

ATTACHMENT 1

GrainCorp Operations Limited

Response to ACCC request for information - Question 12

Comparison of 2008/2009 Storage and Handling Agreement (“**S&H Agreement**”) and
Proposed 2009/2010 Wheat Port Terminal Services Agreement (“**WPTS Agreement**”)

	GrainCorp Storage & Handling Agreement 2008/2009 (existing)	Wheat Port Terminal Services Agreement 2009 / 2010 (new)
Purpose and Scope <i>(S&H Agreement clause 1 & 2, WPTS Agreement clause 1 & 2)</i>	The agreement applies to storage and handling services provided by GrainCorp at upcountry storage sites and port terminal facilities in relation to all grains.	The agreement applies to storage and handling services provided by GrainCorp for the Client at a port terminal in relation to wheat.
Variation <i>(WPTS Agreement clause 2.6)</i>	The agreement can only be varied with the consent of the client.	The terms of the agreement and Annexure B (Wheat Port Terminal Services Protocols) can only be varied with consent of the client and on 30 days notice. Annexure A (Wheat Port Terminal Services and Fee Schedule) may be varied by GrainCorp with 30 days.
New season Agreement and Holding over <i>(WPTS Agreement clause 4.1)</i>		The agreement provides that the provisions of the previous agreement will apply if the wheat port terminal services agreement is not published by 1 October 2009.
Receival <i>(S&H Agreement clause 2.4-2.12, WPTS Agreement clause 3.1-3.4)</i>	Clauses dealing with receival at upcountry storage and the posting of cash price and/or pool prices are removed.	Additional detail is given in relation to segregation of wheat, for reasons including but not limited to pesticide residues, genetic status and phytosanitary requirements (Cl 3.3(a)). There is a new requirement that the Client acknowledges that wheat suspected to contain residues or which may otherwise be contaminated may not be delivered to or accepted at any GrainCorp facility and that GrainCorp is not responsible to the client for any damages or loss suffered from the refusal to accept such wheat (Cl 3.3 (c)). (Previously GrainCorp had a discretion as to what types or grades of grain it would receive and was only required to use its best endeavours to receive grain. This clause has been inserted to provide more detail and certainty in relation to GrainCorp’s conduct, given its experience in relation to receiving contaminated grain.)
Quality Testing Services <i>(S&H Agreement clause 2.22 - 2.25, WPTS Agreement 3.5 - 3.7)</i>	Provisions dealing with quality testing services at upcountry storage facilities have been removed.	The agreement contains a new clause providing that where Wheat has been received into Country Sites, the same grade classification of this Wheat given at the Country Site will apply to Wheat being received into the Port Terminals. The agreement contains a new clause providing that GrainCorp defines

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		“Nil” as less than 0.05% by weight where a Nil tolerance is specified in the Approved Receival Specification.
Outloading <i>(S&H Agreement clause 2.30 - 2.44, WPTS Agreement 3.12-3.14)</i>	Provisions dealing with outloading at upcountry storage facilities have been removed.	The agreement only relates to outloading from port terminals.
Rail and Road Transport Providers <i>(S&H Agreement clause 2.53 - 2.56 WPTS Agreement clause 4.5 - 4.8)</i>		More detail is provided in the agreement to ensure that vehicle operators apply with laws including in respect of safety, environment, carriage of goods and chain of responsibility are complied with. There is an additional requirement for clients to ensure rail wagons have all approvals, licenses and authorisations.
Carryover of grain <i>(Clause S&H Agreement 2.50-2.52)</i>	Clauses dealing with Grain remaining in GrainCorp storage after 20 September 2009 have been removed.	
Preconditions to any Outturning or Outloading Services <i>(Clause 3.15-3.17 WPTS Agreement)</i>		There is a new obligation that the Client must meet the appropriate accreditation requirements. There is a new clause that GrainCorp is not responsible for the cleanliness, fitness for loading or carriage of Wheat of any mode of transportation nominated by the Client. (this was previously addressed by cl 2.53(a)5 and 2.55(3) but is now expressed more clearly). Prior to physically outturning or outloading any Wheat GrainCorp reserves the right to invoice the Client and receive full payment.
Outloading of small tonnages <i>(S&H Agreement clause 4.1-4.2)</i>	This clause has been removed.	
Port Terminal Operation <i>(Clause 5 S&H Agreement)</i>	Clauses dealing with port terminal operation are now contained in the Port Terminal Services Protocols.	

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Shipping information <i>(Clause 5.5-5.6 S&H Agreement 5.1-5.5 WPTS Agreement)</i>		<p>New clauses have been inserted which provide more detail on the apportionment of liability due to grain quality and contamination issues. The new clauses deal with the following:</p> <ul style="list-style-type: none"> • GrainCorp is not liable for loss incurred by the client in relation to the failure to load a portion of wheat due to non conformance to AQIS export conditions. • GrainCorp is not liable for quality issues derived from Wheat rejected from shipping at the port terminal that has been delivered from a non-GrainCorp site. • Where contaminated wheat is received from a non-GrainCorp site and the wheat contaminates other stock at port, the owner of the contaminated wheat assumes responsibility for all costs associated with the contaminated stock. • No mode of transportation can be cleaned at a port terminal without GrainCorp's prior written consent.
Port charges <i>(Clause 5.29 S&H Agreement 5.8 PWTS Agreement)</i>		<p>The fees charged to vessels who do not sail within two hours of completing cargo operations at the Geelong Number Three berth have increased:</p> <ul style="list-style-type: none"> • From \$300 to \$325 of the first hour or part thereof; and • From \$600 to \$650 per hour for each subsequent hour or part thereof.
Stock swaps <i>(Clause 2/46-2.49 S&H Agreement 6.23-6.24 PWTS Agreement)</i>	For Stock Swaps, GrainCorp will advise the Client of the price differential in certain specified situations that vary by location, season and by agreement with the Client.	For Stock Swaps, GrainCorp will advise the Client of the price differential in the applicable Grain Trade Australia location differential to the relevant Port Terminal.
Pest control <i>(Clause 2.26-2.29 S&H Agreement, Clause 3.8-3.11 WPTS Agreement)</i>		A new clause provides that where fumigation or other certificates are required by the Client GrainCorp will apply an administration charge.
Shrinkage <i>4.4-4.8 S&HA, 6.25-6.31 (WPTSA)</i>		The provisions have been updated to reflect that the agreement does not include upcountry storage and handling services.

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Documentation and Weights <i>(4.9 - 4.14 S&HA, 6.32 - 6.37 WPTSA)</i>		<p>Clauses relating to rail movements from GrainCorp's country sites to domestic end users of port terminals neither owned or operated by GrainCorp have been removed.</p>
Record keeping <i>(Clause 4.15-4.16 S&HA, 6.38-6.40 WPTSA)</i>		<p>There is a new obligation that all information or documentation provided by a Client will contain accurate and truthful statements and descriptions.</p>
Credit facility <i>(Clause 3.9 S&H Agreement, Clause 7.10 WPTSA)</i>		<p>There is a new clause providing that if a Client has more than one agreement with GrainCorp, it may meet its obligation to provide a bank guarantee or security deposit to meet its obligations under all its agreements with GrainCorp.</p> <p>The clause also provides for agreements with either GrainCorp or its Related Bodies Corporate.</p>
Damages <i>(Clause 6.1-6.10 S&H Agreement, Clause 8.1-8.9 WPTS Agreement)</i>		<p>There is an additional clause that GrainCorp does not take responsibility for chemical residues in Wheat detected at levels below 0.1mg/kg regardless of whether the chemicals were applied as part of GrainCorp's pest control program or were received from grower deliveries or any other source.</p> <p>A clause dealing with the Client's ability to access Grain in a GrainCorp Country Site has been removed, consistent with the scope of the Wheat Port Terminal Services Agreement.</p>
Termination <i>(Clause 8 S&H Agreement, 10 WPTS Agreement)</i>	<p>GrainCorp may terminate the Agreement immediately upon written notice to the Client if the Client:</p> <ul style="list-style-type: none"> • fails to pay any amount that is due and payable under the Agreement; or • breaches any other provision of this agreement. 	<p>The Agreement now sets out the specific breaches for which GrainCorp may immediately terminate the Agreement rather than allowing our immediate termination right for all breaches:</p> <ul style="list-style-type: none"> • If the Client breaches any other provision of this Agreement or any other agreement between the Client and GrainCorp or its Related Bodies Corporate, GrainCorp may only terminate the agreement on 14 days written notice to the Client and if the Client does not remedy the breach to GrainCorp's satisfaction within GrainCorp's stipulated time frame. • If, prior to termination or expiry of the term the Client does not ensure that provisions are made to outturn / or outload any Wheat held by GrainCorp prior to termination; then the Client shall be bound by the terms of the new season Wheat Port Terminal

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		<p>Services Agreement.</p> <ul style="list-style-type: none"> The agreement expressly provides that termination shall not prejudice the rights of parties that have accrued prior to the date of termination and that provisions in certain specified clauses shall survive termination of the Agreement.
Disputes <i>(Clause 9.1 S&H Agreement, 11 WPTS Agreement)</i>	Disputes in relation to grade, quality, sampling, testing or classification of Grain should be referred to either BRI Australia Ltd or to a mutually agreed independent testing facility.	<p>Disputes in relation to grade, quality, sampling, testing or classification of wheat should be referred to a mutually agreed independent testing facility. The reference to BRI Australia Ltd has been removed.</p> <p>Disputes in relation to access to the Port Terminal that arise in connection with the protocols and procedures set out in Annexure B are to be resolved in accordance with the dispute resolution provisions contained in Annexure B.</p>
Site access <i>(Clause, 12.10 WPTS Agreement)</i>		The agreement includes new provisions in relation to Site Access for the purpose of protecting the health and safety of all persons and protection of property and the environment at all GrainCorp facilities. These include terms and conditions that require the Client to provide advance written notice to GrainCorp of attendance at any GrainCorp facility and the Client's compliance with all procedures, policies and instructions of GrainCorp representatives prior to entering, while visiting and while leaving any GrainCorp facility or site. GrainCorp has an ability to refuse requests for Client visits to site.
Confidentiality and endorsement <i>(Clause 10.9-10.10 S&H Agreement, 12.11 WPTS Agreement)</i>		There is a new obligation that the Client must not, without the express prior written approval of GrainCorp, make any statements or authorise or publish any material in relation to any GrainCorp personnel, site facility or any matter connected to the Services or this Agreement and in no circumstance will the Client make any statements or authorise or publish any material which may be construed as having been approved by or endorsed by GrainCorp.
Notices <i>(Clause 10.2-10.4 S&H Agreement, 12.2-12.4 WPTS Agreement)</i>		There is a new obligation that notices to GrainCorp must be served on the Company Secretary.
Legal operation <i>(Clause 10.1 S&H Agreement, 12.1 WPTS Agreement)</i>		There is a new clause providing that GrainCorp is not required to perform an obligation if may contravene any condition of accreditation or access or under any government scheme.

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<i>Agreement)</i>		
Interaction with access undertaking <i>(Clause 12.16 WPTS Agreement)</i>		There is a new provision clarifying that not all Services provided under the Agreement constitute Port Terminal Services for the purpose of any undertaking provided by GrainCorp to the ACCC.
Approved Bulk Handling Company <i>(definitions)</i>	Approved Bulk Handling Company means those silos, not operated by GrainCorp, that, in GrainCorp's absolute opinion, have relevant grain quality procedures and consistently meet export quality standards on outloading.	Approved Bulk Handling Company means those silos, not operated by GrainCorp, that have ISO 9001 or similarly acceptable accreditation for the storage, handling, and transportation of export quality Wheat and GrainCorp has formally recognised that company by exchange of relevant correspondence.