) the date that GrainCorp provides any Port Terminal Services.

1.5 For the purposes of the PPSA, the Customer will be deemed to have accepted the terms and conditions of this Agreement on and from the first date that GrainCorp provides the Customer with any Port Terminal Services.

1.6 This Agreement does not apply to the supply of services which are subject to separate agreements (including Other Agreements).

1.7 On and from the Commencement Date, this Agreement supersedes any prior agreement between the parties that relates to the Port Terminal Services.

1.8 Notwithstanding anything to the contrary in this Agreement, if the Customer enters, or is deemed to have entered, into an agreement that supersedes this Agreement (an "**Subsequent Agreement**"), GrainCorp may, in its sole discretion and without giving the Customer any notice, elect to deem this Agreement to be a "master agreement" between the Customer and GrainCorp which does not end on the Termination Date, so that for the purposes of the PPSA:

- (a) all Subsequent Agreements will be subject to, and will be deemed to form part of, this Agreement; and
- (b) GrainCorp may rely on any registration made on the PPSR with respect to this Agreement in relation to any Security Interests arising under any Subsequent Agreements.

2. SCOPE OF AGREEMENT

- 2.1 This Agreement applies to the Port Terminal Services including:
- (a) Wheat and Non-Wheat which is received into the Port Terminal directly from or on behalf of the Customer;
 - (b) Wheat and Non-Wheat which is transferred to the Customer where the transferred Wheat and Non-Wheat was the subject of a Grower Warehouse Agreement; and
 - (c) Wheat and Non-Wheat which is transferred to the Customer where the transferred Wheat and Non-Wheat was the subject of a Bulk Wheat and Non-Wheat Port Terminal Services Agreement or a Country Storage and Handling Agreement.
 - (d) For the avoidance of doubt, where a Customer has a relationship with GrainCorp governed by a Country Storage and Handling Agreement and the Port Terminal Services Protocols, all of the Customer's stock contracted under the separate agreements will be considered in concert for the purposes of **Clauses 6.30 and 6.31** of this Agreement.
- 2.2 During the Term, GrainCorp will sample, provide quality testing services for, weigh, store and load to vessel or (if available) rail or (if available) road transport, all Wheat and Non-Wheat received by it under the terms of this Agreement.
- 2.3 The terms of this Agreement do not extend to the supply of services for:
- (a) Packing Wheat and Non-Wheat into shipping containers at Port Terminals. Other than as set out here, the terms for packing containers are the subject of separate terms and conditions which may be agreed between the parties, or
 - (b) Importation of Wheat and Non-Wheat from vessels at the Port Terminal which are subject to separate terms between the parties.
- 2.4 This Agreement is not an open offer or a representation that GrainCorp will supply Port Terminal Services to the Customer for any minimum or maximum quantity or quality of Wheat and Non-Wheat, nor is it a representation that GrainCorp will supply Port Terminal Services for all of the Customer's requirements. Where GrainCorp does supply Port Terminal Services, it does so in compliance with the terms of this Agreement.

3. SERVICES PROVIDED BY GRAINCORP UNDER THIS AGREEMENT

Receival of Wheat and Non-Wheat

- 3.1 During the Term, GrainCorp will use reasonable endeavours to receive Wheat and Non-Wheat into the Port Terminal in accordance with the Customer's request and subject to any terms in this Agreement. At all times GrainCorp retains the discretion as to what specifications and quantities of Wheat and Non-Wheat it will receive into a Port Terminal. Notwithstanding this **Clause 3.1**, all Wheat and Non-Wheat of the Customer that forms part of an agreed Site Assembly Plan ("**SAP**") or an agreed equivalent plan, will be received at the Port Terminal provided it meets the standards as prescribed on the Cargo Nomination Application ("**CNA**").

- 3.2 GrainCorp will only receive Wheat and Non-Wheat at Port Terminals from sources other than GrainCorp Storages where the Customer and the Wheat and Non-Wheat it seeks to deliver, satisfy the requirements specified in the Port Terminal Services Protocols.
- 3.3 Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that:
- (a) Wheat and Non-Wheat is received and stored by GrainCorp Ports based on variety or grade and chemical residue status declared by grower, marketer or their agent during delivery;
 - (b) Wheat and Non-Wheat received and stored by GrainCorp may be stored in common (i.e. commingled) with Wheat and Non-Wheat received from other GrainCorp customers, and Wheat and Non-Wheat may be segregated due to, but not limited to, chemical residues, genetic status and phytosanitary requirements;
 - (c) Wheat and Non-Wheat received and stored by GrainCorp of Feed Grade may be commingled with Wheat and Non-Wheat of the same type and grade but of a different growing season;
 - (d) it understands and has advised all of its suppliers, that Wheat and Non-Wheat suspected to contain residues or which may otherwise be contaminated may **not** be delivered to or accepted at any GrainCorp facility. If such delivery is made for or on behalf of the Customer, GrainCorp will not be responsible to any party for any Claim of Loss howsoever alleged or suffered; and
 - (e) this Agreement shall not be construed as a lease, tenancy at will, or licence of any storage facilities or land upon which any storage facility is located.
- 3.4 For the purposes of this Agreement, the grade of Wheat and Non-Wheat will be determined by GrainCorp in accordance with the Commodity Standards unless otherwise agreed in advance of any testing or sampling by GrainCorp, and in writing between GrainCorp and the Customer.

Quality Testing Services

- 3.5 Where Wheat and Non-Wheat has been received into GrainCorp Storages, the same grade classification of this Wheat and Non-Wheat given at the GrainCorp Storage will apply to Wheat and Non-Wheat being received into the Port Terminals.
- 3.6 GrainCorp will provide protein, moisture, screenings, defective grain and contaminant testing services for Wheat and Non-Wheat prior to or following receipt at Port Terminals. GrainCorp will provide falling number testing of Wheat and Non-Wheat upon receipt at Port Terminals as determined by GrainCorp. Wheat and Non-Wheat analysis resulting in grade or scale classification will be performed using instruments which comply with the provisions of the *Commonwealth Government's National Measurement Act (1960), National Measurement Regulations (1999) and the National Trade Measurement Regulations (2009)*. All other testing will be performed in accordance with the Commodity Standard for the relevant Wheat and Non-Wheat type and grade.

- 3.7 Germination testing of barley and free fatty acid testing of oilseeds will only be conducted during non-harvest periods at times mutually agreed between GrainCorp and the Customer.
- 3.8 Testing for Genetic Modification (GM) of canola will occur on composite harvest samples at our laboratories. Where Low Level Presence is detected above the tolerance specified for that grade, this shall be managed on outload by agreement with the Customer.

Reclassification of Malt Barley

- 3.9 GrainCorp may reclassify malting barley stored under this Agreement to that of feed barley standard where the germinative energy as determined under **Clause 3.7** is less than 95% and GrainCorp's stock provision obligation will be reduced to that of feed barley standard. Any such reclassification will only be conducted after consultation with the Customer.
- 3.10 Malting barley physical stocks failing to meet minimum germination requirements for their grade as per **Clause 3.9** will be regraded at a bin level to a grade that will identify the stock as having reduced germination. Customer's malting barley accounting stocks will be proportionately adjusted to this grade at a site level.

Pest Control

- 3.11 Unless otherwise agreed in advance by the parties in writing, GrainCorp may treat all Wheat and Non-Wheat with approved chemicals or treatments as per applicable codes and regulations including the Australian Pesticides and Veterinary Medicines Authority and Food Safety Australia and New Zealand codes. GrainCorp will provide a list of approved chemicals and treatments to the Customer on request.
- 3.12 If the Customer requests and GrainCorp agrees to a different chemical or treatment strategy for a specific Port Terminal, an additional fee may be charged by GrainCorp and payable by the Customer for the agreed treatment.
- 3.13 Where fumigation or other certificates are required by the Customer, GrainCorp will apply a charge for the administration of these certificates. Any certification requirements must be lodged as part of a Cargo Nomination Application. These certificates may not be obtainable in a format suitable for some requirements. GrainCorp accepts no responsibility for certification requests that have not been agreed between the Customer and GrainCorp prior to a Cargo Nomination Application approval.
- 3.14 GrainCorp will regularly inspect Wheat and Non-Wheat stored for the Customer. If infestation is detected in Wheat and Non-Wheat arriving at the Port Terminal from a GrainCorp Storage, the Wheat and Non-Wheat will be disinfested and treated at GrainCorp's cost. If infestation is detected in Wheat and Non-Wheat arriving at the Port Terminal which is not sourced from a GrainCorp Storage, the Wheat and Non-Wheat will be disinfested at the Customer's risk and cost. GrainCorp is under no obligation to receive infested loads of grain that are not sourced from GrainCorp Storage.

Outloading of Wheat and Non-Wheat

- 3.15 If a Customer wishes to remove a Tonnage of its Wheat and Non-Wheat from a Port Terminal by loading road transport, the Customer must complete and execute a GrainCorp approved Movement Request to Outload and follow the procedures in the Country Storage and Handling Agreement. GrainCorp is not required to load Wheat and Non-Wheat until the completion and execution of a Movement Request in accordance with the Movement Request procedures.
- 3.16 If a Customer wishes to remove a Tonnage of its Wheat and Non-Wheat from a Port Terminal by loading to a vessel, the Customer and GrainCorp must follow procedures in the Port Terminal Services Protocols and this Agreement and (if applicable) the Long Term Agreement for Port Terminal Services.
- 3.17 The outloading of Wheat and Non-Wheat is subject to local operating arrangements, legislative and regulatory requirements and compliance, availability of road transport, fumigation requirements and periods of non-access and prevailing weather conditions.
- 3.18 If the Customer requires GrainCorp to outload Wheat and Non-Wheat by road transport, GrainCorp will not permit loading beyond the legal mass limit prescribed by the relevant legislation in each state for that road transport configuration, and the Customer will have no Claim against GrainCorp for any Loss connected to such directions or restrictions.
- 3.19 Once Wheat and Non-Wheat is outloaded from a Port Terminal (ordinarily determined as the point where the Wheat or Non-Wheat passes over the rail of the vessel or vehicle):
- (a) The Wheat and Non-Wheat no longer forms part of the Stored Wheat and Non-Wheat and the Customer becomes the full owner of that Wheat and Non-Wheat bearing all risk and responsibility; and
 - (b) The GrainCorp Stock Management System will be updated either manually or automatically to reflect the remaining Interest (if any) of the Customer.

Preconditions to Any Outturning or Outloading Services

- 3.20 Without limiting any other provision in this Agreement, the following preconditions apply before any outloading is supplied:
- (a) GrainCorp relies on the Customer to have in place, and in turn, the Customer warrants that it shall have in place and maintain at all times during the Term, an appropriate wheat export licence and any accreditation or similar as required under any law or by any government body ("**Accreditation Requirements**"). The Customer undertakes not to request any outload services, or if requested, to cancel such request, unless and until the Accreditation Requirements are complied with. If GrainCorp reasonably suspects or is otherwise notified of the Customer's non-compliance with the Accreditation Requirements then the Customer is in breach of warranty and GrainCorp may at the Customer's sole risk and cost, refuse to supply any Port Terminal Services in connection with this Agreement, until the Customer proves compliance with these requirements. The Customer indemnifies GrainCorp from and against any Loss or Claim arising in connection with any failure to comply, in whole or in part, with any

Accreditation Requirements.

- (b) GrainCorp is not responsible for the cleanliness, fitness for loading or carriage of Wheat and Non-Wheat, of any mode of transportation nominated by the Customer. If the Department of Agriculture and Water Resources (DAWR) or an Authorised Officer determines, or if acting reasonably GrainCorp in consultation with the Customer, determines that the Customer's selected mode of transportation is not clean, fit for loading or carriage then it may suspend or refuse to provide any outloading services and in no circumstances will GrainCorp be liable for any delay, Loss or Claim and the Customer shall meet all of GrainCorp's costs, expenses or losses associated with the rejection, suspension or cancellation of the scheduled outloading services. To avoid doubt, this clause will apply where GrainCorp engages labour or is required to cancel the provision of services to other Customers directly as a result of the Customer's mode of transport failing to meet the statutory or regulatory requirements for the transport of Wheat and Non-Wheat (for example, failing regulatory surveys). The Customer will be advised, in writing, of any Claim to be made by GrainCorp, within a reasonable time of the determination that the mode of transport has been declared not clean or unfit for loading or carriage of Wheat and Non-Wheat.
- (c) Prior to physically outloading any Wheat and Non-Wheat, GrainCorp reserves the right to invoice the Customer and receive payment in full for any related outloading services, failing which GrainCorp is not required to commence any such outloading services. On completion of any outloading services, the Customer must within 21 days pay for any additional costs, services and Fees for Wheat and Non-Wheat outloaded additional to the quantity invoiced. If the quantity outloaded is less, then GrainCorp will within 21 days refund/credit to the Customer the difference. Refunds relating to pre-booked shipping capacity not fully outloaded to vessel are outlined in the Port Terminal Services Protocol.

4. CONDITIONS OF SERVICES PROVIDED BY GRAINCORP UNDER THIS AGREEMENT

New Season Agreement and Holding Over

- 4.1 The parties will be bound by the terms and conditions of this Agreement (or an equivalent agreement) issued for the grain season or seasons commencing on 1 October 2018 ("**New Season Agreement**") from the earlier of:
 - (a) the date of execution by the Customer of the New Season Agreement; or
 - (b) the date that GrainCorp stores and handles Wheat and Non-Wheat on behalf of the Customer during the grain season commencing on 1 October 2018.

If such agreement is not published prior to 1 October 2018 or is otherwise delayed, then GrainCorp and the Customer continue to be bound by the terms of this Agreement subject to agreed variations and any revised Fees that apply for the new season, as will be notified to the Customer before 1 October.

Hours of Operation

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

Rail Transport Providers

- 4.5 Where the Customer is obligated to arrange its own rail transport services, the following conditions will apply.
- 4.6 If GrainCorp receives the Customer's Wheat or Non-Wheat by rail transport or is required to outload the Customer's Wheat and Non-Wheat to rail the Customer must:
- (a) Ensure that the Customer's rail service provider:
 - (1) Has all approvals, licences and authorisations required to operate rail and related services;
 - (2) Is an approved rail service provider with applicable interface agreements and service level agreements in place with GrainCorp (as required by GrainCorp and/or rail regulators) that:
 - Has adequate systems to provide the necessary rail and related services to the Customer in a timely, safe and professional manner; and
 - Meets GrainCorp's rail loading and unloading requirements (as advised from time to time) for the Port Terminal.
 - (3) Provides rail wagons and other related equipment utilised in the transport of

Wheat and Non-Wheat that are clean and empty of any grain residue and/or contaminants, free from defects, well maintained, rail and carriage worthy and that avoid risk of any damage to property or injury to any persons including GrainCorp employees, agents and contractors;

- (4) Provides a system for the notification of defects in rail wagons. Any defect reported by GrainCorp will be recorded and the Customer must ensure that remedial action taken by the Customer's rail service provider or alternative transportation must then be arranged by other means or a different rail service provider. GrainCorp will be advised when corrective action has been completed on the defective rail wagon. The rail service provider will not allow the defective rail wagons to be loaded until the defect has been remedied and confirmed to GrainCorp;
 - (5) minimizes and avoids all risk of damage or injury to all persons, and protection of same, including the protection of GrainCorp employees, agents and contractors by providing wagons with top door opening/closing mechanisms which do not require GrainCorp employees to climb onto the wagon to open or close the rail wagon doors; and
 - (6) Participates in safety audits conducted at or near GrainCorp Storages so that risks of injury to any persons including GrainCorp employees are identified, and addresses and remedies any risks related to rail wagons identified in the course of such safety audit.
 - (7) The Customer shall bear all risk and responsibility for the actions and / or omissions of its rail service provider, including any Loss or Claim howsoever connected to their engagement of the rail service provider or the performance of the rail or related services. The Customer shall indemnify GrainCorp for any and all such Claims or Loss.
- (b) The Customer acknowledges and agrees that, unless advised otherwise by GrainCorp, the loading of Wheat and Non-Wheat into rail wagons by GrainCorp does not include:
- (1) the movement or shunting of rail wagons by any means;
 - (2) the cleaning of rail wagons; or
 - (3) the opening and closing of wagon lids and discharge hatches on rail wagons.

4.7 GrainCorp will use reasonable endeavours to ensure that the Tonnage loaded into rail transport provided by or on behalf of the Customer from a Port Terminal will be loaded to the Nominated Capacity.

4.8 GrainCorp does not warrant that the Tonnage loaded into rail transport provided by or on behalf of the Customer from a Port Terminal will be loaded to the Nominated Capacity.

Road Transport Providers

- 4.9 Where the Customer is obligated to arrange its own road transport services, the following conditions will apply.
- 4.10 If GrainCorp receives the Customer's Wheat or Non-Wheat by road transport or is required to outturn the Customer's Wheat and Non-Wheat to road the Customer must:
- (a) Ensure that vehicle operators engaged by the Customer for the purposes of delivering or outloading Wheat or Non-Wheat by road to/from the Port Terminal comply with all laws and regulations, including those in respect of safety, the environment, carriage of goods and chain of responsibility, are conversant with site safety procedures and have undergone a site induction program prior to entering the Port Terminal;
 - (b) Ensure that vehicle operators are advised that they must not, and thereafter do not, require or request GrainCorp staff to access or climb on vehicles for any purpose to assist with connecting or disconnecting trailers or discharging loads;
 - (c) Engage road transport providers and ensure that they provide associated equipment that is registered, insured, operated by licensed and physically capable operators, is clean, safe, and fit for purpose prior to entering the Port Terminal (this includes equipping operators with appropriate PPE);
 - (d) Ensure the road transport provider advises GrainCorp of vehicle registration details in a manner that complies with any applicable Movement Request booking and truck time slotting requirements. Such details are to be provided no later than AEST 5:00pm of the business day prior to the date of intended delivery; and
 - (e) On request by GrainCorp, the road transport provider is required to provide information comprising their personnel's policies and procedures in relation to its driver fatigue management obligations.
- 4.11 If the Customer requires GrainCorp to receive Wheat and Non-Wheat by road transport, GrainCorp will not permit loading beyond the legal mass limit prescribed by the relevant legislation in each state ('Mass Limit') for that road transport configuration, and the Customer will have no Claim against GrainCorp for any Loss connected to such directions or restrictions.
- 4.12 Grain delivered in excess of the Mass Limit (or other requirement imposed by law (including a Notice)) for a specific load ('Mass Breach Grain') will be immediately transferred to a 'Mass Breach Buyer Account' in CropConnect. Thereafter, the Customer will have 21 days from the date of the associated Reival Docket to collect the Mass Breach Grain. Fees and shrink as per this Agreement will equally apply to Mass Breach Grain. GrainCorp does not guarantee the quality of Mass Breach Grain as it does not form part of Stored Grain. All Mass Breach Grain not collected within the time prescribed above, will be donated to a charity determined by GrainCorp in its absolute discretion.
- 4.13 The Customer acknowledges that where DAWR or an Authorised Officer or GrainCorp, in its discretion, determines that the road transport is not clean or fit for loading or carriage of Grain, GrainCorp may cancel, suspend or refuse Outload.

5. OBLIGATIONS OF THE CUSTOMER UNDER THIS AGREEMENT FOR PORT TERMINAL OPERATIONS

Shipping Information

- 5.1 The parties are bound by the Port Terminal Services Protocols and procedures attached to and forming part of this Agreement, or as varied from time to time.
- 5.2 The Customer acknowledges and agrees that the DAWR or an Authorised Officer may disallow the loading of some portion of the Customer's Wheat and Non-Wheat at the Port Terminal for reasons of non-conformance to the DAWR export conditions as outlined in the *Export Control Act 1982* (such as, but not limited to, detection of live insects, rodents and rattlepod). GrainCorp is not liable for any Loss incurred by the Customer in relation to the failure to outload or load that portion of the Wheat and Non-Wheat or the replacement of that stock for the completion of loading, due to a decision by the DAWR or an Authorised Officer to disallow the outloading or loading of that portion of the Wheat and Non-Wheat, including vessel discharge or other post outloading or loading mitigation.
- 5.3 GrainCorp is not liable for any quality issues not caused by GrainCorp derived from Wheat and Non-Wheat rejected from shipping at the Port Terminal that has been delivered from any site, other than a GrainCorp Storage. The Customer remains the owner of this Wheat and Non-Wheat at all times until the Wheat and Non-Wheat is sold or removed from the Port Terminal subject to applicable fees.
- 5.4 Where contaminated Wheat and Non-Wheat is received from or on behalf of the Customer from any site, other than a GrainCorp Storage, and this Wheat and Non-Wheat contaminates other stock at the Port Terminal, the Customer is deemed the owner of the contaminated Wheat and Non-Wheat and is liable for all Loss incurred by GrainCorp (including from Claims by other Customers) caused by and all costs associated with the contaminated stock, GrainCorp will load Wheat and Non-Wheat from the Port Terminal storage in accordance with:
- (a) the standard, advised to GrainCorp by the Customer (provided that these are no more rigid than the Commodity Standards for the receipt of the Wheat and Non-Wheat);
 - (b) the "Authority to Load Advice" form provided to GrainCorp by the Customer and endorsed by GrainCorp; and
 - (c) any other market or blending requirements as agreed in writing by the parties.
- 5.5 The Customer acknowledges and agrees that GrainCorp has the right to mitigate dust emissions at the Port Terminal. Such mitigation may include moisture conditioning of grain paths.
- 5.6 Notwithstanding any other provision in this Agreement, the Customer acknowledges and accepts that matters and events beyond GrainCorp's control may occur (including but not limited to changes in vessel scheduling and arrival or departure times, failure of vessels to pass any quarantine requirements or other inspections, Wheat and Non-Wheat quality issues, vessel congestion, lack of performance and delays due to freight, Port Block Outs or other service providers) which means GrainCorp cannot guarantee all cargos will be ready for loading, or that they can or will be loaded as scheduled. GrainCorp will try to avoid any changes or delays where possible and will keep the Customer informed. GrainCorp will use reasonable

endeavours to accumulate cargo and load vessels as scheduled.

- 5.7 For the avoidance of doubt, no mode of transportation can be cleaned at a Port Terminal without GrainCorp's prior written consent. If a vessel cannot be loaded for any reason including for failing to pass any inspection or survey, then GrainCorp is entitled to instruct a vessel to be removed from the berth, including to make way for another vessel to be loaded. GrainCorp will not be liable for any Loss or Claim howsoever suffered or incurred by a Customer or third party connected to such a direction.

Port Charges

- 5.8 GrainCorp is not liable for any port or related charges in relation to receipt, storage and loading of Wheat and Non-Wheat at Port Terminals (including vessel, demurrage, stevedoring, Port fees or DAWR fees), and such charges will be borne by the Customer. In addition, any charges that GrainCorp may incur under the *Maritime Transport Security Act (2003)* or any other applicable act or regulation, shall be passed onto either the vessel agent or Customer after consultation.
- 5.9 The Customer will be responsible for paying all costs associated with conducting the export inspection of Wheat and Non-Wheat by the DAWR, an Authorised Officer and/or its agent(s) as well as the cost of employing all labour connected with loading, storing, treating and transporting the Wheat for any such inspection. Where GrainCorp provides the bulk grain inspection service via an Authorised Officer the Customer shall pay the applicable fee as outlined in this agreement's Fee Schedule.
- 5.10 For vessels at Geelong, upon completion of loading, the vessel must sail within two hours of completing cargo operations (at the Geelong Number Three berth). If the vessel does not sail the following hourly charges will apply after the expiration of the two hours:
- (a) \$363 per hour for the first hour or part thereof; and
 - (b) \$726 per hour for each subsequent hour or part thereof. This additional fee will be charged to the shipper's agent.
 - (c) This additional fee will be charged to the shipper's agent. If the shipper's agent defaults on this, or any other charge applied by GrainCorp in loading a vessel on behalf of the Customer at the Geelong Terminal, GrainCorp may seek payment in full from the Customer for any amount outstanding and charged to the agent for the loading of that vessel.

6. TITLE TO GRAIN AND GRAIN ACCOUNTING OBLIGATIONS

Co-ownership

- 6.1 Notwithstanding any other provision of this Agreement (but subject to **Clause 6.28 and 6.29**), the Customer acknowledges that when GrainCorp receives the Customer's Wheat and Non-Wheat both of the following occur:

- (a) the weighbridge documentation notates the tare weight and the final net mass of the load is known, and
 - (b) the Customer (or the Customer's agent) has signed the Receival Docket, then the Customer's Wheat and Non-Wheat becomes Stored Wheat and Non-Wheat. At this time, full ownership in the Wheat and Non-Wheat automatically transfers from the Customer to the Co-owners, and in return, an Interest transfers from the Co-Owners to the Customer. As a result, the Customer becomes a Co-owner of all the Stored Wheat and Non-Wheat.
- 6.2 For the purposes of this Agreement, the percentage of the Stored Wheat and Non-Wheat which the Wheat and Non-Wheat makes up, and which therefore constitutes the Customer's Interest in the Stored Wheat and Non-Wheat respectively, will be determined by GrainCorp, using the records GrainCorp is required to keep pursuant to **Clauses 6.44 to 6.46**. For the avoidance of doubt the Customer's Interest represents an ownership right to Wheat and Non-Wheat of the same type and grade of the Wheat and Non-Wheat that was classified by GrainCorp on Receival and delivered by the Customer (and not the same physical Wheat and Non-Wheat that is delivered by the Customer).
- 6.3 Each Co-owner holds its Interest as a tenant in common.
- 6.4 If GrainCorp becomes insolvent, each Co-owner will assert its right to retain ownership commensurate to its Interest.
- 6.5 A Co-owner may, subject to the terms and conditions of this Agreement, deal with its Interest as an owner, including:
 - (a) transferring all or part of its Interest to another Co-owner;
 - (b) removing Wheat and Non-Wheat with GrainCorp's approval from the Stored Wheat and Non-Wheat; and
 - (c) transferring all or part of its Interest to a third party.
- 6.6 In respect of each Co-owner, provided that the Co-Owner complies with all its obligations under this Agreement, GrainCorp has possession of the Co-owner's Stored Wheat and Non-Wheat but no legal or equitable title to any part of it, except to the extent that GrainCorp is a Co-owner.
- 6.7 GrainCorp may become a Co-owner by adding Wheat and Non-Wheat to the Stored Wheat and Non-Wheat. In accordance with **Clause 6.1**, full ownership in any Wheat and Non-Wheat added to the Stored Wheat and Non-Wheat by GrainCorp is transferred to the Co-owners. In return, the Co-owners transfer to GrainCorp an Interest.
- 6.8 Except as set out in **Clause 7.15**, in respect of each Co-owner, provided that the Co-Owner complies with all its obligations under this Agreement, GrainCorp may only deal with Stored Wheat and Non-Wheat as owner of its own Interest and not as the owner of the Interest of the Co-owner. This applies in particular, to the removal of Wheat and Non-Wheat from the Stored Wheat and Non-Wheat.

- 6.9 The Customer warrants to GrainCorp that:
- (a) the Customer will not create, or consent to, any Security Interest over Stored Wheat and Non-Wheat or the Customer's Interest in the Stored Wheat and Non-Wheat other than a Permitted Security Interest;
 - (b) if a Security Interest other than a Permitted Security Interest is created over Stored Wheat and Non-Wheat or the Customer's Interest in Stored Wheat and Non-Wheat in breach of this Clause 6.9(b), the Customer will ensure that it is promptly and unconditionally released; and
 - (c) the Customer will not seek to enforce in any way a Security Interest over Stored Wheat and Non-Wheat or the Customer's Interest in Stored Wheat and Non-Wheat, other than a Permitted Security Interest.
- 6.10 The Customer indemnifies and will keep GrainCorp fully indemnified for any breach by the Customer of Clause 6.9.
- 6.11 The Customer or a third party may request a waiver from the restriction on dealing with Stored Wheat and Non-Wheat as set out in this Clause 6.11 by submitting such request in writing for GrainCorp's consideration and approval. GrainCorp may elect or decline, in its sole discretion, to grant its approval to such request for waiver on terms as it thinks fit. GrainCorp may elect to request the party seeking a waiver to procure entry of a deed of priority with GrainCorp.
- 6.12 The Customer agrees to make amendments to any agreement, and to do such other things as GrainCorp may require from time to time to ensure that any Security Interest that GrainCorp has arising out of or in connection with this Agreement is perfected under the PPSA and to otherwise protect GrainCorp's position under the PPSA as contemplated by this Agreement.
- 6.13 Notwithstanding the order in which:
- (a) any Security Interest that GrainCorp has arising out of or in connection with this Agreement, or a Permitted Security Interest is executed, created, lodged for registration, registered or perfected; or
 - (b) anything else that occurs;
 - (c) anything contained in this Agreement or any agreement which creates a Permitted Security Interest;
 - (d) the fluctuation from time to time of the monies secured by any Security Interest; or
 - (e) any rule of law or equity to the contrary or anything else,

the Customer, as a party who has the benefit of a Permitted Security Interest under paragraph (a) of the definition of that term, agrees and acknowledges that at all times, any Security Interest that GrainCorp has arising out of or in connection with this Agreement will have first priority over the Permitted Security Interest for all Fees, Costs, interest and any other amounts owing by the Customer in respect of this Agreement.

- 6.14 If the Customer has the benefit of a Permitted Security Interest, the Customer:
- (a) must, within five (5) Business Days of a request by GrainCorp, provide to GrainCorp any information GrainCorp requires in respect of the Permitted Security Interest; and
 - (b) agrees to indemnify and keep GrainCorp fully indemnified for any payment of any Fees and any other amounts owing by the Customer under this Agreement.

Transfer of Title

- 6.15 If a Customer (as seller) wishes to transfer a Tonnage of Wheat and Non-Wheat (being all or part of its Accounting Stock Tonnage) to another GrainCorp Customer, the Customer must either:
- (a) complete and execute a Buyer to Buyer Title Transfer in CropConnect and comply with the procedures specified by the GrainCorp Transaction Document headed “Guide for Buyers” and in this regard:
 - 1. Title will Transfer when You “confirm” the transaction with CropConnect;
 - 2. The Transfer or Swap is effective on the date on which the seller confirms the Transfer in CropConnect; or
 - (b) complete a Buyer to Buyer Title Transfer form or Stock Swap form and follow the procedures set out in that form and in this regard:
 - 1. The Transfer or Swap is effective, after execution by all parties on the date which the seller confirms the Transfer of Title to GrainCorp in writing;
 - 2. CropConnect will be updated manually to reflect the revised Interests of You and the third party.
 - (c) You must ensure that all Accounting Stock placed on offer in CLEAR is Uncommitted at both the time of offer and request for Title Transfer should it be subject to an acceptable bid;
 - (d) In the event that Your Uncommitted Accounting Stock is insufficient at the time of offer or the Title Transfer, it will be rejected by GrainCorp and the Transfer will not be completed.
 - (e) Wheat and Non-Wheat may be transferred in accordance with this provision only to another GrainCorp customer who has signed a current Bulk Wheat and Non-Wheat Port Terminal Services Agreement or Country Storage and Handling Agreement.
- 6.16 GrainCorp provides this service to the Customer to facilitate the transfer of all or a part of the Interest, as recorded in the GrainCorp Stock Management System, to another GrainCorp customer. This service provided by GrainCorp does not constitute or represent the agreement or terms and conditions for the sale of Wheat and Non-Wheat from the Customer to another GrainCorp customer.

- 6.17 The Customer must regularly update and keep secure the password created by the Customer to access the GrainCorp Buyer to Buyer Software. To limit the Customer's liability, the Customer must notify GrainCorp immediately by telephone on (02) 9325 9191 during business hours in the state of New South Wales (9:00am to 5:00pmAEST, excluding bank and public holidays) if the Customer believes that a user's password has become known to anyone other than the intended user.
- 6.18 The Customer must provide a minimum of two (2) email addresses for the transmission of confirmation of transfer and it is the Customer's responsibility to maintain the email addresses to be used for confirmation of transfers and these email addresses must be kept current. GrainCorp is not liable for any Claim or Loss incurred by the Customer or any other person arising out of or in connection with the Customer's failure to advise GrainCorp of the changes to email addresses.
- 6.19 GrainCorp may allow any employee of the Customer, authorised by the Customer in writing, access to this software. More than one user from the Customer can have access to the application and password sharing is not required, nor recommended.
- 6.20 The Customer must advise GrainCorp of all persons whom the Customer no longer requires or authorises to have access to the software on behalf of the Customer. GrainCorp is not liable for any Loss incurred by the Customer or any other person arising out of or in connection with the unauthorised use of this software by a former staff member of the Customer where the Customer has failed to advise GrainCorp of changes to staff with access to this software.
- 6.21 The Customer must not attempt to transfer to another party more than the Customer's Accounting Stock Tonnage at the time of the transfer, as recorded in the GrainCorp Stock Management System. Any attempt to do so will result in the revocation of access rights to the software.
- 6.22 All or a part of an Accounting Stock Tonnage will transfer in the GrainCorp Stock Management System upon the seller clicking on the 'Confirm' button.
- 6.23 All or a part of an Accounting Stock Tonnage may be transferred in accordance with this **Clause 6** only to another GrainCorp customer. The transfer is effective, upon the seller clicking on the 'Confirm' button.
- 6.24 GrainCorp may reverse any transfer if:
- (a) the user is in default of payment of any Fees that are not the subject of a dispute to GrainCorp; or
 - (b) the user has attempted to transfer more than their Accounting Stock Tonnage at the time of the transfer, as recorded in the GrainCorp Stock Management System; or
 - (c) in GrainCorp's opinion, the security of the Customer has been breached and the Customer confirms that breach; or
 - (d) the user is in breach of any term of this Agreement; or
 - (e) if the user has selected a Buyer who is not a GrainCorp Customer, in which case

GrainCorp has no liability for any Claim or Loss in connection with the reversal.

- 6.25 GrainCorp may at any time add, remove, change or impose restrictions on the functionality of the software without limitation and without recourse by the Customer. GrainCorp will notify the Customer in advance of any changes to the service provided by the software.
- 6.26 The Customer acknowledges that GrainCorp will not be liable for any Claim or Loss incurred by the Customer or any other person arising directly or indirectly by the use of the Buyer to Buyer Software due to:
- (a) any breakdown or interruption to the service that related to circumstances beyond GrainCorp's direct and immediate control; or
 - (b) the buyer of all or part of the Customer's Accounting Stock Tonnage failing to honour the transfer or any contractual agreement between the two parties.
- 6.27 If a Tonnage of Wheat and Non-Wheat is transferred to the Customer (as buyer) from another GrainCorp Customer (as seller) using the Buyer to Buyer Software as set out in this **Clause 6**, then:
- (a) if the Customer rejects all or a part of the Wheat and Non-Wheat that is transferred by the seller, the Customer must transfer that Wheat and Non-Wheat back to the seller within 2 business days of the original transfer. If the Customer fails to do so, it will be deemed to have accepted the transfer; and
 - (b) the Customer acknowledges that the Wheat and Non-Wheat accepted from the seller may not be at the location agreed on the transfer at the time of outturn.

Stock Swaps

- 6.28 The Customer acknowledges that GrainCorp can swap a grade of Wheat and Non-Wheat with the same grade of Wheat and Non-Wheat between GrainCorp Storages and Port Terminals (and in the Natural Port Zone) by entering into this Agreement. GrainCorp will affect these swaps by filling out a Stock Swap Form, forwarding this form to the Customer and amending the location of the Customer's Accounting Stocks in the GrainCorp Stock System.
- 6.29 For each stock swap effected under **Clause 6.28**, GrainCorp will advise the Customer of the price differential to the relevant Port Terminal in accordance with the 'GNC Swap Differentials' published on the GrainCorp website. For canola, quality differentials of the season, oil and impurities based on the Relevant Increments.
- 6.30 Where a payment is to be made by GrainCorp a Recipient Created Tax Invoice (as required under the relevant GST legislation) and a payment by electronic funds transfer will be sent to the Customer within 21 days of the transaction. The Customer has the option of providing GrainCorp an invoice in lieu of a GrainCorp produced Recipient Created Tax Invoice. Where an invoice is to be sent to the Customer the invoice will form a part of the Customer's normal GrainCorp monthly invoice as per **Clauses 7.1 and 7.2**.

Shrinkage

- 6.31 A shrink allowance of 0.20% by weight will be deducted for all Wheat and Non-Wheat road and rail deliveries to port terminals from Third Party Storages (with the exception of legumes, pulses, maize, sunflowers and oilseeds other than canola, as noted in clause 6.32) including each of the following Wheat and Non-Wheat handling actions:
- (a) Receival by road;
 - (b) Receival by rail; and
 - (c) Wheat and Non-Wheat sold between Customers by Title Transfer.
- 6.32 A shrink allowance of 1% by weight will be deducted for all legumes, pulses, maize, sunflowers and oilseeds other than canola, delivered via road and rail to port terminals from Third Party Storages including each of the following Wheat and Non-Wheat handling actions:
- (a) Receival by road;
 - (b) Receival by rail; and
 - (c) Wheat and Non-Wheat sold between Customers by Title Transfer.
- 6.33 A shrinkage allowance of 0.30% by weight will be deducted from all Wheat and Non-Wheat that is outloaded from a Port Terminal, to cover loss of grain to dust and other handling losses, by any of the following Wheat and Non-Wheat handling actions:
- (a) Elevation to a vessel;
 - (b) Loading of road transport and containers, regardless of destination; and
 - (c) Loading of connecting conveyor between GrainCorp Port Terminal and external malt houses.
- 6.34 The Customer waives the right to claim the dust, GrainCorp will dispose of the dust in accordance with local environmental guidelines.
- 6.35 These deductions will be applied such that the quantity of Wheat and Non-Wheat available to the Customer for Outloading or Title Transfer will be the reduced quantity. Where a shrinkage allowance is deducted under **Clause 6.31 to 6.33** title in the shrinkage residue (being a volume of Wheat and Non-Wheat representing the amount deducted) will transfer to GrainCorp (and not the Co-Owners pursuant to **Clause 6.1**). After the Customer's Accounting Stock Tonnage (which for the purpose of this **Clause 6.35** is taken to represent the Interest of the Customer) as recorded in the GrainCorp Stock Management System has been outloaded, any shrinkage residue will be available for sale by GrainCorp as it sees fits. GrainCorp will retain all proceeds from the sale of any shrinkage residue.
- 6.36 All fees will be levied against the Accounting Stock Tonnage. Any dust and damaged Wheat and Non-Wheat disposed of by GrainCorp will be to the account of GrainCorp and will not be considered to be outloaded on behalf of the Customer.

Reconciliation of Accounting Stock Tonnage

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

Documentation and Weights

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

- 6.42 The Customer acknowledges that as a result of variances between weighing devices, the actual Outloading Tonnage from a GrainCorp Storage may be more or less than the Tonnage received at a Port Terminal.
- 6.43 If a variance occurs between Port Terminals and GrainCorp Storages as per **Clause 6.41**, GrainCorp may adjust Accounting Stock Tonnages to resolve the variances provided that the Customer's total Accounting Stock Tonnages is unchanged and any GrainCorp fees pertinent to the transaction are reconciled.

Record-keeping

- 6.44 GrainCorp will keep separate records for the Customer, of the Receival Tonnage and Outloading Tonnage determined pursuant to **Clauses 6.40 to 6.43** for each type and grade of Wheat and Non-Wheat received or outloaded.
- 6.45 GrainCorp will keep daily records of the total amount of Stored Wheat and Non-Wheat in its possession and where the Stored Wheat and Non-Wheat is stored.
- 6.46 The Customer warrants that all and any information or documentation it provides to, or arranges to be provided to GrainCorp including all shipping or other documents which contain details of grade, origin, location, treatment and type of Wheat and Non-Wheat ("Customer Documents"), will contain accurate and truthful statements and descriptions. The Customer indemnifies GrainCorp from and against any Loss or Claim suffered, threatened, or commenced in connection with any misrepresentation or error.

Provision of Stock Information

- 6.47 Upon request by the Customer, GrainCorp will supply the Customer with particulars of Wheat and Non-Wheat received, held in storage and outturned on behalf of the Customer (**Stock Information**) in the manner agreed between the parties from time to time. GrainCorp will use reasonable endeavours to provide the Stock Information in as timely and accurate manner. The Customer acknowledges that the Stock Information may be subject to further update upon the availability of additional Stock Information that may affect the Accounting Stock Tonnage of the Customer. GrainCorp is not liable to the Customer or any other person for any Claim or Loss arising out of or in connection with the supply of Stock Information unless the result of gross negligence by GrainCorp. The Customer expressly indemnifies and releases GrainCorp and its employees, agents and contractors for any Loss suffered or incurred by them in connection with any Claims.
- 6.48 If any documents issued to the Customer contain incorrect information as to the quantity or other particulars of Wheat and Non-Wheat, then GrainCorp must promptly notify the Customer by sending a new or amended version of the document.
- 6.49 If an error is not ascertained until after the complete outturn of the Customer's Wheat and Non-Wheat, and it results in the Customer receiving Wheat and Non-Wheat in excess of the Accounting Stock Tonnage, then the Customer must either:
- (a) pay to GrainCorp an amount equal to the market value of the excess quantity of Wheat and Non-Wheat at the date of outturn, within 21 days of the date of invoice; or

- (b) replace the Wheat and Non-Wheat with wheat and Non-Wheat of the same commodity and grade and in the quantity exactly equal to the surplus volume provided in excess to the Customer's Accounting Stock Tonnage, as, when and where so requested by GrainCorp, acting reasonably.

7. PAYMENT OF FEES, CHARGES AND OTHER MONEYS

Invoices

- 7.1 The Customer agrees to pay all Fees to GrainCorp in accordance with the terms of this Agreement, Annexure A and under Other Agreements.
- 7.2 Unless otherwise specified in this agreement, Fees payable under this Agreement will be invoiced (other than amounts payable on demand by GrainCorp under this Agreement) after the end of the month or other period during which or in respect of which the Fees were incurred. Fees for the receipt of Wheat and Non-Wheat during the period of this Agreement may be invoiced every 7 days during this period at the discretion of GrainCorp.
- 7.3 The Vessel Loading Fee, Minimum Cargo Lift Fee (if applicable), Overtime Vessel Loading Fee (if applicable), the Geelong Wharf Facility Hire Fee (if applicable) Wheat and Non-Wheat Blending Fee and any other applicable vessel loading charges will be invoiced on the completion of loading each vessel.
- 7.4 Subject to **Clause 7.15**, all Fees, charges and other moneys payable which are invoiced must be paid within 21 days of the date of receipt of the invoice. GrainCorp may amend these credit terms at any time if the Customer does not strictly adhere to these payment terms, and may reject Wheat and Non-Wheat from any party where they have outstanding accounts under this Agreement or any other agreement the Customer has with GrainCorp or its Related Bodies Corporate which breach the terms of credit of the relevant agreement.
- 7.5 A credit card surcharge of 0.935% will apply to any payment made by a Customer to GrainCorp using a credit card.
- 7.6 GrainCorp reserves the right to make adjustments for any error in the calculation of Fees in one invoice in any subsequently issued claim for payment, and the Customer must pay the adjustment amount as and when claimed by GrainCorp.
- 7.7 The Customer is entitled to dispute invoices. Where there is a dispute, GrainCorp will continue to provide the Port Terminal Services in accordance with this Agreement. The Customer cannot unreasonably withhold payment on any part of an invoice that is not in dispute.

Goods and Services Tax

- 7.8 If GST applies to any supply made under this Agreement, GrainCorp will, in addition to the Fees or any other consideration expressed as payable in this Agreement, subject to issuing a valid tax invoice, recover from the Customer an additional amount on account of GST, such amount to be calculated by multiplying the fee or any other amount or consideration payable by the Customer for the supply by the prevailing GST rate.

- 7.9 If it is determined on reasonable grounds that the amount of GST paid or payable on any supply made under this Agreement differs for any reason from the amount of GST recovered from the Customer including by reason of:
- (a) an alteration in the GST law;
 - (b) the issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
 - (c) the allowance to the Customer of a refund of GST in respect of any supply made under this Agreement; or
 - (d) a decision of the Administrative Appeals Tribunal (or its equivalent) or a court, then the amount of GST recovered or recoverable from the Customer shall be adjusted accordingly.

Information

- 7.10 GrainCorp does not represent, warrant or guarantee, whether expressly or impliedly, that the information provided by third parties (e.g. NGR) under or in connection with this Agreement, is complete, sufficient or accurate. To the fullest extent permitted by law, GrainCorp accepts no responsibility for any inaccuracies, errors, false and misleading content or omissions contained in any such information, or any other information or matter arising or coming to its notice which may affect this information, or any party's reliance on same.

Payment

- 7.11 If a Tonnage of Wheat and Non-Wheat is transferred to the Customer (as buyer) from another GrainCorp Customer (as seller) where the transferred Wheat and Non-Wheat was the subject of a Grower Warehouse Agreement, then:
- (a) the Customer must pay to GrainCorp under this Agreement all Country Receival Fees or Direct to Port Receival Fees in respect of the transferred Wheat and Non-Wheat relating to the period before and on the date of transfer as shown on the Grower Warehouse Grain Title Transfer Form. The Customer acknowledges that these fees, shown on that Grower Warehouse Grain Title Transfer Form, are payable by the Customer as Fees under this Agreement.
 - (b) If the warehoused Wheat and Non-Wheat has been moved by rail as part of an overflow movement during the harvest period, the Customer must pay GrainCorp the country outloading fee as prescribed in Annexure A of the GrainCorp Country Storage and Handling Agreement of the current season and the net difference in the location differentials as published by GTA between the GrainCorp Storage at which the warehoused Wheat and Non-Wheat was received and the Port Terminal.
- 7.12 Under a Buyer to Buyer Title Transfer form or Grower Warehouse Grain Title Transfer form, if Wheat and Non-Wheat which is stored by GrainCorp is transferred to the Customer (as buyer) by another GrainCorp Customer or Grower (as seller), the Customer must pay under this Agreement:
- (a) Storage Fees; and

- (b) Outloading Fees; and
 - (c) all other fees, charges and other moneys payable to GrainCorp, in respect of the transferred Wheat and Non-Wheat relating to the period after the date of transfer.
- 7.13 Under a Buyer to Buyer Title Transfer form, if Wheat which is stored by GrainCorp is transferred by the Customer (as seller) to another GrainCorp customer (as buyer), the Customer must pay under this Agreement and before the Wheat and Non-Wheat is transferred:
- (a) all unpaid Receival Fees; and
 - (b) Storage Fees; and
 - (c) all other unpaid fees, charges and other moneys payable to GrainCorp, in respect of the transferred Wheat and Non-Wheat relating to the period up to and including the date of transfer.

Interest on Overdue Accounts

- 7.14 The Customer will be liable for interest on overdue amounts due and payable under this Agreement from the date on which payment was due to the date on which payment is made. The interest rate applicable under this Clause 7.14 is the rate which is 12% per cent per annum. Interest will be calculated on a daily basis on the outstanding amount, until paid in full.

Credit Facilities and Requirements

- 7.15 In order to receive the Port Terminal Services, the Customer must comply with one or more of the following requirements, at GrainCorp's discretion, namely:
- (a) the Customer will have the benefit of the 21-day payment terms for the payment of Fees in **Clause 7.4**, provided that the Customer otherwise complies with all of its obligations pursuant to this Agreement and any Other Agreements with GrainCorp or its Related Bodies Corporate and makes payment to GrainCorp in respect of any service charges or any other moneys which may from time to time be due and payable by the Customer to GrainCorp under this or any Other Agreement with GrainCorp or its Related Bodies Corporate. It is further agreed and acknowledged that the Customer shall make immediate payment of all moneys owing by the Customer at any time upon written demand from GrainCorp in accordance with **Clause 7.11**.
 - (b) GrainCorp may require the Customer to pay the Fees prior to providing the Port Terminal Services in which event notification of the amount to be paid shall be provided to the Customer and paid by the Customer, prior to provision of the Port Terminal Services.
 - (c) Notwithstanding **Clause 7.15(a)** and **(b)**, GrainCorp may require the Customer to pay in advance for Port Terminal Services in those circumstances where, taking into account the quantity to be loaded, the loading of the vessel would reduce the total Accounting Stock Tonnage of the Customer in GrainCorp facilities of all Wheat and Non-Wheat to less than 1,000 Tonnes.

Costs

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

Set-off

- 7.17 GrainCorp may apply any amounts whatsoever then due and payable by it to the Customer in satisfaction of any amounts whatsoever then due and payable by the Customer (or any of its Related Body Corporates) to GrainCorp (or any of its Related Body Corporates) under this Agreement or for any other reason.

Lien

- 7.18 Without limiting any other terms of this Agreement, , or GrainCorp's rights at law and/or under any statute of the Commonwealth, a State or Territory, the Customer acknowledges and agrees:
- (a) this **Clause 7.18(a)** applies irrespective of the capacity in which the Customer owes any amount to GrainCorp, whether or not the Customer is liable as principal or surety and whether or not the Customer is liable alone, jointly, or jointly and severally;
 - (b) GrainCorp will have a contractual right of lien and/or a right of set off over the Customer's Interest in Stored Wheat and Non-Wheat for all amounts due and payable by the Customer or any of its Related Body Corporates to GrainCorp or any of its Related Body Corporates under this Agreement or for any other reason;
 - (c) GrainCorp's rights described in clause (b) above are in addition to, and do not exclude or limit, any other rights or remedies provided to GrainCorp by law and/or under any statute of the Commonwealth, a State or a Territory, including, without limitation, any rights and remedies that GrainCorp may have under the PPSA and in connection with any warehouseman's lien or storer's lien arising under the Storage Liens Act 1935 (NSW), the Storage Liens Act 1973 (Qld), the Warehousemen's Liens Act 1958 (Vic) and any other similar or equivalent legislation and/or regulations.

Security Interest

- 7.19 Without limiting any other term of this Agreement, or GrainCorp's rights at law and/or any statute of the Commonwealth, a State or a Territory, the Customer acknowledges and agrees:
- (d) this Agreement constitutes a security agreement under and for the purposes of the PPSA that gives rise to one or more Security Interests in the Customer's Interest in Stored Wheat and Non-Wheat and the proceeds of such Stored Wheat and Non-Wheat (including but not limited to proceeds from any dealing with the Customer's Stored Wheat and Non-Wheat);
 - (e) the Customer's Stored Wheat and Non-Wheat is collateral that is security for the Customer's obligations under this Agreement which is registrable on the PPSR under the PPSA;

- (f) GrainCorp may in its sole discretion perfect any Security Interest arising under or in connection with this Agreement by possession of the Customer's Stored Wheat and Non-Wheat and/or by effecting any registration on the PPSR (in any manner that GrainCorp deems appropriate) from time to time and the Customer agrees that any failure to register a financing statement in respect of its Security Interests does not affect or impair GrainCorp's Security Interests provided GrainCorp has possession of the Customer's Stored Wheat and Non-Wheat;
- (g) its consent to GrainCorp effecting registrations on the PPSR (in any manner that GrainCorp deems appropriate) to perfect any Security Interests in the Customer's Stored Wheat and Non-Wheat and the proceeds of such Stored Wheat and Non-Wheat arising under or in connection with this Agreement;
- (h) to promptly execute any documents, provide all relevant information, fully cooperate with GrainCorp and do any other act or thing that GrainCorp requires to ensure that any Security Interest created under this Agreement is perfected and remains continuously perfected, has priority over any other Security Interests in the Customer's Wheat and Non-Wheat and any defect in the Security Interest, including its registration, is overcome;
- (i) that it must not, without providing prior written notice to GrainCorp, change its name, address, contact details or any other details that would cause any details in a financing statement to be different if a Security Interest was re-registered;
- (j) to the extent the law permits:
 - (A) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (1) GrainCorp need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (2) sections 142 and 143 of the PPSA are excluded;
 - (B) for the purposes of section 115(7) of the PPSA, GrainCorp need not comply with sections 132 and 137(3);
 - (C) the Customer waive its rights to receive from GrainCorp any notice required under the PPSA (including a notice of a verification statement); and
 - (D) if GrainCorp exercises a right, power or remedy in connection with its Security Interests, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless GrainCorp states otherwise at the time of exercise. However, this **Clause 7.19(j)(D)** does not apply to a right, power or remedy which can only be exercised under the PPSA,provided that this **Clause 7.19(g)** does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other clause in this Agreement;
- (k) the parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA . The Customer must notify GrainCorp before authorising the disclosure of information under section 275(7)(c) of the PPSA or requesting information under section 275(7)(d) of the PPSA. Nothing in this clause prevents any disclosure by the Customer or GrainCorp that it believes is necessary to comply with its other obligations under the PPSA; and

- (l) in this **Clause 7.19** the following words have the respective meanings given to them in the PPSA: collateral, financing statement, perfected, possession, proceeds, register, registration, security agreement and verification statement.

Amounts Owing

7.20 Without limiting any other term of this Agreement, or GrainCorp's rights at law and/or any statute of the Commonwealth, a State or a Territory, if any amount is owed to GrainCorp (or any of its Related Bodies Corporate) by the Customer (or any of its Related Bodies Corporate) for any reason and on any account whatsoever (whether or not directly in connection with this Agreement or the Port Protocols Agreement or other Agreements) then GrainCorp may in its discretion, execute a:

- (m) Movement Request or load Wheat or Non-Wheat under **Clause 3.16**; or
- (n) Buyer to Buyer Title Transfer Form (or Stock Swap Form) or transfer Wheat and Non-Wheat under **Clause 6.15**,

in which case GrainCorp will instead retain possession of the Wheat and Non-Wheat as applicable that the Customer would otherwise be entitled to and, on 14 days' notice to the Customer, may sell the Wheat and Non-Wheat (in a manner determined at the sole discretion of GrainCorp) and apply the sale proceeds to the amount owed by the Customer (or any of its Related Body Corporates) to GrainCorp (or any of its Related Body Corporates) (in any priority) with any surplus monies to be paid to the Customer. The rights of lien granted to GrainCorp under this **Clause 7.20** are in addition to any other rights of lien it has under this Agreement, any statute of the Commonwealth, a State or a Territory or common law.

7.21 This **Clause 7.21** applies irrespective of the capacity in which the Customer owes any amount to GrainCorp, whether or not the Customer is liable as principal or surety, and whether or not the Customer is liable alone, or jointly or jointly and severally with another person.

8. LIMITATION OF LIABILITY

- 8.1 Unless otherwise agreed in writing with the Customer, GrainCorp will not be liable to the Customer or any third party for any Claims or Loss in relation to any alleged or actual reduction in standard or quality of Wheat and Non-Wheat where:
- (a) The reduction in quality or standard of Wheat and Non-Wheat (as determined by the values for protein, moisture and screenings) has not resulted in the downgrading of the Wheat and Non-Wheat from the grade to which the Wheat and Non-Wheat was classified on receipt by GrainCorp; and/or
 - (b) GrainCorp has received and loaded the Wheat and Non-Wheat in accordance with the Commodity Standards or other minimum receipt specifications and sampling methodology agreed in writing between GrainCorp and the Customer under this Agreement; and/or

- (c) the Customer has requested GrainCorp to blend two or more grades of Wheat and Non-Wheat into one grade of Wheat and Non-Wheat and the blended Wheat and Non-Wheat is at least the same quality of the lower Grade; and/or
 - (d) the moisture content of the representative sample for all grades loaded to road, rail, or vessel is within 0.3% of the maximum allowable under the Commodity Standards.
- 8.2 If the Commodity Standards or the minimum receival specifications and sampling methodology as the case may be referred to in **Clause 8.1** are not met, any Claims made by the Customer against GrainCorp in respect of Downgraded Wheat and Non-Wheat will be limited to: $T \times (P - V)$ where: T is the quantity in Tonnes of Wheat and Non-Wheat downgraded from one grade to a lower grade; and P is the fair market value determined in GrainCorp's discretion of the non Downgraded Wheat and Non-Wheat on the date at which the Claim was made by the Customer; and V is the fair market value of the Downgraded Wheat and Non-Wheat on the date at which the Claim was made by the Customer.
- 8.3 Where a Claim is recognised by GrainCorp to be valid and GrainCorp agrees to compensate the Customer or, in any other event where GrainCorp is liable to compensate or indemnify the Customer, then the Customer acknowledges and agrees that GrainCorp's maximum liability in respect of any Claim or Loss shall not exceed \$100,000 for Wheat or Non-Wheat outloaded on any shipping vessel or onto rail or road trucks on any one day, or multiple days if relating to the same matter, for the Port Terminal.
- 8.4 GrainCorp's liability for a Claim under this **Clause 8** is subject to the Customer:
 - (a) advising GrainCorp promptly of suspecting Downgraded Wheat and Non-Wheat, ceasing discharging suspected loads, and allowing GrainCorp to inspect suspected Downgraded Wheat and Non-Wheat;
 - (b) allowing GrainCorp every possible opportunity to mitigate all actual or potential losses;
 - (c) informing GrainCorp of any potential Claim which it has against GrainCorp in respect of Downgraded Wheat and Non-Wheat received by the Customer within 5 business days of receiving the Wheat and Non-Wheat; and
 - (d) providing GrainCorp with a sample of the Downgraded Wheat and Non-Wheat subject to the Claim; and
 - (e) allowing GrainCorp to test this sample and compare this sample with sample of Wheat and Non-Wheat retained by GrainCorp on the outloading of Wheat and Non-Wheat from the GrainCorp Storage or the Port Terminal.
- 8.5 GrainCorp may, in its discretion, mitigate or satisfy any Claim in respect of Downgraded Wheat and Non-Wheat by:
 - (a) Averaging the quality parameters of the Downgraded Grain with other road or rail trucks outloaded to the Customer on the same day provided that:

1. the protein, moisture and screening parameters of the downgraded load of Grain are within 0.3% of the minimum protein and maximum moisture and 1.0% of the maximum screening of the grade's Commodity Standard; and
 2. no more than two road or rail trucks have downgraded Grain; and/or
- (b) blending a sufficient quantity of other Wheat and Non-Wheat so as to upgrade the Customer's Wheat and Non-Wheat; and/or
 - (c) substituting (at GrainCorp's expense) other Wheat and Non-Wheat of the same type of the required grade and quantity; and/or
 - (d) retaining the Downgraded Wheat and Non-Wheat and providing for the Claim as part of the outload adjustment under **Clauses 6.31 and 6.32**.
- 8.6 GrainCorp is not liable for any Consequential Loss relating to Downgraded Wheat and Non-Wheat made by or through the Customer.
- 8.7 The Customer acknowledges that GrainCorp cannot guarantee complete freedom from Wheat and Non-Wheat defects and contaminants listed with a nil tolerance in the Commodity Standards, and is not liable for any quality Claims resulting from the detection of defects and contaminants whenever detected at levels of 0.05% by weight or less.
- 8.8 GrainCorp does not take responsibility for chemical residues in Wheat and Non-Wheat detected at levels below 0.05mg/kg. This is regardless of whether the chemicals were applied as part of GrainCorp's pest control program, or any fumigation process, or were received from grower deliveries or any other source.
- 8.9 The Customer acknowledges that GrainCorp, while using best endeavours to outturn Wheat and Non-Wheat in accordance with the Commodity Standards, is not liable for any non-conformance to the specification where the attribute does not form part of the original testing procedure or cannot be comprehensively determined by GrainCorp at the time of receipt at GrainCorp Storages or that normally deteriorates in storage over time. This includes, but is not limited to varietal purity, free fatty acids, falling number, vitreous kernel in Durum Wheat, and the presence of objectionable, toxic and chemical residues.
- 8.10 The Customer acknowledges that GrainCorp, while using its reasonable endeavours to do so, cannot guarantee the level of whole and split grain for Pulses and Soybeans or cracked and broken levels for Maize stored and outloaded to the Customer.

9. EXCLUSION OF LIABILITY

- 9.1 The Customer acknowledges that GrainCorp is unable to test Wheat and Non-Wheat on receipt (whether received from the Customer or from another person) for toxic or other chemical residues, genetically modified seed or other contamination. GrainCorp is not liable for any direct or Consequential Loss suffered or incurred by the Customer caused by or otherwise relating to the storage or handling of contaminated Wheat and Non-Wheat at the Port Terminal. From time to time, GrainCorp may agree with the Customer to provide additional testing of Wheat and Non-Wheat received at the Port Terminal and may agree to provide

additional guarantees as to the freedom of Wheat and Non-Wheat from defects and contaminants. GrainCorp and the Customer will agree additional fees and charges for this service.

- 9.2 The Customer acknowledges that any transportation of Wheat and Non-Wheat is at the Customer's risk, including transportation of Wheat arranged by or on behalf of or at the request of either the Customer or GrainCorp. To the fullest extent permitted by law, GrainCorp is not liable for any Claim or Loss incurred by the Customer caused by or otherwise relating to the transportation of Wheat and Non-Wheat. Where the Customer acquires rail services from GrainCorp under a separate agreement, nothing in this Agreement affects the obligations and liabilities of GrainCorp under that agreement.
- 9.3 The Customer acknowledges that GrainCorp can remove and dispose of dust or Downgraded Wheat and Non-Wheat generated from the Customer's Wheat and Non-Wheat.
- 9.4 Without limitation, GrainCorp is not liable to the Customer or any third party, or any person claiming through or on behalf of the Customer, for any costs, losses or delays, whether direct or indirect, that may arise if wheat is not accumulated at the Port Terminal before the Assigned Load Date for any reason or out loaded to a vessel after the Assigned Load Date.

Insurance

- 9.5 GrainCorp will take out and keep in force an insurance policy, and may only by prior written agreement jointly insure with the Customer, in respect of loss or damage to the Wheat and Non-Wheat while it is held in the Port Terminal.
- 9.6 If GrainCorp makes a claim under the insurance policy then in relation to determining the fair market price for the purposes of any shortfall liability under **Clause 6.37**, the Customer:
- (a) authorises GrainCorp to:
 - (1) receive and give good discharge for all monies payable under the insurance policy;
 - (2) settle, adjust and compromise all claims under the insurance policy; and
 - (3) determine, by agreement with the insurer, the time of loss; and
 - (b) will not make any claim against GrainCorp, nor contest or dispute any GrainCorp decision, in relation to any action by GrainCorp in accordance with this **Clause 9.6** unless GrainCorp acts fraudulently and in bad faith.

Force Majeure

- 9.7 In this Agreement 'Force Majeure Event' means any event which is beyond the reasonable control of GrainCorp, including:
- (a) acts of God, fire, storm, lightning, floods, earthquakes, pandemic, epidemic;
 - (b) acts of the public enemy, war, rebellion, insurrection, terrorist act, sabotage;

- (c) materials shortages, utility failures, adverse effects of weather or weather related events;
 - (d) changes in any laws, regulations or schemes; and
 - (e) Port Block Out, embargo, strikes, lockouts, labour disputes or disturbances.
- 9.8 Subject to **Clause 9.9**, neither party will be liable to the other or any other person for any delay in performance or inability to perform any of its obligations under this Agreement to the extent that such failure is caused or contributed to by a Force Majeure Event. If GrainCorp's performance is delayed by a Force Majeure Event, the time for performance will be extended for at least the time and to the extent that such performance is prevented by the Force Majeure Event.
- 9.9 The occurrence of a Force Majeure Event does not affect the Customer's liability to pay the Fees to GrainCorp in accordance with the terms of this Agreement.

10. TERMINATION

10.1 GrainCorp may terminate this Agreement:

- (a) immediately upon written notice to the Customer if the Customer:
 - (1) has a liquidator or administrator appointed, or is no longer Solvent;
 - (2) fails to pay any amount that is due and payable under this Agreement or any other agreement between the Customer and GrainCorp or its Related Bodies Corporate;
 - (3) breaches a material term, representation, obligation or warranty as set out in this Agreement or any other agreement between the Customer and GrainCorp or its Related Bodies Corporate;
 - (4) fails to follow a direction of GrainCorp made reasonably and lawfully and material adverse consequences arise from the failure to follow that direction;
 - (5) commits an act or omission which compromises the safety of any person or brings GrainCorp in to disrepute; or
 - (6) fails to have in place or accurately declare the status of an Accreditation Requirements as set out in this Agreement.
- (b) upon 14 days' written notice to the Customer if the Customer breaches any other material provision of this Agreement or any other agreement between the Customer and GrainCorp or its Related Bodies Corporate, and does not remedy the breach to GrainCorp's satisfaction within GrainCorp's reasonably stipulated time frame.

10.2 The Customer may terminate this Agreement:

- (a) immediately in the event that GrainCorp has a liquidator or administrator appointed;

- (b) upon 14 days' prior written notice where GrainCorp breaches any material provision of this Agreement or any other agreement between the Customer and GrainCorp or its Related Bodies Corporate, and does not remedy the breach to the Customer's satisfaction within the Customer's reasonably stipulated time frame.
- 10.3 The Customer must pay all Fees and other amounts due and payable in connection with this Agreement not later than 5 days following the termination date.
- 10.4 Notwithstanding expiry of the Term, or termination of this Agreement as set out in this **Clause 10**, the Customer must ensure that prior arrangements are made to outturn and / or outload any Wheat and Non-Wheat held by GrainCorp prior to termination; otherwise the Customer shall be bound by the terms of this Agreement or the Port Terminal Services Protocols (as applicable).
- 10.5 Termination of this Agreement shall not prejudice any rights of either party that have accrued prior to the date of termination and the provisions set out in **Clauses 7, 8, 9, 12.5, 12.6, 12.7** shall survive termination of this Agreement.

11. DISPUTES

- 11.1 Any dispute concerning the grade, quality, sampling, testing or classification of Wheat and Non-Wheat which GrainCorp and the Customer cannot resolve themselves after using reasonable endeavours to do so within 10 business days may be referred to a mutually agreed accredited independent testing facility for resolution in accordance with the provisions of this Agreement. GrainCorp and the Customer agree to be bound by the decision of the mutually agreed accredited independent testing facility. If an accredited independent testing facility cannot be agreed between GrainCorp and the Customer, the dispute will be referred to a dispute resolver as appointed by the dispute manager of the ADC. GrainCorp and the Customer shall bear their own costs in determining the resolution to the dispute.
- 11.2 If any dispute between the parties relates to a decision by GrainCorp to reject a Cargo Nomination Application or change a vessel loading order under the Port Terminal Services Protocols, then the parties shall resolve such disputes in accordance with the dispute resolution provisions contained in this agreement.
- 11.3 For any dispute not covered under **Clause 11.1** and **11.2**, a party raising a dispute under this Agreement ("**Initiating Party**") must give the other party ("**Recipient Party**") a notice setting out brief details of the dispute ("**Dispute Notice**"). Within five business days of service of a Dispute Notice, the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party's position on the Dispute ("**Reply Notice**").
- 11.4 Within a maximum of ten business days of service of a Reply Notice, senior representatives from each party, with authority to settle the dispute, will meet and use reasonable endeavours acting in good faith to resolve the dispute by joint discussions.
- 11.5 If the dispute is not resolved within ten business days after the date of the Reply Notice, the dispute must, unless the parties agree otherwise, be submitted to mediation in accordance with the following:

- (a) The dispute will be referred to formal mediation in New South Wales to be mediated by a single mediator appointed by agreement of the parties or if they fail to agree within three Business Days, a mediator appointed by either:
 - (1) the President of the New South Wales Chapter of the Institute of Arbitrators and Mediators of Australia (“IAMA”); or
 - (2) a dispute resolver as appointed by the dispute manager of the ADC.

If the parties fail to agree on an organisation to appoint a mediator under **Clause 11.5(a)** within three business days, a mediator will be appointed by the President of the New South Wales Chapter of IAMA.

- (b) Unless the parties agree otherwise, a mediation conducted by a mediator appointed by IAMA will be conducted under the IAMA Mediation Rules and a mediation conducted by a mediator appointed by the ADC will be conducted under the ADC Guidelines and Rules (whether or not the mediator is a legal practitioner).
- (c) The parties may appoint a person, including a legally qualified person to represent it or assist it in the mediation.
- (d) Each party will bear their own costs relating to the preparation for and attendance at the mediation.
- (e) The costs of the mediator will be borne equally by the parties.
- (f) The mediation process will terminate within 20 business days of the appointment of the mediator, upon which either party will be entitled to commence court proceedings in relation to the dispute.

11.6 A party must not start court proceedings in respect of the dispute unless it has complied with **Clauses 11.2 to 11.5**. Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.

11.7 During any dispute resolution process, the pre-dispute status quo will continue. Accordingly:

- (a) each party will comply with its obligations, and may exercise its rights under this Agreement; and
- (b) the fact that a party ceases to do anything in dispute will not be taken to be an admission by that party that it had breached, or had been in breach of, this Agreement.

12. MISCELLANEOUS

Legal Operation

12.1 Neither party is required to perform any obligation under this Agreement if, in its reasonable opinion, it would contravene or might contravene any Commonwealth, State, Territory or Local Government statute, code or other law, including any condition of accreditation or access or under any laws, government or endorsed scheme or arrangement.

Notices

- 12.2 Any notice or other communication in connection with this Agreement (unless specifically permitted by e-mail):
- (a) is effectively signed by or on behalf of a party if it is executed by that party, any of that party's officers or that party's solicitor or attorney;
 - (b) may be served on a party by being:
 - (1) sent by post in a pre-paid envelope to;
 - (2) sent by facsimile transmission to; or
 - (3) personally delivered to or left at that party's registered office, address specified;
- if the notice is served by GrainCorp on the Customer, then the details for the purposes of **Clause 12.2(b)** will be specified on page 1 of this Agreement. If the notice is served by the Customer on GrainCorp then that notice for the purposes of **Clause 12.2(b)** will be served to the GrainCorp Company Secretary c/ the address for GrainCorp stated on page 1 of this Agreement.

- 12.3 Any notice or other communication in connection with this Agreement will:
- (a) if posted, be taken to be served two business days after the date of posting; and
 - (b) if sent by facsimile transmission, be taken to be served on conclusion of successful transmission.

- 12.4 Service by any of the methods referred to in **Clause 12.2** will be valid and effective even though a party does not receive the document or if the document is returned to a party through the post unclaimed.

Exercise of Rights

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

Remedies Cumulative

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

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

Assignment & Privacy

12.7 This Agreement:

- (a) may be assigned by GrainCorp to any of its Related Bodies Corporate without the consent of the Customer; and
- (b) subject to **paragraph (a)**, must not be assigned by either party to this Agreement to any third party without the written consent of the other party, which may not unreasonably be withheld.

12.8 Both parties acknowledge the right of the other party to access information pursuant to this Agreement in line with the Privacy Act. Both parties agree that any information related to the performance of this Agreement may be collected, held and used by the other party as follows:

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

Site Access

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

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

The Customer is responsible for ensuring that it and the Customer's employees, agents, contractors and invitees comply with this clause, any laws and regulations, and all GrainCorp's Port Terminal and access/ egress requirements and they that do not cause and risk of harm, damage, injury, hazard, or cause any contamination of any Wheat and Non-Wheat, on or about any GrainCorp Port Terminal.

Confidentiality & Endorsement

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

Legal advice and costs

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

Amendment

- 12.12 This document may only be varied or replaced by a document executed by the parties.
- 12.13 By no later than 31 August of each year occurring after the date of this Agreement, GrainCorp must notify the Customer of New Season Agreement to apply for the next season commencing 1 October of that year.

Counterparts

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

Entire understanding

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

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

13. INTERPRETATION & DEFINITIONS

Interpretation

- 13.1 In this Agreement unless the contrary intention appears:
- (a) a reference to this Agreement or another instrument includes any variation or replacement of any of them;
 - (b) a reference to laws, any statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
 - (c) the singular includes the plural and vice versa;
 - (d) any reference to a GrainCorp Customer, and not the Customer in this Agreement, shall be a reference to a party who has a relationship with GrainCorp that is governed by this Agreement and / or a Country Storage and Handling Agreement for the current Season;
 - (e) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
 - (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - (g) the use of the words "including", "includes", "for example" or "such as" does not limit the meaning of the words to which the list relates, to those items or to items of a similar kind;
 - (h) headings are inserted for convenience and do not affect the interpretation of this Agreement.
 - (i) a reference to a **Clause**, schedule, annexure is a reference to a **Clause**, schedule, annexure or appendix to this Agreement and references to this Agreement include any recital, schedule, annexure or appendix, unless otherwise indicated.
 - (j) except as otherwise provided expressly in this Agreement, a reference to a business day or working day is any day on which the Port Terminal is open for business in the relevant state or territory where the relevant services and activities in connection with this Agreement are occurring
 - (k) a reference to the 'terms' of this Agreement includes all terms, conditions, warranties and covenants of this Agreement.
 - (l) A reference to a 'discretion' exercised by a party to this Agreement, refers to the power of choice exercised in good faith by that party which is absolute and final.

Definitions

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

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

- (a) Receival Tonnage (including transfers from Grower Warehousing), less,
- (b) Shrinkage Allowance in accordance with **Clauses 6.25** and **6.26**, plus,
- (c) Tonnage title transferred to the Customer, less,
- (d) Tonnage title transferred from the Customer, plus,
- (e) The net of seasonal or grade reclassification in proportion to the Customer's interest, plus,
- (f) The net of Wheat and Non-Wheat for moved as site to site movements in proportion to the Customer's interest, less,
- (g) Wheat and Non-Wheat for outloaded from the GrainCorp System at any time during the period in proportion to the Customer's interest.

Accreditation Requirements has the meaning set out in **Clause 3.21** of this Agreement, and includes any amendment or re-enactment of any legal or regulatory requirement which may apply to Customer in connection with the Port Terminal Services.

ADC means the Australian Disputes Centre, located at Level 16, 1 Castlereagh Street, Sydney, NSW 2000.

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

Assigned Load Date means the date assigned by GrainCorp to a vessel nominated by the Customer, in accordance with the Port Terminal Services Protocol, and at which date GrainCorp reasonably expects that vessel to be placed on a shipping berth for the commencement of loading.

Authorised Officer means an Australian Government official or other authorised personnel approved under Australia's export legislation by the DAWR to undertake export inspection functions, including sampling, inspection and testing tasks.

Authority To Load Advice means the form provided to GrainCorp by the Customer specifying the Wheat or Non-Wheat to be loaded to the nominated vessel.

Blending Fee means loading two or more grades of a Grain into a hatch of vessel.

Booking ID means the tracking order created by GrainCorp to acknowledge the Movement Request of the Customer.

Bulk Wheat and Non-Wheat means Wheat and Non-Wheat for export from Australia other than Wheat

and Non-Wheat for that is exported in a bag or a container that is capable of holding not more than 50 Tonnes of Wheat and Non-Wheat for.

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

Carbon Scheme means any law or regulation of any jurisdiction or any requirement or condition of a licence, permit, governmental consent or approval with respect to the production, or emission of, or, to reduce, limit, cease, prevent, offset or sequester greenhouse gas emissions, including without limitation, any statutory emissions trading scheme or tax for the management or reduction of greenhouse gas emissions or concentrations.

Change in Regulations means the repeal, amendment, introduction or change in the judicial or administrative interpretation of any applicable Law (including a Carbon Scheme and tax but excluding income tax) of any jurisdiction or the change or introduction of any condition attaching to any Licence or the directive, regulations or rules of a Government Agency or Port Corporation.

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

CLEAR means the electronic platform operated by NZX Holding No. 4 Limited trading as CLEAR Commodities.

Commencement Date has the meaning given in **Clause 1.2**.

Commodity Standards means the commodity standards published on the GrainCorp Website subject to the limitations described in this agreement. Application of Commodity Standards may include harvest management tools utilised by GrainCorp such as commingling of grades. Additional Commodity Standards may be created by GrainCorp due to seasonal requirements or agreed between GrainCorp and the Customer for specific requirements.

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

Co-owner means, in respect of a particular type and grade of Wheat and Non-Wheat for, each customer of GrainCorp who has delivered wheat and Non-Wheat of that type and grade to GrainCorp and for whom the Bulk Wheat and Non-Wheat for Port Terminal Services Agreement 2018/2019 GrainCorp has stored, handled or is storing or handling Wheat and Non-Wheat for of that type and grade at any particular time, pursuant to a Bulk Wheat and Non-Wheat for Port Terminal Services Agreement or Country Storage and Handling Agreement. For the avoidance of doubt, GrainCorp may also be a Co-owner as contemplated in **Clause 6.7** of this Agreement.

CropConnect means the electronic stock management system operated by GrainCorp.

Department of Agriculture and Water Resources or DAWR means the government department that has oversight of the export inspection functions under Australia’s Export legislation (ABN 24 113 085 695) 18

Marcus Clark Street, Canberra City, ACT 2601.

Downgraded Wheat and Non-Wheat means Wheat and Non-Wheat that fails to meet the minimum/maximum of one or more quality specifications in a grade defined by Commodity Standards. For clarity, "downgrading" hierarchy occurs through the Grade Cascade, where applicable, as defined by the relevant commodity standards, unless otherwise agreed between the Customer and GrainCorp

Feed Wheat and Non-Wheat means Wheat and Non-Wheat for specifically for the purpose of non-human animal stock feed consumption.

Fees means the fees and charges that are due and payable under this Agreement as consideration for the Services, as set out in Annexure A and may be amended from time to time.

Government Agency means a government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GrainCorp means GrainCorp Operations Limited (ABN 52 003 875 401) of Level 28, 175 Liverpool Street, Sydney, NSW, 2000.

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

GrainCorp Storages means the grain storage facilities operated from time to time by GrainCorp except the Port Terminals.

GrainCorp System means the grain receipt, storage and handling facilities operated from time to time by GrainCorp, including the GrainCorp Storages, and Port Terminals.

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

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

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

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

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

GTA means Grain Trade Australia Limited.

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

Licence means any licence, consent, approval, permit, accreditation or other authorization which is required to be granted by any Government Agency or Port Corporation in connection with the operation of a Port Terminal, as varied, amended or substituted from time to time, which to avoid doubt, includes any such consent, licence, approval, permit, accreditation or other authorisation required to be held by GrainCorp solely because of its ownership a Port Terminal.

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

Low Level Presence means the unintended presence of a Genetically Modified variety or commodity in a Non-Genetically modified variety or commodity, whether known or not.

Market Risk means the risk of Wheat and Non-Wheat being rejected or detained by the importing customer, where Wheat and Non-Wheat may contain defects, contaminants or residues that breach contract specifications. This risk may include testing methods or contract interpretation differences, non-regulated chemical residues, toxins or organisms.

Movement Request means a request from a customer made on the relevant form or lodged via CropConnect to load and/or unload grain at a GrainCorp storage site. A Movement Request is required for all outloads, inloads (excluding ex farm deliveries) and site to site movements. Each Movement Request is assigned a unique GrainCorp Reference Number. If supplied, the order numbers provided customers are recorded as a Customer Reference against each Movement Request

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

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

Nil means less than 0.05% by weight of defects or contaminants that have a Nil tolerance in the Commodity Standards, (excluding live insects.)

Nominated Capacity means the total mass weight of Wheat and Non-Wheat of a particular type that can be loaded into a given rail wagon class that does not exceed the legal loading limits as set by the relevant authority. These nominated capacities may change from time to time as advised by GrainCorp.

Non-Wheat means malt barley, feed barley, canola, oat, rye, triticale, legumes, rice, sunflower seed, sorghum, maize (and any other type of grain which GrainCorp agrees to store and handle, excluding Wheat) which is the subject of this Agreement and includes Stored Grain.

Notice of Readiness means Customer confirmation that the presented vessel at a Port Terminal can be loaded and, includes confirmation that the vessel has passed AQIS survey and that any required letters of credit are in place.

Operational Reasons means delays or Wheat and Non-Wheat unavailability due to weather problems, grain infestation or fumigation, grain quality problems, inaccessible Wheat, mechanical failure, rail availability or rail delays, last of grain in storage being outloaded and failure to accumulate cargo at a Port Terminal in a timely manner.

Other Agreements means other operative agreements between GrainCorp and the Customer for the Season that work in conjunction with this Agreement, including the Country Storage and Handling Agreement, Grower Warehousing Agreement, Export Direct Services Agreements or Long Term Agreement for Port Terminal Services.

Outloading Tonnage / Outloading means Tonnage of Wheat and Non-Wheat removed from a Port Terminal to the Customer's rail, road or shipping transport.

Permitted Security Interest means:

- (a) a Security Interest whereby the Title Transfer of Wheat and Non-Wheat between the Customer and another party has taken place in accordance with this Agreement but subject to a retention of title; and
- (b) any Security Interest that GrainCorp has arising out of or in connection with this Agreement.

Port Corporation means a port corporation or anybody having ownership or control over the operations of the port at which a Port Terminal is located.

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

Port Terminal Services Protocols means the Bulk Wheat and Bulk Grain Port Terminal Services Protocol or the Port Terminal Services Protocol for GrainCorp Exempt Port Terminals as published on GrainCorp's web site from time to time.

Port Terminal Services means the intake, treatment and blending of Wheat and Non-Wheat, ship loading services, storage services and other miscellaneous services where required and as agreed between the Customer and GrainCorp at a GrainCorp port terminal facility.

Port Terminal Services Agreement means any prior agreement which applied prior to the Term for services similar to this agreement between the Customer and GrainCorp.

Port Terminal Services Price Schedule means the fees and charges for the loading of Wheat and Non-Wheat to the vessel's side as detailed in Annexure A.

PPSA means the *Personal Property Securities Act 2009* (Cth), together with any regulations in force at any time under the PPSA, including the Personal Property Securities Regulations 2010 (Cth).

PPSR means the Personal Property Securities Register established under the PPSA.

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

Receival Tonnage means Tonnage of Wheat and Non-Wheat delivered to the Customer from Growers on a Receival Docket, or transfers of Receival Dockets from Grower Warehousing or other deliveries from outside of the GrainCorp System.

Regulatory Risk means the Wheat and Non-Wheat presented for inspection fails to meet Australian regulations or importing country sanitary or phytosanitary regulations including;

- (a) The presence or possible presence of live insects or other regulated pests.
- (b) The presence or possible presence of quarantine objects like weed seeds, plant diseases, fungi.
- (c) The presence or possible presence of chemical residues or toxins that fail to meet Australian regulatory requirements.
- (d) The presence or possible presence of chemical residues or toxins that fail to meet importing country regulatory requirements.
- (e) The omission of, or an incorrect action relating to completion of preshipment activities including regulated fumigation, testing or other certification requirements.

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

Season means the season nominated on the cover page of this Agreement.

Stock Swap means the notional placement of Accounting Stock at a GrainCorp Storage other than the Origination Site for Outload.

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

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

Term has the meaning given to it in clause 1.2.

Termination Date has the meaning given to it in clause 1.2.

Third Party Storages means any grain storage facilities operated from time to time by any party other than GrainCorp including on farm storages.

Title Transfer means where the Accounting Stock Tonnage, or part thereof, of the Customer (which, for the purposes of this definition, is taken to represent the Customer's Interest) at a specific GrainCorp Storage or Port Terminal, as recorded in GrainCorp Stock Management Systems, is transferred to another GrainCorp customer.

Tonne or Tonnage means a metric tonne of tonnage.

Vessel Loading Advice means the form provided to GrainCorp by the Customer specifying the grain to be loaded to the nominated vessel.

Vessel Loading Fee means the fee as listed for the relevant GrainCorp Port Terminal in the

Wheat means *Triticumaestivum*, *Triticumduri*, (Durum).

Annexure A: Bulk Wheat and Non-Wheat Port Terminal Services Price Schedule

Notes:

1. Unless stated otherwise, all prices are quoted as AUD per Tonne.
2. All fees are quoted exclusive of GST.
3. Prices for Soybean and any other grain not listed are available upon application.
4. These prices are effective from 1 October 2018 to 30 September 2019

1. Port Intake Fees

1.1 Intake Fees at Port Terminals ex GrainCorp Storage

Ex GrainCorp Intake Fees		
Port Terminal	Rail Fee / T	Road Fee / T
Mackay	\$0.00	\$2.08
Gladstone	\$0.00	\$2.08
Fisherman Islands	\$0.00	\$2.08
Carrington	\$0.00	\$2.08
Port Kembla	\$0.00	\$2.08
Geelong	\$0.00	\$2.08
Portland	\$0.00	\$2.08

Intake into the Port Terminal is as per the shift hours specified in 5.1 of this Schedule. Intake and unloading outside of these hours is by arrangement. Where overtime shifts have been booked and payable and rail and/or road transport fails to arrive, cancellation fees will apply as per table 5.1.

GrainCorp will provide the following services for the intake of Wheat and Non-Wheat outloaded from GrainCorp storages in accordance with the relevant Port Terminal Services Protocols:

- Site assembly planning and coordination of delivery of Wheat and Non-Wheat to port terminal(s);
- Unloading of rail and road trucks into the Terminal during the hours and days as specified by GrainCorp;
- Sampling and classification on delivery;
- Weighing on delivery;
- Transfer of Wheat and Non-Wheat to storage cells;
- Recording and provision of delivery information;
- Grain hygiene and quality management;
- Shipping stem maintenance; and
- Insurance for all general physical risk (i.e. fire, flood, storm, etc).

Services excluded

The Standard Port Terminal Services for intake of Wheat and Non-Wheat at Port Terminals ex GrainCorp Storage do not include:

Bulk Wheat and Non-Wheat Port Terminal Services Agreement 2018/2019

- Procurement of road and rail transport;
- Port Terminal stevedoring costs unless by prior arrangement with the respective Port Terminal; and
- Geelong Terminal wharfage.

1.2 Intake Fees at Port Terminals ex Third Party Storage

Ex Third Party Storage – Treated / Fumigated Grain			
Port Terminal	Rail Fee / T	Road Fee / T	Road Fee / T (ex-farm) (1)
Mackay	\$0.00	\$2.08	Applicable Receival Fee under the Country Storage & Handling Agreement or Grower Warehousing Agreement (as applicable)
Gladstone	\$0.00	\$2.08	
Fisherman Islands	\$0.00	\$2.08	
Carrington	\$0.00	\$2.08	
Port Kembla	\$0.00	\$2.08	
Geelong	\$0.00	\$2.08	
Portland	\$0.00	\$2.08	

(1) Ex-farm grain delivered to the Port Terminal that is not received under a Movement Request (that is grain delivered using a NGR grower number)

Ex Third Party Storage (in transit testing), optional	Fee / T	Included Services
All Port Terminals	POA	Off-site testing of trucks at designated testing station en-route to the Port Terminal (if provided by GrainCorp from time to time)

Intake into the Port Terminal is as per the shift hours specified in 5.1 of this Schedule. Intake and unloading outside of these hours is by arrangement. Where overtime labour has been booked and payable and rail and/or road transport fails to arrive, cancellation fees will apply as per table 5.1.

When receiving treated or fumigated grain from Third Party Storage, the Customer must advise on submitting the Cargo Nomination Application (and prior to delivery), the details of any chemical treatment used or planned to be used, and not deliver the commodity until advised that such treatments are acceptable to GrainCorp.

Port Terminals have a nil tolerance for fumigant residues. Where the commodity has been fumigated, the Customer must provide a 'Clearance Certificate' stating that the commodity is free from all fumigant residues, issued by a licensed fumigator. If this information cannot be supplied, fees as outlined in section 1.3 of this Schedule will be applicable.

GrainCorp requires that Grain delivered to the Port Terminal from Third Party Storage after the following dates each year has a valid fumigation certificate or vendor declaration:

- All Queensland Terminals – 1st December
- Carrington Terminal – 15th December

- Port Kembla, Geelong and Portland Terminal – 1st February

Non-compliant deliveries will not be accepted at a Port Terminal after the prescribed dates above.

GrainCorp will provide the following services for the intake of Wheat and Non-Wheat from Third Party Storage in accordance with the relevant Port Terminal Services Protocols:

- Site assembly planning and coordination of delivery of Wheat and Non-Wheat to Port Terminal(s);
- Unloading of rail and road trucks into the Port Terminal during the hours and days as specified by GrainCorp;
- Sampling and classification on delivery;
- Weighing on delivery;
- Transfer of Wheat and Non-Wheat to storage cells;
- Recording and provision of delivery information;
- Grain hygiene and quality management;
- Shipping stem maintenance; and
- Insurance for all general physical risk (i.e. fire, flood, storm, etc).

Services excluded

The Standard Port Terminal Services for intake of Wheat and Non-Wheat at Port Terminals from Third Party Storage does not include:

- Procurement of road and rail transport;
- Port Terminal stevedoring costs unless by prior arrangement with the respective Port Terminal; and
- Geelong Terminal wharfage.

The direct to port intake fee under this section 1.2 of this Schedule will be available for deliveries of Wheat and Non-Wheat by Customers who meet the terms and conditions of the Port Terminal Services Protocols.

Fees for service requirements that do not meet the Standard Terms outlined in this Agreement will be quoted on a case by case basis depending on the services required.

Failure by the Customer to meet any of the agreed service parameters during the delivery period or after may lead to additional charges being applied.

The applicable Port Terminal intake fee is levied against all Tonnes received into the terminal.

1.3 Intake Fees at Port Terminals by Road or Rail ex Third Party Storage - Infested Loads

Ex Third Party Storage - Infested Loads	Fee / T
Receival Path Cleaning Fee	\$2,351 per train / road truck (where possible rejected at port sampling point)
Hospital Bin/Bunker Treatment (includes transport, handling and treatment)	\$9.45 per Tonne
On site fumigation (where available)	\$1,170 per 1,000 (wheat) Tonne of bin capacity

Intake into the Port Terminal is as per the shift hours as specified in 5.1 of this Schedule. Intake and

unloading outside of these hours is by arrangement. Where overtime shifts have been booked and payable and rail and/or road transport fails to arrive, cancellation fees will apply as per table 5.1.

In the circumstance where grain is delivered to a GrainCorp Port Terminal by road or rail from Third Party Storage and is found to be infested, mitigation costs will be charged to the Customer. The charges will be charged in two separate components:

1. Receival path cleaning fee; and either of:
 - 2a. Fumigation fee for the infested grain (where this service is available); or
 - 2b. Removal of the grain from the terminal to a “hospital” facility for disinfestation.

GrainCorp reserves the right to reject Wheat and Non-Wheat from intake into the Port Terminal if infestation is detected prior to the unloading of rail wagons or road deliveries.

1.4 Re-Delivery at Port Terminals

Re-Delivery at Terminal	Commodity	Component	Fee / T
All Port Terminals	Wheat & Non-Wheat	All Grades	\$8.10

This fee is applicable to Wheat and Non-Wheat outloaded from GrainCorp Storage and rejected at its destination for reasons outside of the control of GrainCorp and tendered for re-delivery to the Port Terminal. This fee will apply if Wheat or Non-Wheat is rejected at a destination for quality non-conformance and subsequent load samples indicate that the load is within specification.

1.5 Cargo Nomination Application Booking Fee

Cargo Nomination Application booking Fee (non-refundable)	Fee / T
Wheat and Non-Wheat at all Port Terminals (Refer to Port Terminal Services Protocol for applicable conditions)	\$8.00

This fee is in addition to any other fees that may be applicable to the intake, storage and the loading of vessels. Conditions applicable to this fee are to be found in the Port Terminal Services Protocol.

The Customer will be invoiced the Cargo Nomination Booking Fee on the nominated Tonnage. Following completion of vessel loading, an adjustment invoice or credit will be prepared as part of the Vessel Loading Advice (VLA) to adjust for loaded Tonnes.

If a vessel loads below the nominated Tonnage, the Customer is credited for the Booking Fee applicable to the difference between the nominated Tonnage and the actual Tonnage loaded, capped at 10% of the nominated Tonnage.

If the nominated Tonnage is within or up to the +10% tolerance of the elevation Tonnage, an adjustment invoice for the Booking Fee will be raised for the difference between the nominated Tonnage and the elevation Tonnage.

1.6 Vessel Loading Fee

Vessel Loading Fee	Fee / T
Wheat - Mackay and Gladstone	\$16.85
Wheat - Fisherman Islands	\$15.80
Wheat - NSW and Victoria Port Terminals	\$11.61
Barley, Sorghum, Pulses, Maize - Mackay and Gladstone	\$18.52
Barley, Sorghum, Pulses, Maize - Fisherman Islands	\$17.47
Durum, Barley, Canola, Sorghum, Pulses, Maize - NSW and Victoria Port Terminals	\$13.27
Other grains	POA

The vessel loading fee is in addition to the Port Terminal Intake fees listed in tables 1.1, 1.2 and 1.3 of this Schedule and will be charged against all Tonnes loaded onto vessels.

For Wheat and Non-Wheat outloaded to a vessel, the fee includes the following services:

- Transfer of Wheat and Non-Wheat to the vessel via the terminal shipping path;
- Loading vessels as per the relevant clauses in the Port Terminal Services Protocols;
- Overtime for the unloading of rail and road transport and shiploading;
- Monitoring of Wheat and Non-Wheat quality during loading;
- Liaison with stevedore regarding loading requirements;
- Any Pesticide Residue Free or Restricted testing required; and
- Collection of hatch and cargo samples if required.

Loading of vessels on a 24 hour per day basis can be arranged with prior notice to the relevant GrainCorp Terminal Manager and is subject to Overtime Vessel Loading fee and availability of labour. Where overtime labour has been booked and the Customer fails to present vessel or rail and/or road transport fails to arrive, cancellation fees will apply as per table 5.1.

IMPORTANT NOTE: As a result of changes to Export Certification requirements, new fees for grain export inspection will replace previous Australian Quarantine and Inspection Service (AQIS) inspection services, and will be applicable when GrainCorp provides the service.

1.7 Draft Survey

GrainCorp may, from time to time, use a draft survey on vessels loaded to validate its shore based weights. In the event, based on GrainCorp’s reasonable opinion, the shore based weights are not accurate at a Port Terminal or at a Port Terminal for a grain commodity, GrainCorp can use draft survey weights (from an independent and licenced marine surveyor) for the determination of fees and grain weights under this Agreement. GrainCorp will provide the Customer reasonable notice before adopting the use of draft survey weights and for the discontinuation of the use draft survey weights when, based on GrainCorp’s reasonable opinion, the shore based weights are not accurate.

2. Port Storage Fees

2.1 Basic Terminal Storage Fee

Basic Terminal Storage Fee		Fee / T
All Port Terminals	Price per month (Stock On Hand first day of each month 12.01am opening balance)	\$1.65 per month

The services provided for in the storage fees are as follows:

- Maintenance and provision (including electronically) of grain stock records by Terminal and grade;
- Pesticide and fumigation application as required during the storage period;
- Condition monitoring of grain held in storage; and
- Provision of weekly port terminal stock information as per the GrainCorp Port Protocol requirements..

2.2 Additional Terminal Storage Fees

These fees are in addition to the basic terminal storage fee.

Additional Terminal Storage Fees		Fee / T
All Port Terminals	Cargo accumulated and awaiting loading on vessel which is beyond 10 business days of the Assigned Load Date for that vessel	\$0.61 per Tonne per day
	Residual stock remaining at port after vessel departure (#)	\$1.80 per Tonne of capacity per week

No Additional Terminal Storage Fees will apply for residual stock at port (but only to the extent that the residual stock is less than 10% of the previous vessel Tonnes) if the customer has an accepted cargo nomination for that grade or type of grain for the next shipping elevation period.

Immediately following the commencement of Additional Terminal Storage Fees the Customer and GrainCorp will discuss options to mitigate the additional fees e.g. assisting in facilitating a stock swap with other Customer/s.

Additional Terminal Storage fees will be capped at no more than 2 weeks except where a Customer fails to take reasonable steps to mitigate the Additional Terminal Storage Fees. If the customer moves the Assigned Load Date the Basic and/or Additional Terminal Storage Fees will continue to apply up until the new Assigned Load Date.

3. Port Outloading Fees

3.1 Rail and road outloading from Port Terminals

Domestic Outloading from Port Terminals	Fee / T
Road or rail outloading to domestic destination	POA

- Road and rail outloading from Newcastle and Mackay is by appointment only;
- Road outloading from Geelong, Portland, Port Kembla, Fisherman Islands or Pinkenba is by appointment;
- Rail outloading is not available from Gladstone, Port Kembla, Geelong, Portland, Fisherman Islands or Pinkenba;
- Road outloading is not available from Gladstone;

- Five business days’ notice must be provided by submission of a road or rail outload order in order to program outloading around the receive and shipping activities.

3.2 Port Outloading Fees to GrainCorp Packing Locations – Basic Fees

For full details of containerisation charges, terms and conditions, please refer to the relevant Container Packing Price Schedules.

4. GrainCorp Technical Services Port Sample Fees

4.1 Sample Fees

Customers are provided with a 5kg sample from each hatch included in the loading fee. Also available on reasonable request are additional samples as follows:

Port Sample type	Quantity	Fee
Storage unit sample	For each 5kg or part thereof	N/A
Composite preshipment sample	For each 5kg or part thereof	N/A
Parcel sample	For each 5kg or part thereof	N/A
Hatch sample	For each 5kg or part thereof	N/A

Additional charges may be applicable for requests over and above those considered reasonable by GrainCorp and such fees will be advised on a per request basis.

Where bins are required to be turned for sample collection, charges will apply and will be advised to the Customer at an agreed rate. Freight costs for sample distribution will be to the Customer’s account.

Prices for services provided by GrainCorp Technical Services (such as independent analysis) are available separately and do not form part of this Agreement.

4.2 Treatment/Fumigation Certificate Fees

The cost for a Treatment/Fumigation Certificate is \$112 for the first Certificate and \$45 per Certificate for any subsequent issue of Certificates requested relating to that cargo. For Fumigation Certificates requested pertaining to traceable ‘Identity Preserved’ (IP) grain the fee shall be \$545 per certificate.

Treatment/Fumigation Certificate	Per Cargo	Fee (per certificate)
First certificate	Per cargo	\$112
Subsequent certificates	Per cargo	\$45
Fumigation certificates for IP grain	Per cargo	\$545

Note

- Certificates are issued on standard GrainCorp Treatment Certificate template;
- Charges are applicable to fumigation Certificates generated for both export cargoes or product outloaded from GrainCorp storage;
- Multiple copies of each Certificate can be provided without additional charge; and
- Fees include the distribution as required via post (including Express Post), email or fax.

5. Port Terminal Miscellaneous Fees

5.1 Miscellaneous Fees

Port Terminal Miscellaneous Fees			Fee / T
Overtime Vessel Loading Fee for <ul style="list-style-type: none"> Day Shift (Sat only) Afternoon Shift (Mon-Sat) (excluding Public Holidays) 	All Ports	Per shift	No charge
Overtime Vessel Loading Fee for <ul style="list-style-type: none"> Night Shift (Mon-Sat) All Shifts Sunday and Public Holidays 	All Ports	Per hour (minimum 4 hours)	\$1,085
Cancellation Fee for the cancellation of requested and booked Overtime Vessel Loading Shifts outside of Day Shifts (below) in circumstances where the Customer's vessel fails to present	All Ports	Per shift	\$7,500
Cancellation fee for rail and road intake where overtime labour has been requested and booked in circumstances where rail and/or road transport fails to arrive	QLD Ports	Per shift	\$3,025
	Newcastle	Per shift	\$5,550
	Port Kembla	Per shift	\$5,550
	Geelong	Per hour	\$800
	Portland	Per hour	\$800
Blending Fee (the Blending Fee will be agreed with the Customer on a vessel by vessel basis no later than 21 days prior to the ALD)		Per Tonne	\$2.55
Pre-blending fee for bulk		Per Tonne	\$2.55
Segregation Fee		Per Tonne	\$1.06
Minimum Cargo Additional Loading Fee <15,000 Tonnes		Per vessel	\$20,000
Fumigation fee for bulk vessels as requested by customer		Per Tonne	\$2.33
Bulk Grain Inspection Charges on behalf of DAWR		Per Tonne	\$0.32
Portland Terminal Shunting Fee		Per Tonne	\$0.31
Geelong Terminal Wharf Hire		Per Tonne	\$1.75
Title Transfer at port		Per Tonne	\$0.35
Receipt Amendment*		Per receipt	\$37.90
Shipping and Domestic Quality Certificate		Per certificate	\$32.71
Inter-Zone Transfer Fee (Central Queensland only)		Per Tonne	\$2.73
Newcastle Transfer fee from Western Storage to Terminal		Per Tonne	\$6.48
Newcastle Grading Plant			\$POA
Vessel loading stevedoring services			\$POA
Geelong Sail Delay Fee payable by Shipper's Agent – First Hour (refer clause 5.10)		Per Hour	\$363
Geelong Sail Delay Fee payable by Shipper's Agent – Subsequent		Per Hour	\$726

Port Terminal Miscellaneous Fees	Fee / T
Hour (refer clause 5.10)	

* Where amendment relates to registration, contract number or subsidiary of Customer.

The applicable Day Shift hours at the Port Terminals are:

Terminals	Day Shift
Mackay	07:00 – 15:00 Monday to Friday
Gladstone	07:00 – 15:00 Monday to Friday
Fisherman Islands	07:00 – 15:00 Monday to Friday
Carrington	07:30 – 15:00 Monday to Friday
Port Kembla	07:15 – 14:45 Monday to Friday
Geelong	07:30 – 15:30 Monday to Friday
Portland	07:30 – 15:30 Monday to Friday

5.2 Additional Information and Explanation of Charges

Blending Fee

A blending fee for no more than three grades will apply when separately segregated grades are either mixed together in store or on outturn (including loading separately segregated grain into vessel holds).

A blending fee will also apply when grain is blended to meet a customised grade. A customised grade is any commodity specification that does not meet the standard grade, for example but not limited to, blending to increase protein, or blending to reduce screenings to meet the **contract specifications** supplied by the Customer to GrainCorp.

The blending fee is applied to all Tonnes in the blend. GrainCorp does not take responsibility for compliance of grades and specifications where blending has been undertaken. If grain does not meet quality specifications at the destination, GrainCorp will refund the blending fee provided that the Customer provides documentary proof to the reasonable satisfaction of GrainCorp that the grain has not met customer specifications.

Where two or more grades are loaded without any specific instructions or requirements from the Customer, no Blending Fee applies.

Segregation Fee

A Segregation Fee for three or more grades loaded onto a vessel will apply when these grades are required to be separately received and segregated at the Terminal prior to loading. The Segregation Fee is applied to the all Tonnes loaded onto a vessel. The Segregation Fee is not payable for that Tonnage loaded onto a vessel where a Blending Fee is paid.

Pre-blending Fee

A pre-blending fee will apply when the exporter requires three or more segregated grades to be blended. The pre-blending fee is applied to that portion of the cargo that requires pre-blending prior to the vessel arriving. A further fee of \$2.55 per Tonne applies (i.e. blending fee) if pre-blended Tonnes are blended to the vessel as above.

Geelong Wharf Facility Hire Charge

The Geelong wharf facility hire charge per Tonne loaded is levied on the shipper. Other charges such as lay time charges and provision of fresh water apply, but these are levied on the vessel's agent.

Portland Shunting Fee

Applies to all Tonnes delivered by rail to the Portland Terminal. This is included for cost recovery purposes only and is collected by GrainCorp for payment to the Port of Portland for the shunting service.

Inter Zone Transfer

Grain delivered into the Mackay Port Zone and exported through another Port will attract an Inter Zone Transfer fee. This fee is collected by GrainCorp on behalf of The Mackay Port Authority.

Pesticide Residue Free Grain

Pesticide Residue Free (PRF) grain is grain that has not been treated by GrainCorp with a contact pesticide. GrainCorp is not responsible for PRF grain that has been accepted into the Port Terminal from other bulk handling companies, private storage or from growers as GrainCorp does not routinely test on receipt for the presence of prior treatments. Nor is GrainCorp responsible for prior treatments or contamination from storage, handling or transport equipment. PRF grain is supplied to the market via common grain paths, elevators, conveyors, silos, road/rail trucks etc. which have the capacity to transfer low levels of contamination of pesticides.

There is no separate charge payable on grain required to be shipped as PRF however the following points should be noted:

- PRF grain requests require a minimum of four weeks' notice;
- GrainCorp does not guarantee PRF grain nor accept any liability grain not meeting PRF requirements;
- GrainCorp can only review the hygiene history for grain held in GrainCorp storages;
- PRF requests must be stated clearly on all enquiries, packing instructions and CNAs;
- The service covers site selection and arrangement of samples and arrangement of tests;
- PRF testing for bulk shipments is included in the service;
- PRF testing for bulk shipments does not include rapid tests which are at the shipper's expense;
- PRF results are usually only available after the vessel has sailed.

Pesticide Residue Restricted Grain

Pesticide Residue Restricted (PRR) grain is grain that is selected, tested and returned to a pesticide level which varies from the maximum residue limits prescribed for the commodity by the Australian Pesticides and Veterinary Medicines Authority (APVMA) and Food Standards Australia & New Zealand (FSANZ). GrainCorp is not responsible for ensuring pesticide restricted grain meets specified residue tolerances where the grain has been accepted into the Port Terminal from other bulk handling companies, private storage or from growers as GrainCorp cannot have knowledge of nor be responsible for prior treatments or contamination from storage, handling or transport equipment.

Pesticide restricted grain is supplied to the market via common grain paths, elevators, conveyors, silos, road/rail trucks etc. which have the capacity to transfer low levels of contamination of pesticides.

There is no separate charge payable on grain required to be shipped as PRR however the following points should be noted:

- PRR grain requests require a minimum of four weeks' notice;
- GrainCorp does not guarantee PRR grain or accept any liability for grain not meeting PRR requirements;
- GrainCorp can only review the hygiene history for grain held in GrainCorp storages;
- PRR requests must be stated clearly on all enquiries, packing instructions and CNAs;
- The service covers site selection and arrangement of samples and arrangement of tests;
- PRR testing for bulk shipments is included in the service;
- PRR testing for bulk shipments does not include rapid tests which are at the shipper's expense; and
- PRR results are normally only available after the vessel has sailed.

THIS CONTRACT is executed on the.....day of20

SIGNED for and on behalf of **GRAINCORP**

OPERATIONS LIMITED by its duly authorised representative in the presence of

Signature of witness

Signature of signatory

Name of witness (print)

Name of signatory (print)

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of GRAINCORP OPERATIONS LIMITED

(Delete whichever is inapplicable)

SIGNED for and on behalf

of.....

by its duly authorised representative in the presence of

Signature of witness

Signature of signatory

Name of witness (print)

Name of signatory (print)

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of.....

Signed by)
in accordance with Sec 127 (1) of the)
Corporations Act, 2001)

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary
(print)