MALLESONS STEPHEN JAQUES

Port Terminal Services Access Undertaking

by

GrainCorp Operations Limited (ABN 52 003 875 401) of Level 26, 175 Liverpool Street, Sydney, NSW, 2000 ("**GrainCorp**")

in favour of

Australian Competition and Consumer Commission
being a body corporate established under **section 6A** of the CCA ("**ACCC**")

24 January 2011

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Port Terminal Services Access Undertaking

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Port Terminal Services Access Undertaking
General terms

1 Background

1.1 Introduction

(a) GrainCorp operates the Port Terminal Facilities at the Port Terminals.

(b) The Port Terminal Facilities provide services relating to the export of Bulk Wheat and other commodities.

(c) GrainCorp has historically provided access to services provided by the Port Terminals to third parties under open access policies.

(d) GrainCorp is an Accredited Wheat Exporter under the *Wheat Export Marketing Act 2008* (Cth). GrainCorp's current accreditation expires on 30 September 2011. GrainCorp intends to apply for accreditation under the WEMA for a further period commencing on 1 October 2011.

(e) Under section 24 of the WEMA, a person who is also the provider of one or more port terminal services (as defined under that Act) must satisfy the 'access test' to be eligible for accreditation to export Bulk Wheat.

(f) Currently, the 'access test' under the WEMA requires:

(i) the person to comply with the continuous disclosure rules in relation to a port terminal service; and

(ii) either there is:

(A) an access undertaking in operation (under Division 6 Part IIIA of the *Competition and Consumer Act 2010*) relating to the provision to Accredited Wheat Exporters of access to the port terminal service for purposes relating to export of Bulk Wheat; or

(B) a decision in force that a regime established by a State or Territory for access to the port terminal service is an effective access regime (under Division 2A Part IIIA of the CCA) and under that regime Accredited Wheat Exporters have access to the port terminal service for purposes relating to the export of Bulk Wheat.

(g) GrainCorp has submitted this Undertaking to the ACCC for approval under Part IIIA of the CCA for the purpose of satisfying the 'access test'.

1.2 Objectives

The Undertaking has the following objectives:

(a) providing a framework to manage negotiations with Applicants for access to services provided by certain facilities at the Port Terminals in relation to the export of Bulk Wheat;

(b) establishing a workable, open, non-discriminatory and efficient process for lodging and processing Access Applications;

(c) providing a non-discriminatory approach to pricing and the provision of Port Terminal Services under which GrainCorp publishes reference prices annually and offers access to standard services on the terms and conditions contained in Schedule 5;

(d) operating consistently with the objectives and principles in Part IIIA of the CCA and the Competition Principles Agreement;

(e) reaching an appropriate balance between:

(i) the legitimate business interests of GrainCorp, including:

(A) the recovery of all efficient costs associated with the granting of access to the Port Terminal Services;

(B) a fair and reasonable return on GrainCorp's investment in the Port Terminal Facility commensurate with its commercial risk;

(C) GrainCorp's business interests relating to the export of grain other than Bulk Wheat and to the export of non-grain commodities using the Port Terminal Facilities; and

(ii) the interest of the public, including:

(A) ensuring efficient use of resources; and

(B) the promotion of economically efficient investment, use and operation of the Port Terminals; and

(iii) the interests of Applicants wanting access to the Port Terminal Services, including providing access to the Port Terminal Services:

(A) on non-discriminatory price and non-price terms; and

(B) in a transparent, open, efficient and non-discriminatory manner;

(f) providing an efficient, effective and binding dispute resolution process in the event that GrainCorp and the Applicant are unable to negotiate a mutually acceptable Access Agreement; and

(g) in accordance with the objective in s44AA(b) of the CCA, providing for a uniform approach to access to the Port Terminal Services at the different Port Terminals to the extent practicable having regard to the different characteristics of the Port Terminals.

2 Structure

2.1 Components

This Undertaking applies in relation to access to Port Terminal Services provided by means of Port Terminal Facilities at a number of Port Terminals (listed in Schedule 1). The Port Terminal Facilities are geographically separate and have different physical and operating characteristics and modes of operation.

2.2 Priority

To the extent of any inconsistency between the General Terms and the Schedules, they are to apply in the following order of priority:

(a) Schedule 1 and Schedule 2;

(b) the General Terms; and

(c) Schedules 3 to 5.

2.3 Obligation to procure

If the performance of an obligation under this Undertaking requires a Related Body Corporate of GrainCorp to take some action or refrain from taking some action, GrainCorp must procure that Related Body Corporate to take that action or refrain from taking that action.

3 Term and variation

3.1 Commencement Date

For the purposes of the WEMA:

(a) all provisions of this Undertaking other than clauses 5.5(b), 5.5(c), 9, 10, 11 and 12 and Schedule 6 commence on 1 August 2011 and GrainCorp will comply with those provisions on and from this date; and

(b) clauses 5.5(b), 5.5(c), 9, 10, 11 and 12 and Schedule 6 commence on 1 October 2011 and GrainCorp will comply with those provisions on and from this date.

3.2 Expiry

This Undertaking expires on the earlier of:

(a) 30 September 2014; or

(b) the day the ACCC consents to GrainCorp withdrawing the Undertaking in accordance with Part IIIA of the CCA (including under clause 3.3).

3.3 Early withdrawal of the Undertaking

GrainCorp may seek the approval of the ACCC to the withdrawal of this Undertaking on the occurrence of any of the following events:

(a) GrainCorp or a Related Body Corporate ceases to be an Accredited Wheat Exporter under the WEMA; or

(b) the WEMA, and/or any other applicable legislation from time to time, is amended such that there is no longer any legislative requirement for GrainCorp to have in place an access undertaking under Part IIIA of the CCA in relation to access to any of the Port Terminal Services in order for GrainCorp or its Related Bodies Corporate to export Bulk Wheat.

3.4 Variation for a particular Port Terminal

GrainCorp may seek the approval of the ACCC to the variation of this Undertaking by removing the Port Terminal Services provided at a particular Port Terminal on the occurrence of any of the following events:

(a) the Port Terminal is disposed of to a person who is not a Related Body Corporate of GrainCorp and GrainCorp ceases to operate or control the Port Terminal Facilities at that Port Terminal; or

(b) there is in force under Division 2A Part IIIA of the CCA a regime established by a State or Territory for access to services provided at the Port Terminal and under that regime persons seeking to export Bulk Wheat have access to Port Terminal Services (or services substantially similar to the Port Terminal Services) for purposes relating to the export of Bulk Wheat.

3.5 Other variations

(a) If, during the term of the Undertaking, GrainCorp is of the opinion that circumstances have changed such that this Undertaking:

(i) is no longer commercially viable for GrainCorp or becomes inconsistent with the objectives set out in clause 1.2; or

(ii) is no longer consistent with the Continuous Disclosure Rules as a result of changes to the WEMA or any other applicable legislation,

GrainCorp may seek the approval of the ACCC to vary this Undertaking.

(b) Prior to seeking the approval of the ACCC under clause 3.5(a), GrainCorp will first consult with counterparties to Access Agreements and Applicants regarding the proposed variation.

4 Scope

4.1 Application of Undertaking

(a) This Undertaking applies to:

(i) the negotiation of new Access Agreements;

(ii) the negotiation of access to Port Terminal Services in addition to Port Terminal Services already the subject of an executed Access Agreement; and

(iii) a decision by GrainCorp to unilaterally vary the prices at which Port Terminal Services are provided under an executed Access Agreement.

(b) This Undertaking does not apply to the negotiation of any Access Agreement which will have a commencement date before 1 October 2011 or after the expiry of this Undertaking.

4.2 Meaning of Port Terminal Services

(a) This Undertaking applies only to access to Port Terminal Services.

(b) "**Port Terminal Services**" means the services described in Schedule 2 in relation to Bulk Wheat provided by means of a Port Terminal Facility, and the use of a Port Terminal Facility and use of all other associated infrastructure owned, operated or controlled by GrainCorp at a Port Terminal which in each case is necessary to allow Applicants and Users to export Bulk Wheat through that Port Terminal.

4.3 Meaning of Port Terminal Facility

"**Port Terminal Facility**" means a ship loader that is:

(a) at a Port Terminal; and

(b) capable of handling Bulk Wheat;

and includes any of the following facilities:

(c) an intake/receival facility;

(d) a grain storage facility;

(e) a weighing facility;

(f) a shipping belt;

that is:

(g) at the Port Terminal; and

(h) associated with the ship loader; and

(i) capable of dealing with Bulk Wheat.

The Port Terminal Facilities at each Port Terminal are described in Schedule 1.

4.4 Nature of Port Terminal Services

The Port Terminal Services may include:

(a) intake and receival services;

(b) storage and handling services;

(c) ship nomination, acceptance, booking, cancellation and preparation of a Site Assembly Plan; and

(d) ship loading.

4.5 What this Undertaking does not cover

(a) The grain supply chain comprises the following activities:

(i) intake and receival services (inland);

(ii) grain storage and handling (inland);

(iii) transportation (from inland facilities to at port facilities);

(iv) services at port terminals (at port); and

(v) shipping services (at port).

(b) To avoid doubt, this Undertaking does not apply:

(i) to access to services not being Port Terminal Services provided by GrainCorp in relation to Bulk Wheat; or

(ii) in relation to other facilities owned by GrainCorp which are part of the grain supply chain such as up country receival and accumulation facilities; or

(iii) to the transportation of Bulk Wheat to port; or

(iv) to grains which are not wheat; or

(v) to wheat which is not Bulk Wheat.

(c) Nothing in this Undertaking prevents GrainCorp from agreeing with an Applicant or User to provide access to port terminal services for grains other than Bulk Wheat and other services related to Port Terminal Services.

5 Price and non-price terms

5.1 Access to Standard Port Terminal Services

On request by an Applicant in accordance with clause 6, GrainCorp will offer to supply the Standard Port Terminal Services to the Applicant:

(a) at the Reference Prices published under clause 5.3; and

(b) on the Standard Terms under clause 5.4,

and this Undertaking recognises the ability of an Applicant to negotiate for, and an arbitrator to arbitrate on, access to:

- non Standard Port Terminal Services (that are nonetheless within the ambit of Port Terminal Services);
- non Standard Terms (for Port Terminal Services or Standard Port Terminal Services);
- prices other than Reference Prices (for Port Terminal Services or Standard Port Terminal Services); or
- any combination of the above.

5.2 Standard Port Terminal Services

(a) The Standard Port Terminal Services for each Port Terminal are set out in Schedule 2.

(b) GrainCorp is under no obligation to provide access to a Standard Port Terminal Service (or to enter into an Access Agreement for them) beyond the term of this Undertaking unless GrainCorp chooses to do so in its absolute discretion.

5.3 Reference Prices

(a) By no later than 31 August of each year, GrainCorp must, for access to each Standard Port Terminal Service, publish reference prices ("**Reference Prices**") on GrainCorp's website.

(b) Unless varied in accordance with clause 5.6 the Reference Prices must apply for a period not ending before 30 September of the next year.

(c) If GrainCorp has not already complied with clause 5.3(a) at the commencement of this Undertaking, then it must do so within three Business Days of its commencement.

(d) GrainCorp must give the ACCC copies of Reference Prices within three Business Days following publication.

5.4 Standard Terms

(a) The Standard Terms are the terms and conditions set out in the Indicative Access Agreement in Schedule 5 to this Undertaking ("**Standard Terms**").

(b) Unless varied in accordance with clause 5.6, the Standard Terms must apply for the term of the Undertaking.

(c) The Standard Terms offered to an Applicant must include the Port Terminal Services Protocols, as varied from time to time.

(d) Nothing in this Undertaking prevents the parties agreeing to include terms relating to access to the Port Terminal Services in an agreement also applying to access to other services provided by GrainCorp but, to avoid doubt, this Undertaking (including clauses 6 and 7) will only apply to the terms relating to the provision of access to Port Terminal Services.

5.5 Non-discriminatory access

(a) In providing access to Port Terminal Services, GrainCorp must not discriminate between different Applicants or Users in favour of its own Trading Division, except to the extent that the cost of providing access to other Applicants or Users is higher.

(b) During the term of this Undertaking, but not more than twice in every 12 month period, the ACCC may require GrainCorp to appoint an Independent Auditor to provide a report in relation to GrainCorp's compliance with clause 5.5(a). If the ACCC requires GrainCorp to appoint an Independent Auditor, the provisions set out in Schedule 6 will apply.

(c) The ACCC may authorise a member of the ACCC to exercise any powers under clause 5.5(b) or Schedule 6 of this Undertaking on behalf of the ACCC.

5.6 Variation to Reference Prices and Standard Terms

(a) GrainCorp may vary the Reference Prices from time to time. GrainCorp must provide the ACCC with copies of variations to the Reference Prices within three Business Days following publication.

(b) GrainCorp may vary the Standard Terms with approval from the ACCC in accordance with the procedure in Division 6 of Part IIIA of the CCA.

(c) Any variation under clause 5.6(a) or 5.6(b) must be published at least 30 days prior to the date on which it is to become effective in the same locations as it publishes its Reference Prices and Standard Terms.

(d) To avoid doubt, any variations to the Reference Prices or Standard Terms do not automatically override the terms of existing access agreements.

6 Negotiating for access

6.1 Good faith negotiation

GrainCorp will negotiate with an Applicant for the provision of access to Port Terminal Services in good faith in accordance with the terms of this Undertaking.

6.2 Framework

(a) This part of the Undertaking outlines the process to be followed for an Applicant to gain access to the Port Terminal Services. It provides for:

(i) **Preliminary inquiry** - preliminary exchanges of information and meeting to enable an Access Application to be lodged;

(ii) **Access Application** - submission of a formal Access Application by the Applicant;

(iii) **Negotiation** - negotiating an Access Agreement;

(iv) **Access Agreement** – acceptance and execution of an Access Agreement.

(b) If, at any time during this process, a Dispute arises between the parties, then either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in clause 7.

6.3 Preliminary inquiry

(a) Provision of information

(i) Subject to clause 6.3(a)(iv), GrainCorp will provide any information requested by an Applicant which is related to access to the Port Terminal Services and which is reasonably required by the Applicant to assist in negotiations in relation to an Access Application within five Business days of receiving the request.

(ii) If the Applicant's request for information is not sufficiently clear or detailed to enable GrainCorp to identify and collate the information sought by the Applicant, GrainCorp must notify the Applicant within three Business Days and seek further clarification of the Applicant's request.

(iii) Upon receiving clarification from the Applicant, GrainCorp will provide the information requested to the Applicant within a further four Business Days. To avoid doubt, the Applicant may seek further information in accordance with clause 6.3(a)(i) at any time prior to the completion of an Access Agreement.

(iv) GrainCorp's obligation under clause 6.3(a)(i) and 6.3(a)(iii) is subject to:

(A) GrainCorp not disclosing any information which would breach a confidentiality obligation binding on it or which it considers (acting reasonably) is commercially sensitive in relation to its own operations; and

(B) GrainCorp being able to refuse the request if:

(aa) it is unduly and manifestly onerous to GrainCorp, having regard to the following:

- the operational, commercial and logistical information that is required by grain exporters around the world for use of port terminal services for the exporting of Bulk Wheat;
- whether GrainCorp has access to and control of the information requested, or whether compliance with the Applicant's request would require GrainCorp to engage third party consultants or advisers in order to gather, collate or present the information;
- GrainCorp's staffing, technical and financial capability to obtain and provide the information requested by the Applicant;
- the volume of, and timeframe within which, information is requested by the Applicant; or

(ab) the information requested by the Applicant is not ordinarily and freely available to GrainCorp.

(b) Parties to Negotiation

(i) GrainCorp reserves the right to negotiate only with an Applicant who complies with the requirements and processes set out in this Undertaking. If an Applicant does not comply with the relevant obligations and processes, and such non-compliance is material, GrainCorp will not be obliged to continue negotiations regarding the provision of access for that Applicant.

(ii) An Applicant is currently required to be an Accredited Wheat Exporter. However, if the requirement to obtain accreditation under the WEMA, or any other applicable legislation, is removed at any time during the term of this Undertaking, an Applicant must otherwise be entitled to export Bulk Wheat. It

is the responsibility of the Applicant to ensure that they are in compliance with the relevant legal requirements for the purposes of exporting Bulk Wheat.

(iii) If GrainCorp refuses to negotiate, or ceases to negotiate, with an Applicant, for any reason, it will, on the day of the decision to refuse or cease to negotiate, provide to the Applicant written reasons for such refusal.

(iv) If the Applicant considers that GrainCorp has unreasonably refused to commence, unreasonably delayed or unreasonably ceased negotiations for any reason, then the Applicant may refer the matter to the arbitrator in accordance with clause 7.4. If the arbitrator determines that GrainCorp has unreasonably refused to commence, unreasonably delayed or unreasonably ceased negotiations, GrainCorp will recommence negotiations immediately, subject to any other determination the arbitrator makes.

(v) If at any time, GrainCorp is of the view that an Applicant's request for access is not in good faith or the Applicant is not negotiating in good faith, GrainCorp may refer the request to the arbitrator in accordance with clause 7.4 for determination. If the arbitrator determines that the request or negotiation is not in good faith, then GrainCorp will be entitled to cease negotiations, subject to any other determination the arbitrator makes. The arbitrator may consider whether or not an Applicant is negotiating in good faith as a preliminary or threshold question in any arbitration.

6.4 Access Application

(a) **Application process**

(i) Requests for access to the Port Terminal Services are to be submitted to GrainCorp and must include the information contained in Schedule 4.

(ii) Prior to an Applicant submitting an Access Application, GrainCorp will, if requested conduct initial meetings with the Applicant within three Business days of the request, to discuss the Access Application and to provide clarification of the process as outlined in this Undertaking and in particular, the information requirements set out in Schedule 4.

(b) **Acknowledgment**

(i) Upon receiving an Access Application from an Applicant, GrainCorp will acknowledge receipt of the Access Application in writing (or electronically) to the Applicant within three Business Days of its receipt, or such longer period in accordance with clause 6.4(b)(iv).

(ii) If the Application is incomplete, prior to acknowledging the Access Application, GrainCorp may seek in writing:

(A) such additional information; or

(B) clarification of the information that has been provided in the Access Application,

to the extent that such additional information or clarification is reasonably required to enable GrainCorp to consider the Access Application.

(iii) If GrainCorp seeks additional information or clarification in accordance with clause 6.4(b)(ii), it will advise the Applicant of the additional information or the clarification required within three Business Days of receipt of the Access Application.

(iv) Upon receiving the required information or clarification from the Applicant, GrainCorp will provide written acknowledgment of the receipt of the completed Access Application within three Business Days.

6.5 Access to Standard Port Terminal Services before an Access Agreement is executed

(a) If an Applicant lodges an Access Application, and requests access to Port Terminal Services prior to finalising and executing an Access Agreement, GrainCorp will, subject to the Applicant satisfying the Prudential Requirements, within three Business Days of receiving the request, offer to provide access to the Standard Port Terminal Services on the Standard Terms and at the Reference Prices.

(b) The Applicant may accept GrainCorp's offer to provide access to the Standard Port Terminal Services on the Standard Terms and at the Reference Prices by executing an "Interim Agreement" consisting of the Standard Terms and Reference Prices.

(c) The Interim Agreement will terminate on the earlier of:

(i) the date on which an Access Agreement is entered into;

(ii) the date on which the parties agree otherwise;

(iii) a date determined by an arbitrator under clause 7; or

(iv) if, by the end of the Negotiation Period, neither party has lodged a Dispute Notice, the end of the Negotiation Period.

(d) To avoid doubt, the Interim Agreement does not preclude the parties from entering into an Access Agreement.

(e) If an Interim Agreement terminates under clause 6.5(c), and an Applicant lodges a new Access Application, an Applicant may again

request access to Port Terminal Services and clauses 6.5(a) to 6.5(d) and clause 6.5(f) will apply.

(f) An Access Agreement once executed will apply retrospectively from the later of:

(i) the date on which the Interim Agreement was executed; or

(ii) a date determined by an Arbitrator under clause 7,

and will replace the Interim Agreement.

6.6 Negotiation of Access Agreement

(a) Following GrainCorp's acknowledgment under clause 6.4(b), GrainCorp will offer to commence negotiations as soon as reasonably possible, but no later than five Business Days (or such longer period as agreed between the parties), to progress towards an Access Agreement.

(b) The Negotiation Period ("**Negotiation Period**") will commence upon GrainCorp acknowledging the Access Application under clause 6.4(b) and will cease upon any of the following events:

(i) execution of an Access Agreement in respect of access sought by the Applicant;

(ii) written notification by the Applicant that it no longer wishes to proceed with its Access Application;

(iii) the expiration of three months from the commencement of the Negotiation Period, or if both parties agree to extend the Negotiation Period, the expiration of the agreed extended period;

(iv) following referral to arbitration in accordance with clause 6.3(b)(v), the arbitrator determines that the Applicant is not negotiating in good faith;

(v) following a determination or direction by the arbitrator in accordance with clause 7, where an Applicant does not comply with a determination or direction of the arbitrator, and that determination or direction is not the subject of review; or

(vi) a notice issued by GrainCorp under clause 6.7(e) becomes effective.

(c) Upon cessation of the Negotiation Period, GrainCorp will be entitled to cease negotiations with the Applicant.

(d) If, for any reason, the Negotiation Period ceases and an Access Agreement has not been executed, the Applicant may submit a new Access Application at any time and this Undertaking will apply to the new Access Application.

6.7 Prudential requirements

(a) Within seven Business Days of receiving an Access Application, or a request for access to the Standard Services under clause 6.5, GrainCorp may require the Applicant to demonstrate to GrainCorp that it is able to meet the Prudential Requirements and to undertake that it can meet the Prudential Requirements for the duration of the Negotiation Period.

(b) Upon receiving a request by GrainCorp under clause 6.7(a), the Applicant must demonstrate that it can satisfy the Prudential Requirements within seven Business Days.

(c) GrainCorp will assess whether the Applicant satisfies the Prudential Requirements within five Business Days of receiving all of the required documents or evidence from the Applicant.

(d) In the event the Applicant cannot satisfy the Prudential Requirements, GrainCorp may issue a notice of intent to end the negotiation period, to become effective 10 Business Days after the issue of the notice.

(e) If, at any time, GrainCorp receives evidence confirming that the Applicant no longer satisfies the Prudential Requirements, on receiving such evidence GrainCorp will advise the Applicant of such evidence and issue a notice of intent to end the negotiation period, to become effective 10 Business Days after the issue of the notice.

(f) If GrainCorp issues a notice of intent GrainCorp will provide to the Applicant written reasons for its decision to end the Negotiation Period, including reasons why the Applicant does not meet the Prudential Requirements at the time it issues the notice.

(g) For the purposes of clause 6.7(a) the Applicant will be required to satisfy the following Prudential Requirements:

(i) the Applicant must be Solvent; and

(ii) the Applicant, or a Related Body Corporate of the Applicant, must not be currently, or have been in the previous two years, in Material Default of any agreement with GrainCorp based on financial issues; and

(iii) the Applicant must be able to demonstrate to GrainCorp that it has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under an Access Agreement, including timely payment of access charges and payment of insurance premiums and deductibles under the required policies of insurance or otherwise provides Credit Support acceptable to GrainCorp (acting reasonably).

(h) For the purposes of clause 6.7(g), GrainCorp may:

(i) require the Applicant to provide:

(A) details of the Applicant's credit rating (if applicable);

(B) the Applicant's most recent financial statements;

(C) commercial trade references (if available);

(ii) consider the Applicant's previous credit history with GrainCorp;

(iii) engage an external credit review company to undertake a credit review.

6.8 Access Agreement

(a) The granting of access will be finalised by the execution of an Access Agreement. The parties to the Access Agreement will be GrainCorp and an Accredited Wheat Exporter.

(b) Once the Applicant has notified GrainCorp that it is satisfied with the terms and conditions of the Access Agreement as drafted, GrainCorp will within two Business Days, provide a final Access Agreement (or, if applicable, an amendment to an existing Access Agreement) to the Applicant for execution.

(c) If GrainCorp offers an Access Agreement and the Applicant accepts the terms and conditions offered in that Access Agreement, GrainCorp will execute the Access Agreement within five Business Days of GrainCorp providing a final Access Agreement to the Applicant under clause 6.8(b), or such longer period as is agreed by the parties.

7 Dispute resolution

7.1 Disputes

(a) This clause 7 applies to any Dispute arising in relation to:

(i) the negotiation of new Access Agreements;

(ii) the negotiation of access to Port Terminal Services in addition to Port Terminal Services already the subject of an executed Access Agreement; and

(iii) a decision by GrainCorp to unilaterally vary the prices at which Port Terminal Services are provided under an executed Access Agreement provided the User issues a Dispute Notice within 30 days of the publication of the variation in accordance with clause 5.6(c).

(b) An Applicant is not entitled to raise a Dispute in relation to the terms of the Initial Port Terminal Services Protocols or the Port Terminal Services Protocols applying at the time of the Access Application.

(c) Any Dispute will, unless otherwise expressly agreed to the contrary by both parties, be resolved in accordance with this clause 7 and either party may give to the other party to the Dispute notice in writing ("**Dispute Notice**") specifying the Dispute and requiring it to be dealt with in the manner set out in this clause 7. The parties must act in good faith to settle the Dispute in accordance with this clause 7.

(d) Other than as set out in clause 7.1(a)(ii) and 7.1(a)(iii), any disputes in relation to an Access Agreement once executed (including the application of the Port Terminal Services Protocols) will be dealt with in accordance with the provisions of that Access Agreement.

(e) GrainCorp will by 31 July of each year provide a report to the ACCC on any material disputes in relation to an Access Agreement and any Disputes raised by Applicants or Users or GrainCorp in the last 12 months (except for the first year in which case the report will apply to the period from the commencement of this Undertaking) including the details of any resolution and the status of unresolved matters.

7.2 Negotiation

Within five Business Days of a party giving the other a Dispute Notice, senior representatives from each party will meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

7.3 Mediation

(a) If the Dispute is not resolved under clause 7.2 within five Business Days after the date of the Dispute Notice then:

(i) if the parties agree, they will attempt to resolve the Dispute by mediation pursuant to this clause 7.3; or

(ii) if the parties do not wish to resolve the Dispute by mediation, either party may by notice in writing to the other, refer the Dispute to be determined by arbitration under clause 7.4.

(b) If the parties agree to attempt to resolve the Dispute by mediation, the Dispute will be referred to the chief executive officers of both parties who will attempt to resolve the Dispute, including by informal mediation.

(c) If the Dispute is not resolved within 5 Business Days after being referred to the chief executive officers under clause 7.3(b), GrainCorp will refer the Dispute 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:

(i) the President of the New South Wales Chapter of the Institute of Arbitrators and Mediators of Australia ("**IAMA**"); or

(ii) CEO of Grain Trade Australia ("**GTA**").

If the parties fail to agree on an organisation to appoint a mediator under clause 7.3(c) within three Business Days, a mediator will be appointed by the President of the New South Wales Chapter of IAMA.

(d) Unless the parties agree otherwise:

(i) the mediation will be conducted by a mediator (howsoever appointed under clause 7.3(c)) under either the IAMA Mediation Rules or the GTA Trade and Dispute Resolution Rules (whether or not the mediator is a legal practitioner);

(ii) the parties may appoint a person, including a legally qualified person to represent it or assist it in the mediation;

(iii) each party will bear their own costs relating to the preparation for and attendance at the mediation; and

(iv) the costs of the mediator will be borne equally by the parties.

7.4 Referral to arbitration

(a) Notwithstanding any other provision of this Undertaking, either party may, by notice in writing to the other, ("**Arbitration Notice**"), refer a Dispute to arbitration in accordance with this clause 7.4 at any time following the issue of a Dispute Notice. The Arbitration Notice must specify the nature of the Dispute, the matters in respect of which the party is seeking arbitration and the contact details of both parties and whether the parties have agreed or are likely to agree upon a private arbitrator if the ACCC does not arbitrate the Dispute.

(b) If the Dispute referred to in the Arbitration Notice is already the subject of mediation in accordance with clause 7.3, that mediation will cease immediately.

(c) Any arbitration will be conducted in accordance with clauses 7.5 to 7.7.

7.5 Appointment of arbitrator

(a) If a Dispute is referred to arbitration in accordance with clause 7.4, GrainCorp must, within two Business Days, provide the ACCC with a copy of the relevant Dispute Notice and Arbitration Notice. All correspondence with the ACCC under this clause 7 must be addressed to:

The General Manager
Transport and General Prices Oversight
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne VIC 3000
Fax: (03) 9663 3699

(b) If within five Business Days of receiving notice in accordance with clause 7.5(a), the ACCC advises GrainCorp and any other party to the Dispute in writing that it wishes to be the arbitrator in respect of the Dispute, then the ACCC will be appointed to arbitrate the dispute and the arbitration will be conducted in accordance with clause 7.6. The ACCC may authorise a member of the ACCC to make a decision under this clause 7.5(b).

(c) If the ACCC:

(i) advises GrainCorp and any other party to the Dispute in writing within five Business Days of receiving notice in accordance with clause 7.5(a) that it does not wish to be the arbitrator in respect of the Dispute; or

(ii) does not advise GrainCorp and any other party to the Dispute in writing within five Business Days of receiving notice in accordance with clause 7.5(a) that it wishes to be the arbitrator in respect of the Dispute,

then, subject to clause 7.5(e), the arbitration will be conducted by an arbitrator appointed by the agreement of the parties to the Dispute.

(d) Within two Business Days of the parties agreeing an arbitrator, GrainCorp must notify the ACCC.

(e) If the parties fail to agree an arbitrator within five Business Days of the expiry of the five Business Days referred to in clause 7.5(c)(i) or (ii) respectively, or such longer period as may be agreed by the parties, then either party may request the President of the NSW Chapter of IAMA to appoint an arbitrator.

7.6 Arbitration procedure if the ACCC is the arbitrator

(a) If the ACCC is the arbitrator, then except as set out in clause 7.6(b), the arbitration will be conducted in accordance with the procedures, and the ACCC will have the powers, set out in Subdivisions C-E and G of Division 3 of Part IIIA of the CCA and any references to a “final determination” or “interim determination” in those Subdivisions will be taken to mean a final or interim determination made by the ACCC under clause 7.6 of this Undertaking.

(b) In any arbitration conducted by the ACCC in accordance with this Undertaking:

(i) the ACCC may not make a determination which would have any of the effects described in section 44W of the CCA;

(ii) the ACCC may not make a determination which would have the effect of setting the terms and conditions of access to a Port Terminal Service in respect of any period following the expiry of this Undertaking;

(iii) the ACCC must have regard to the provisions of this Undertaking (including clause 5.5);

(iv) sections 44ZO(1)-(4) of the CCA will not apply. A determination or direction of the ACCC will be final and binding, subject to any rights of review, and will have effect on and from the date specified by the ACCC. Any or all of the provisions of a final determination may be expressed to apply from a specified day that is earlier than the day on which the final determination is made. However, that specified day may not be earlier than the date of the Access Application.

(c) Other than in circumstances where the determination or direction is the subject of review, if an Applicant or User does not comply with a determination or direction of the ACCC, GrainCorp will not be obliged to continue negotiations for the provision of access to Port Terminal Services for that Applicant.

7.7 Arbitration procedure if the ACCC is not the arbitrator

(a) If the arbitrator of a Dispute is not the ACCC, the arbitration will be conducted in accordance with the following procedures:

(i) the arbitrator will not be required to proceed with the arbitration unless and until the party that issued the Arbitration Notice has agreed to pay the arbitrator's and other costs as determined in accordance with clause 7.7(h) and provided any indemnity as required in accordance with clause 7.7(j);

(ii) the arbitrator may make an interim determination granting access but only to Standard Port Terminal Services on the Standard Terms and at the then current Reference Prices;

(iii) subject to the involvement of and disclosures to the ACCC, unless GrainCorp and the Applicant agree otherwise, the arbitration must be conducted in private;

(iv) a party may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration;

(v) the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;

(vi) the arbitrator must act as speedily as a proper consideration of the Dispute allows, having regard to the need to carefully and quickly enquire into and investigate the Dispute and all matters affecting the merits, and fair settlement, of the Dispute;

(vii) the arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to a Dispute, and may require that the cases be presented within those periods;

(viii) the arbitrator may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument;

(ix) the arbitrator may call on any party the arbitrator believes necessary to give evidence;

(x) the arbitrator will present its determination in a draft form to the parties and give the parties opportunity to comment before making a final determination;

(xi) the arbitrator will hand down a final determination in writing which includes its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based;

(xii) unless the parties to the Dispute agree otherwise, any determination by the arbitrator will be confidential;

(xiii) the arbitrator may make any determination or direction in relation to the Dispute that it considers appropriate. For the avoidance of doubt, such determination or direction may include making a binding determination in relation to the Dispute, or requiring the parties to continue or re-commence negotiations.

(b) The arbitrator may at any time terminate arbitration (without making an award) if it thinks that:

(i) the notification of the Dispute is vexatious;

(ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or

(iii) the party who notified the Dispute has not engaged in negotiations in good faith.

(c) In deciding a Dispute, the arbitrator must have regard to:

(i) the provisions of this Undertaking (including clause 5.5); and

(ii) the matters set out in section 44X(1) of the CCA;

(iii) any guidance published by the ACCC;

(iv) any submissions provided by the ACCC;

(v) the objectives and principles in Part IIIA of the CCA.

(d) In deciding a Dispute, the arbitrator may have regard to any other matters that it thinks are relevant.

(e) In deciding a Dispute, the arbitrator must not:

(i) without the consent of all parties, make a determination which relates to matters which were not specified in the Arbitration Notice;

(ii) make a determination which would have the effect of setting the terms and conditions of access to a Port Terminal Service in respect of any period following the expiry of this Undertaking;

(iii) make a determination which would have any of the effects described in sections 44V(2)(d) or (da) of the CCA; or

(iv) make a determination which would have any of the effects described in sections 44W of the CCA.

(f) A determination or direction of the arbitrator will be final and binding, subject to any rights of review by a court of law, and will have effect on and from the date specified by the arbitrator. Any or all of the provisions of a final determination may be expressed to apply from a specified day that is earlier than the day on which the final determination is made. However, that specified day may not be earlier than the date of the Access Application.

(g) Other than in circumstances where the determination or direction is the subject of review by a court of law, if an Applicant or User does not comply with a determination or direction of the arbitrator, GrainCorp will not be obliged to continue negotiations for the provision of access to Port Terminal Services for that Applicant.

(h) The arbitrator's costs and the costs of the parties to the arbitration will be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.

(i) The parties' appointment of the arbitrator must provide that:

(i) the arbitrator must keep the ACCC advised, not less frequently than fortnightly, about the progress of the arbitration, including timelines and processes;

(ii) the arbitrator must provide a copy of any correspondence between the arbitrator and the ACCC relating to procedural or other matters to the parties within three Business Days; and

(iii) the ACCC will have the right to make submissions to the arbitrator in respect of the Dispute (subject only to complying with the procedures and timeframes for submissions determined by the arbitrator).

(j) The arbitrator may require the parties to indemnify it from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 7, such indemnity excluding circumstances where the conduct of the

arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.

(k) GrainCorp must send a copy of any determination made by the arbitrator to the ACCC within two Business Days of the determination being made.

(l) The *Commercial Arbitration Act* 1984 (NSW) will apply to any arbitration undertaken in accordance with this clause 7.7. To the extent of any inconsistency, the provisions of the Undertaking will have priority over the provisions of the *Commercial Arbitration Act* 1984 (NSW).

(m) A determination may conclusively resolve all disputes in a matter referred to it, rather than requiring recommencement of negotiations.

8 Confidentiality

8.1 Treatment of Confidential Information

(a) Subject to clause 8.1(b), if a party provides Confidential Information to another party either:

(i) as part of the negotiation process for access to the Port Terminal Services; or

(ii) for the purpose of resolving any Dispute,

the recipient of that Confidential Information will treat that Confidential Information as confidential, the property of the provider of that information, and will use that information solely for the purpose of negotiating access to the Port Terminal Services or resolving any Dispute in accordance with this Undertaking.

(b) A party is permitted to disclose Confidential Information:

(i) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;

(ii) to any mediator or arbitrator appointed in accordance with clause 7 of this Undertaking for the purposes of that mediation or arbitration (and, if the ACCC is the arbitrator, subject to the ACCC's standard confidentiality protocols and procedures);

(iii) to the ACCC to the extent necessary for a party to comply with any written request by the ACCC, (subject to the ACCC's standard confidentiality protocols and procedures); or

(iv) if and to the extent required by law, provided that it first consults with the party that provided the Confidential Information in relation to the manner and timing of that disclosure.

8.2 Dispute resolution

(a) If Confidential Information is provided to a mediator or arbitrator for the purpose of assisting in the resolution of any Dispute in accordance with clause 7, the mediator or arbitrator must (and the terms and conditions of appointment of the mediator or arbitrator must require them to) take all reasonable steps to protect the confidentiality of information that any party to the dispute has identified as confidential or commercially sensitive. This clause 8.2 is subject to the ACCC's obligations under legislation.

(b) For the purpose of clause 8.2, any arbitrator appointed in accordance with clause 7 may require the parties to a Dispute to comply with rules and orders aimed at protecting the confidentiality of information provided by the parties, including:

(i) requiring each party and their advisers to give confidentiality undertakings to each other party; and

(ii) limiting access to Confidential Information to specified individuals subject to confidentiality undertakings provided by those individuals.

(c) Any arbitrator appointed in accordance with clause 7 may make confidential and non-confidential versions of its determination and limit access to the confidential versions to specific individuals.

9 Capacity management

9.1 Continuous Disclosure Rules

GrainCorp must, as a condition of this Undertaking, comply with the Continuous Disclosure Rules from time to time, which, at the commencement of this Undertaking, is to publish on its website in relation to Port Terminal Services:

(a) a statement setting out GrainCorp's policies and procedures for managing demand for the port terminal service (including GrainCorp's policies and procedures relating to the nomination and acceptance of ships to be loaded using the port terminal service) ("**Port Terminal Services Protocols**"); and

(b) a Shipping Stem (to be updated each Business Day) setting out:

(i) the name of each ship scheduled to load grain using a port terminal service;

(ii) for each cargo referred to in paragraph (i) — the date when the ship was nominated to load grain using a port terminal service;

(iii) for each cargo referred to in paragraph (i) — the date when the ship was accepted as a cargo scheduled to load grain using a port terminal service;

(iv) for each ship referred to in paragraph (i)) — the quantity of grain to be loaded into the vessel using a port terminal service;

(v) for each ship referred to in paragraph (i)) — the estimated date on which grain is to be loaded into the ship using a port terminal service.

The Shipping Stem is available at www.graincorp.com.au.

9.2 Port Terminal Services Protocols

(a) As at the commencement date of this Undertaking, the Port Terminal Services Protocols which apply to the provision of Port Terminal Services at Port Terminals owned or operated by GrainCorp are set out in Schedule 3.

(b) GrainCorp must comply with the Port Terminal Services Protocols as varied from time to time.

(c) In the Port Terminal Services Protocols, the term 'Client' includes a person who is a User within the meaning of this Undertaking.

9.3 Variation of Port Terminal Services Protocols

(a) GrainCorp may vary the Port Terminal Services Protocols from time to time subject to clause 9.3(b) and subject to the following conditions:

(i) any variations to the Port Terminal Services Protocols must be consistent with:

(A) the objectives of this Undertaking set out in clause 1.2;

(B) GrainCorp's obligations to provide non-discriminatory access in accordance with clause 5.5;

(ii) the Port Terminal Services Protocols must include an expeditious dispute resolution mechanism for dealing with disputes relating to decisions made by GrainCorp under the Port Terminal Services Protocols (but need not include independent binding dispute resolution);

(iii) before GrainCorp can vary the Port Terminal Services Protocols, it must conduct a consultation process which involves:

(A) preparing and circulating proposed changes to interested parties, and to the ACCC, along with an explanation for the amendment;

(B) allowing Users and Applicants at least 10 Business Days to review and respond to the proposed changes;

(C) GrainCorp collating, reviewing and actively considering the responses from interested parties.

(iv) any variation must be published at least 30 days prior to the date on which it is to become effective in the same locations as it publishes its Port Terminal Services Protocols.

(b) This clause 9.3 does not prevent GrainCorp unilaterally amending the Port Terminal Services Protocols on a temporary basis during the period of Force Majeure, as defined in the Standard Terms.

(c) GrainCorp must provide the ACCC with copies of variations to the Port Terminal Services Protocols promptly following publication.

(d) The Port Terminal Services Protocols (as varied from time to time) are available at www.graincorp.com.au.

9.4 No hindering access

(a) GrainCorp, or a Related Body Corporate of GrainCorp, must not engage in conduct for the purpose of preventing or hindering access to the Port Terminal Services by any other User in the exercise of a right of access under this Undertaking

(b) GrainCorp, or a Related Body Corporate of GrainCorp, may be taken to have engaged in conduct for the purpose referred to in clause 9.4(a) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of GrainCorp, or a body corporate related to GrainCorp, or from other relevant circumstances. This clause 9.4(b) does not limit the manner in which the purpose of GrainCorp may be established for the purposes of clause 9.4(a).

10 Publication of other information

10.1 Information on stock at the port

(a) In order to expressly satisfy the ACCC's requirements GrainCorp will publish and update monthly in a prominent position on its website the following:

(i) total stocks of Bulk Wheat held at each Port Terminal;

(ii) total stocks of all other grain held at each Port Terminal on an aggregated basis;

(iii) cargo nominations; and

(iv) nominated monthly export capacity.

(b) To avoid doubt, GrainCorp will not publish information in relation to up country services.

10.2 Publication of vessel booking applications

(a) GrainCorp will publish the following details of any booking applications that it receives for the export of grain on the Shipping Stem on the day that the Shipping Stem is next updated:

(i) the name of the exporter; and

(ii) the volume of grain to be exported.

(b) The Shipping Stem must be updated each Business Day.

11 Report on Performance Indicators

(a) GrainCorp will publish the following key service performance indicators:

(i) in the case of the period from 1 October 2011 to 31 March 2012, by no later than 31 May 2012;

(ii) in the case of the period from 1 April 2012 to 30 September 2012, by no later than 30 November 2012;

(iii) in the case of the period from 1 October 2012 to 31 March 2013, by no later than 31 May 2013;

(iv) in the case of the period from 1 April 2013 to 30 September 2013, by no later than 30 November 2013;

(v) in the case of the period from 1 October 2013 to 31 March 2014, by no later than 31 May 2014; and

(vi) in the case of the period from 1 April 2014 to 30 September 2014, by no later than 30 November 2014.

in each case, providing details on the following key service standards in respect of the provision of Port Terminal Services for Bulk Wheat at each Port Terminal during the relevant period:

(vii) vessels failing survey;

(viii) average daily road receival rate (to be provided monthly);

(ix) CNA's rejected;

(x) monthly tonnes shipped;

(xi) port blockouts; and

(xii) average CNA assessment times.

(b) GrainCorp will publish its report to the ACCC in a prominent position on its website within five Business Days of the date on which it provides it to the ACCC.

12 Contact details

(a) Persons wishing to contact GrainCorp for further information or to apply for access to the Port Terminal Services should contact GrainCorp at the following address:

General Manager, Ports and New Business
GrainCorp Operations Limited
Level 26
175 Liverpool Street
Sydney NSW 2000

(b) Applicants are also encouraged to review GrainCorp's web site at www.graincorp.com.au which includes information relevant to the Port Terminal Services including:

(i) storage capacity;

(ii) shipping berths; and

(iii) terms and conditions on which the Port Terminal Services are provided.

13 Definitions

13.1 Definitions

"**Access Agreement**" means an agreement between a User and GrainCorp for the provision of Port Terminal Services;

"**Access Application"** means an application for Port Terminal Services as described in clause 6.4;

"**Accredited Wheat Exporter**" means a person having accreditation as an accredited wheat exporter under the WEAS;

"**Applicant**" means the person seeking access to Port Terminal Services under clause 6;

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

"**Business Day**" means a day which is not a Saturday, Sunday or public or bank holiday in Sydney, except that if used in relation to a specific Port Terminal means the State or Territory in which the relevant Port Terminal is located;

"Cargo Nomination Application" means a document by which a User notifies GrainCorp of its intention to nominate a vessel to be loaded at a Port Terminal in accordance with the Port Terminal Services Protocols;

"CCA" means the *Competition and Consumer Act 2010* (Cth);

"Competition Principles Agreement" means the agreement entered into by the Commonwealth of Australia and each State and Territory of Australia in 1995 to implement the national competition policy of Australia;

"Confidential Information" means information exchanged between GrainCorp and an Applicant or User in relation to the business of those persons that:

(a) is by its nature confidential;

(b) is specified to be confidential by the person who supplied it; or

(c) is known, or ought to be known, by a person using or supplying it to be confidential or commercially valuable;

but excludes information that:

(d) is comprised solely of the name, address and contact details of a person; or

(e) was in the public domain at the time when it was supplied; or

(f) subsequently becomes available other than through a breach of confidence or breach of this provision; or

(g) was in lawful possession of the a party prior to being provided by the party; or

(h) must be disclosed under the Continuous Disclosure Rules or for the purpose of compliance with other legal requirements; or

(i) ceases to be confidential in nature by any other lawful means.

"**Continuous Disclosure Rules**" means the continuous disclosure rules as defined in subsection 24(4) of WEMA, as amended or replaced by other legislation relating to the provision of Port Terminal Services by GrainCorp;

"**Credit Support**" means either:

(a) a Parent Guarantee; or

(b) Security;

"Dispute" means a bona fide dispute between an Applicant or User and GrainCorp arising under this Undertaking;

"Dispute Notice" means a written notice provided by an Applicant or User to GrainCorp or by GrainCorp to an Applicant or User specifying the Dispute and requiring the Dispute to be dealt with in the manner set out in clause 7.1;

"**Indicative Access Agreement**" means the indicative access agreement in Schedule 5;

"**Material Default**" means any breach of a fundamental or essential term or repeated breaches of any of the terms of the agreements referred to in clause 6.7(g);

"Negotiation Period" means the period during which negotiation in relation to a final Access Agreement is undertaken as specified in clause 6.6(b);

"Parent Guarantee" means a guarantee given by a Related Body Corporate of the Applicant or User who has an investment grade credit rating or is otherwise acceptable to GrainCorp (acting reasonably);

"Performance Indicators" means the performance indicators set out in clause 11;

"Port Terminals" mean:

(j) Carrington Terminal

(k) Fisherman Islands Terminal;

(l) Geelong Terminal;

(m) Gladstone Terminal;

(n) Mackay Terminal;

(o) Port Kembla Grain Terminal;

(p) Portland Terminal;

"**Port Terminal Facility**" has the meaning given in clause 4.3;

"Port Terminal Service" has the meaning given in clause 4.2(b);

"Port Terminal Services Protocols" means the policies and procedures published by GrainCorp from time to time in accordance with the Continuous Disclosure Rules and clause 9.2. The Port Terminal Services Protocols as at the commencement date of this Undertaking are set out in Schedule 3;

"**Prudential Requirements**" means the requirements specified in clause 6.7(g);

"Reference Prices" means the reference prices described in clause 5.3, or as varied in accordance with clause 5.6;

"**Related Body Corporate**" has the meaning given in the *Corporations Act 2001* (Cth);

"Security" means an unconditional and irrevocable bank guarantee, letter of credit, performance or insurance bond issued by a bank holding an Australian banking licence or such other reputable person or institution accepted by GrainCorp and which is in a form reasonably satisfactory to GrainCorp;

"Shipping Stem" has the meaning given in clause 9.1(b);

"**Site Assembly**" means the receival and positioning by GrainCorp at a Port Terminal of Bulk Wheat for assembly and loading onto vessels for export at a Port Terminal;

"Site Assembly Plan" means a document or documents recording, among other things, the approximate tonnage of Bulk Wheat to be delivered and accumulated by the User at each loading Port Terminal submitted by the User and accepted, subject to GrainCorp's final determination, by GrainCorp;

"**Solvent**" means that, in the last five years:

(a) the Applicant has been able to pay all its debts as and when they become due and has not failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);

(b) a meeting has not been convened to place it in voluntary liquidation or to appoint an administrator;

(c) an application has not been made to a court for the Applicant to be wound up without that application being dismissed within one month;

(d) a controller (as defined in the *Corporations Act 2001* (Cth)) of any of the Applicant's assets has not been appointed; or

(e) the Applicant has not proposed to enter into or enters into any form of arrangement with its creditors or any of them, including a deed of company arrangement.

"Standard Port Terminal Service" means a Port Terminal Service specified as such in Schedule 2;

"Standard Terms" means the standard terms and conditions described in clause 5.4, or as varied in accordance with clause 5.6;

"Trading Division" means a business unit or division of GrainCorp or its Related Bodies Corporate which have responsibility for the trading and marketing of Bulk Wheat;

"User" means a person who has entered into an Access Agreement with GrainCorp in relation to Bulk Wheat;

"WEAS" means the Wheat Export Accreditation Scheme 2008;

"WEMA" means the *Wheat Export Marketing Act 2008 (Cth)*, as amended from time to time.

13.2 Interpretation

In this Undertaking, unless the context otherwise requires:

(a) singular words will also have their plural meaning and vice versa;

(b) a reference to a person includes companies and associations;

(c) a reference to a consent of a party means the prior written consent of that party;

(d) headings are for convenient reference only and do not affect the interpretation of this Undertaking;

(e) a reference to a, clause, Part or a Schedule is a reference to a clause, Part or Schedule of this Undertaking;

(f) a reference to a party includes its successors and permitted assigns;

(g) notices that are required to be given in writing to GrainCorp may, if so agreed by GrainCorp, be provided in electronic form;

(h) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to "law" includes a reference to any Act and the common law;

(i) the words "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

(j) a reference to $ and dollars is to Australian currency.

DATED: **SIGNED** for and on behalf of
GRAINCORP OPERATIONS LIMITED
(ABN 52 003 875 401) by its
duly authorised officer.

……..
(Signature)

……..
(Name)

……..
(Position)

Port Terminal Services Access Undertaking

Schedule 1 – Port Terminals

1 Fisherman Islands

1.1 Location

The Fisherman Islands Port Terminal is located at the Port of Brisbane, in Queensland.

The Port of Brisbane is overseen by the Port of Brisbane Corporation and consists of 29 operating berths.

1.2 Port Terminal Facilities

The Fisherman Islands Terminal facilities handle products including wheat, barley, sorghum, chickpeas, cottonseed, sugar, and woodchips.

The following facilities are located at the Fisherman Island Terminal:

- intake/receival facility
- grain storage facility
- weighing facility
- shipping belt
- ship loader

The facilities do not include the berths at the Port Terminal.

1.3 Additional published protocols and information

The Port of Brisbane is operated and managed by the Port of Brisbane Corporation, a Government Owned Corporation Company under the State of Queensland's Government Owned Corporations Act 1993.

Port notices, including information relating to dangerous goods, tanker requirements and ship maintenance, are published at http://www.portbris.com.au/ShippingOperations/PortNotices.

The Port Procedures Manual for the Port of Brisbane, which lists in detail all vessel-movement restriction, communication, towage, pilotage, emergency, navigation, berth, channel, depth and swing-basin information, is available at www.msq.qld.gov.au/home/shipping/port_procedures/ port_procedures_brisbane.

2 Gladstone Port Terminal

2.1 Location

GrainCorp's Gladstone Terminal is located on the Auckland Point No. 2 Wharf at the Port of Gladstone in Queensland.

It is one of 15 operating wharves at the Port of Gladstone overseen by the Gladstone Ports Corporation.

2.2 Port Terminal Facilities

The Gladstone Terminal facilities currently handle products including wheat, sorghum, chickpeas, magnesia, oilseeds, maize and barley. The following facilities are located at the Gladstone Terminal:

- intake/receival facility
- grain storage facility
- weighing facility
- shipping belt
- ship loader

The facilities do not include the berths at the Port Terminal.

2.3 Additional published protocols and information

The Port of Gladstone is managed and operated by the Gladstone Ports Corporation Limited, a Company Government Owned Corporation Company under the State of Queensland's Government Owned Corporations Act 1993.

Certain limited information in relation to shipping control and handling is provided in the Port Information Handbook at http://www.cqpa.com.au/Pages/Publications/PortInfoBook/Port%20Information%20Handbook%202008.pdf.

Port Notices in relation to berthing allocation, including the Central Queensland Port Authority's Port Rules, Priority of Ship Movements are available at http://www.cqpa.com.au/Pages/Publications/Port%20Notice/Port%20Notice.pdf

A copy of the Central Queensland Ports Authority Port Rules is available from the Central Queensland Ports Authority.

3 Mackay Port Terminal

3.1 Location

The Mackay Terminal is located at Berth no. 5 of the Port of Mackay in Queensland.

The Port of Mackay is overseen by the Mackay Port Authority and comprises 5 berths.

3.2 Port Terminal Facilities

The Mackay Terminal facilities handle products including wheat, sorghum, chickpeas, oilseeds and maize. The following facilities are located at the Mackay Terminal:

- intake/receival facility
- grain storage facility
- weighing facility
- shipping belt
- ship loader

The facilities do not include the berths at the Port Terminal.

3.3 Additional published protocols and information

The Port of Mackay is owned and operated by Mackay Ports Limited, a Government Owned Corporation under the State of Queensland's Government Owned Corporations Act 1993.

For further information about the Port Rules, please refer to the Port Notices for the Port of Mackay that set out the relevant regulations in relation to shipping control, berthing and security arrangements as well as the terms and conditions of port access (amongst other matters) at the Port of Mackay. They can be found at http://www.mackayports.com/mpl/content/uploads/Port%20Notices_2007.pdf

4 Port Kembla Port Terminal

4.1 Location

The Port Kembla Terminal is located at Berth 104 of the Port of Port Kembla in New South Wales. It is one of 18 berths overseen by the Port Kembla Port Corporation at the Port of Port Kembla.

4.2 Port Terminal Facilities

The Port Kembla Terminal facilities manage products including wheat, barley, maize, oats, sorghum, legumes and oilseeds.

The following facilities are located at the Port Kembla Terminal:

- intake/receival facility
- grain storage facility
- weighing facility
- shipping belt
- ship loader

The facilities do not include the berths at the Port Terminal.

4.3 Additional published protocols and information

The Port of Port Kembla is managed by the Port Kembla Port Corporation.

The Port Information Guide for the Port of Kembla provides information in relation to shipping control, pilotage, anchorage and some of the rules and regulations in relation to port access and security arrangements.

It can be found at
http://www.kemblaport.com.au/system/files//f2/o781//Port%20Guide%202010%20CD.pdf

5 Carrington Port Terminal

5.1 Location

GrainCorp's Carrington Port Terminal (is located at Berth no. 3 at Carrington at the Port of Newcastle in New South Wales.

5.2 Port Terminal Facilities

The Carrington Terminal facilities manage products including wheat, barley, oats, sorghum, canola, soya beans, sunflower, lupins and chickpeas.

The following facilities are located at the Carrington Terminal:

- intake/receival facility
- grain storage facility
- weighing facility
- shipping belt
- ship loader

The facilities do not include the berths at the Port Terminal or the Western Storage Facility.

5.3 Additional published protocols and information

The Port of Newcastle is owned and operated by the Newcastle Port Corporation, a corporation owned by the New South Wales State government and established under the Ports Corporation and Waterways Management Act 1995.

The Ship Handling Safety Guidelines for the Port of Newcastle refer to relevant safety parameters in relation to shipping control and navigation at the Port of Newcastle. They can be found at http://www.newportcorp.com.au/client_images/937956.pdf.

The Tide Chart and Information Handbook sets out terms and conditions of access to the Port of Newcastle and relevant regulations in relation to security requirements, environmental obligations, shipping navigation and management. It can be found at http://www.newportcorp.com.au/client_images/881395.pdf.

6 Geelong Port Terminal

6.1 Location

The Geelong Terminal is located at the Port of Geelong in Victoria.

6.2 Port Terminal Facilities

The Geelong Terminal facilities handles products including wheat, barley, oats, rice, legumes, oilseeds and woodchips.

The following facilities are located at the Geelong Terminal:

- intake/receival facility
- grain storage facility
- weighing facility
- shipping belt
- ship loader

The facilities do not include the berths at the Port Terminal or the Corio storage and receival facility.

6.3 Other information

GrainCorp will pass through to Users the Geelong Terminal Wharf Hire Fee.

6.4 Additional published protocols and information

The Port of Geelong is owned by Ports Pty Ltd. However the Port is managed by three separate entities. Geelong Port Pty Ltd leases the Port's land based assets from Port Pty Ltd and is the principal manager of piers and wharfs at the Port of Geelong. GrainCorp manages the storage, logistics and marketing facilities for free flowing bulk products at the Port of Geelong. The statutory corporation, the Victorian Regional Channels Authority manages the navigable waters around the Port of Geelong.

The Geelong Port Standards and Procedures for Geelong Port outline the general duties of Port Users, the general terms and conditions in relation to use of facilities and equipment and the rules and regulations of the Port in relation to navigation, vessel management, cargo and berth management, emergencies, access and security and conduct at the port.

It is found at http://www.geelongport.com.au/downloads/PortStandProc.pdf

Geelong Port Standards and Procedures should be followed in conjunction with the directions of the Harbour Master in relation to a variety of matters including shipping control, channel management and the provision of navigation aids as set out in the Port Waters of Geelong Operating Handbook including Harbour Masters Directions.

This is found at http://www.regionalchannels.vic.gov.au/index.php/news-a-publications/harbour-masters-directions.

7 Portland Port Terminal

7.1 Location

The Portland Terminal is located at K.S. Anderson Wharf Berths No. 1 and No. 2.

7.2 Port Terminal Facilities

The Portland Terminal facilities manage products including wheat, barley, legumes and oilseeds and woodchips.

The following facilities are located at the Portland Terminal:

- intake/receival facility
- grain storage facility
- weighing facility
- shipping belt
- ship loader

The facilities do not include the berths at the Port Terminal. There is an additional fee for a shunting service provided at the Port of Portland which will be passed through to Users at cost.

7.3 Additional published protocols and information

The Port of Portland is currently vested in two funds managed by Hastings Funds Management - the publicly listed Australian Infrastructure Fund and a Utilities Trust of Australia. The statutory corporation, the Victorian Regional Channels Authority manages the navigable waters around the Port of Geelong.

Shipping services, including pilotage, towage, mooring and stevedoring provided by the Port of Portland are described at http://www.portofportland.com.au/index.php?option=com_content&task=view&id=36&Itemid=49.

Berthing protocols that outline procedures in relation to berth allocation are provided at http://www.portofportland.com.au/index.php?option=com_content&task=view&id=41&Itemid=54

Regulations and permits set out by the Port of Portland in relation to use of Port terminal facilities are set out at http://www.portofportland.com.au/index.php?option=com_content&task=view&id=66&Itemid=79

Port Terminal Services Access Undertaking

Schedule 2 - Standard Port Terminal Services

1 Intake of wheat at Port Terminals ex GrainCorp country sites

1.1 Services included

GrainCorp will provide the following services for the intake of wheat outloaded from GrainCorp storages in accordance with the relevant published price and non-price terms and in accordance with the relevant Port Terminal Protocols:

(a) Site Assembly planning and coordination of delivery of grain to port terminal(s), including the preparation of a Site Assembly Plan;

(b) Unloading of rail and road trucks into the Terminal during the hours and days as specified by GrainCorp;

(c) Sampling and classification on delivery;

(d) Weighing on delivery;

(e) Transfer of wheat to storage cells;

(f) Recording and provision of delivery information;

(g) Wheat hygiene and quality management;

(h) Elevation to outloading paths;

(i) Vessel loading;

(j) Shipping stem maintenance;

(k) Insurance for all general physical risk (i.e. fire, flood, storm, etc).

1.2 Services excluded

The Standard Port Terminal Services for intake of wheat at Port Terminals ex GrainCorp country sites do not include:

(a) procurement of road and rail transport;

(b) all Port Terminal stevedoring costs; and

(c) Geelong Terminal wharfage.

1.3 Conditions

These services are provided as per the shift hours listed in the Port Terminal Protocols and relevant Access Agreement. Overtime fees and other conditions will apply for intake and unloading outside of those shift hours.

2 Intake of wheat at Port Terminals ex third party storage

2.1 Third Party Storage Sites

"Third Party Storage Sites" means those sites, not operated by GrainCorp, including on-farm storage sites.

2.2 Services included - treated wheat

GrainCorp will provide the following services for the intake of wheat outloaded from Third Party Storage Sites in accordance with the relevant published price and non-price terms and in accordance with the relevant Port Terminal Services Protocols:

a) Site Assembly planning and coordination of delivery of grain to port terminal(s), including the preparation of a Site Assembly Plan;

b) Unloading of rail and road trucks into the Terminal during the hours and days as specified by GrainCorp;

c) Sampling and classification on delivery;

d) Weighing on delivery;

e) Transfer of wheat to storage cells;

f) Recording and provision of delivery information;

g) Wheat hygiene and quality management;

h) Elevation to outloading paths;

i) Vessel loading;

j) Shipping stem maintenance;

k) Insurance for all general physical risk (i.e. fire, flood, storm, etc).

2.3 Services excluded

The Standard Port Terminal Services for intake of wheat at Port Terminals ex Third Party Storage Sites do not include:

(a) procurement of road and rail transport;

(b) all Port Terminals - stevedoring costs; and

(c) Geelong Terminal – wharfage.

2.4 Infested wheat loads delivered by rail

GrainCorp will provide, and the User is deemed to have requested, the following port intake services in relation to intake at the Port Terminal by rail from Other Approved Bulk Handling Company Sites of infested loads in

accordance with the relevant published price and non-price terms and in accordance with the relevant Port Terminal Services Protocols:

(a) Rail receival path cleaning fee; and either of

(b) Fumigation of the infested grain (where this service is available); or

(c) Removal of the grain from the terminal to a "hospital" facility for disinfestation.

These services will be provided in accordance with relevant AQIS biosecurity conditions.

3 Ship loading services

GrainCorp will provide the following services in accordance with the relevant published price and non-price terms and in accordance with the relevant Port Terminal Services Protocols:

(a) Cargo nomination booking and re-nomination;

(b) Provision of a Shipping and Domestic Outturn Quality Certificate.

4 Storage services

GrainCorp will provide the following services in accordance with the relevant published price and non-price terms and in accordance with the relevant Port Terminal Services Protocols:

(a) maintenance and provision of wheat stock records by terminal and grade;

(b) pesticide and fumigation application as required during the storage period;

(c) condition monitoring;

(d) storage of residual wheat remaining in the Port Terminal after the completion of loading.

5 Blending

GrainCorp will provide the following services in accordance with the relevant published price and non-price terms and in accordance with the relevant Port Terminal Protocols:

(a) blending of segregated grades in store or on outturn (including loading separately segregated wheat into ship's holds);

(b) blending of grain to meet a customised grade ie any commodity specification that does not meet the standard grade, for example blending to increase protein, or blending to reduce screenings to meet contract specifications; and

(c) pre-blending services where the exporter requires three or more segregated grades to be blended.

6 Grain quality port sampling

GrainCorp will provide the following services in accordance with the relevant published price and non-price terms and in accordance with the relevant Port Terminal Services Protocols:

(a) storage unit sampling;

(b) composite pre-shipment sampling;

(c) parcel sampling;

(d) hatch sampling.

These services do not include services by GrainCorp Technical Services (such as independent analysis).

7 Miscellaneous services

GrainCorp will provide the following services in accordance with the relevant published price and non-price terms and in accordance with the relevant Port Terminal Services Protocols:

(a) truck marshalling at terminals where required;

(b) buyer to buyer stock transfer services;

(c) supply of User requested receipt;

(d) pesticide residue free grain specific services;

(e) pesticide residue restricted grain specific services.

8 Additional services - Carrington

GrainCorp will provide services provided by the Carrington Grading Plant at the Carrington Port Terminal.

Port Terminal Services Access Undertaking

Schedule 3 – Initial Port Terminal Services Protocols

(e) the Client has not provided notification of the road outloading destination.

8.2. If the Receival 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 Client against GrainCorp in respect of Downgraded Wheat will be limited to: T x (P – V) where: T is the quantity in tonnes of Wheat downgraded from one grade to a lower grade; and P is the fair market value of the non Downgraded Wheat on the date at which the Claim was made by the client; and V is the fair market value of the Downgraded Wheat on the date at which the Claim was made by the Client.

8.3. Where a Claim is recognised by GrainCorp to be valid and GrainCorp agrees to compensate the Client or, in any other event where GrainCorp is liable to compensate or indemnify the Client, then GrainCorp's maximum liability in respect of any Claim shall not exceed $500,000 for Wheat outloaded on any shipping vessel and $25,000 for Wheat outloaded on to rail or road trucks on any one day for the Port Terminal, capped at 7 days.

8.4. GrainCorp's liability for a Claim under this **Clause 8** is subject to the Client:

(a) advising GrainCorp promptly of suspecting Downgraded Wheat, ceasing discharging suspected loads, and allowing GrainCorp to inspect suspected Downgraded 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 received by the Client within 5 business days of receiving the Wheat; and

(d) providing GrainCorp with a sample of the Downgraded Wheat subject to the Claim; and

(e) allowing GrainCorp to test this sample and compare this sample with sample of Wheat retained by GrainCorp on the outloading of 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 by:

(a) blending a sufficient quantity of other Wheat so as to upgrade the Client's Wheat; and/or

(b) substituting (at GrainCorp's expense) other Wheat of the same type of the required grade and quantity; and/or

(c) retaining the Downgraded Wheat and providing for the Claim as part of the outload adjustment under **Clauses 6.29** and **6.30**.

8.6. GrainCorp is not liable for any Consequential Loss relating to Downgraded Wheat made by or through the Client.

8.7. The Client acknowledges that GrainCorp cannot guarantee complete freedom from Wheat defects and contaminants listed with a nil tolerance in the Receival Standards, and is not liable for any quality Claims resulting from the detection of defects and contaminants whenever detected at levels of 0.01% by weight or less.

8.8. GrainCorp does not take responsibility for chemical residues in Wheat detected at levels below 0.1mg/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 Client acknowledges that GrainCorp, while using best endeavours to outturn Wheat in accordance with the Receival 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 receival at GrainCorp Storages. This includes, but is not limited to varietal purity, falling number, vitreous kernel in Durum Wheat, and the presence of objectionable, toxic and chemical residues.

9. EXCLUSION OF LIABILITY

9.1. Unless specifically provided otherwise in this Agreement, GrainCorp is not liable for any Loss or Claim including damage, destruction, contamination or loss of Wheat unless and then only to the extent such is caused directly by the negligence, wilful default or fraud of GrainCorp or its employees, officers, contractors or agents.

9.2. The Client acknowledges that GrainCorp is unable to test Wheat on receival (whether received from the Client 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 Client caused by or otherwise relating to the storage or handling of contaminated Wheat at the Port Terminal. From time to time, GrainCorp may agree with the Client to provide additional testing of Wheat received at the Port Terminal and may agree to provide additional guarantees as to the freedom of Wheat from

defects and contaminants. GrainCorp and the Client will agree additional fees and charges for this service.

9.3. The Client acknowledges that any transportation of Wheat is at the Client's risk, including transportation of Wheat arranged by or on behalf of or at the request of either the Client or GrainCorp. To the fullest extent permitted by law, GrainCorp is not liable for any Loss incurred by the Client caused by or otherwise relating to the transportation of Wheat. Where the Client acquires rail services from GrainCorp under a separate agreement, nothing in this Agreement affects the obligations and liabilities of GrainCorp under that agreement.

9.4. The Client acknowledges that GrainCorp can remove and dispose of dust or Downgraded Wheat generated from the Client's Wheat.

9.5. Without limitation, GrainCorp is not liable to the Client or any third party, or any person claiming through or on behalf of the Client, 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.

Insurance

9.6. GrainCorp will take out and keep in force an insurance policy, and may only by prior written agreement jointly insure with the Client, in respect of loss or damage to the Wheat whilst it is held in the Port Terminal.

9.7. 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 6.31**, the Client:

(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 9.7** unless GrainCorp acts fraudulently and in bad faith.

Force Majeure

9.8. 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) blockade, embargo, strikes, lockouts, labour disputes or disturbances.

9.9. Subject to clause 9.10, 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.

9.10. The occurrence of a Force Majeure Event does not affect the Client'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 Client if the Client:

(i) has a liquidator or administrator appointed, or is no longer Solvent as defined in the Access Undertaking,

(ii) fails to pay any amount that is due and payable under this Agreement or any other agreement between the Client and GrainCorp or its Related Bodies Corporate;

(iii) breaches a material term, representation, obligation or warranty as set out in this Agreement or any other agreement between the Client and GrainCorp or its Related Bodies Corporate;

(iv) fails to follow a direction of GrainCorp made reasonably and lawfully and material adverse consequences arise from the failure to follow that direction;

(v) commits an act or omission which compromises the safety of any person or brings GrainCorp in to disrepute; or

(vi) 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 Client if the Client breaches any other material provision of this Agreement or any other agreement between the Client 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 Client 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 Client and GrainCorp or its Related Bodies Corporate, and does not remedy the breach to the Client's satisfaction within the Client's reasonably stipulated time frame.

The Client must pay all Fees and other amounts due and payable in connection with this Agreement not later than 5 days following the termination date.

10.3. Notwithstanding expiry of the Term, or termination of this Agreement as set out in this **Clause 10**, the Client must ensure that prior arrangements are made to outturn and / or outload any Wheat held by GrainCorp prior to termination; otherwise the Client shall be bound by the terms of this Agreement or the new season Bulk Wheat Port Terminal Services Agreement (as applicable).

10.4. 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 which GrainCorp and the Client 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 Client 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 Client, the CEO of Grain Trade Australia will determine the accredited independent testing facility. GrainCorp and the Client 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 set out in Annexure B, then the parties shall resolve such disputes in accordance with the dispute resolution provisions contained in Annexure B.

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 Businesss Days, a mediator appointed by either:

(i) the President of the New South Wales Chapter of the Institute of Arbitrators and Mediators of Australia ("**IAMA**"); or

(ii) the CEO of Grain Trade Australia ("**GTA**").

If the parties fail to agree on an organisation to appoint a mediator under **Clause 11.4(b)** 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 GTA will be conducted

under the GTA Trade and Dispute Resolution 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 11.3** 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 Client, 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 Client 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

12.6. 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.

Governing Law

12.7. 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

12.8. This Agreement:

(a) may be assigned by GrainCorp to any of its Related Bodies Corporate without the consent of the Client; 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.

12.9. 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 Client 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 Client (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

12.10. 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 Client must, and must also ensure that the Client'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 Client 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 Client'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 Client 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 Client is responsible for ensuring that it and the Client'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, on or about any GrainCorp Port Terminal.

Confidentiality & Endorsement

12.11. 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 Client 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 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.

Legal advice and costs

12.12. 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

12.13. Subject to **Clauses 12.14** to **12.17** and **13.3** to **13.5**, this document may only be varied or replaced by a document executed by the parties.

12.14. By no later than 31 August of each year occurring after the date of this Agreement, GrainCorp must notify the Client of the new Annexure A, the

Wheat Port Terminal Services and Fees Schedule, to apply for the next season commencing 1 October of that year.

(a) Subject to **Clause 12.16**, the new Annexure A will form part of the Agreement and shall apply from 1 October of that year.

(b) Subject to **Clause 12.15**, the new Annexure A must apply for a period not ending before 30 September of the next year.

12.15. GrainCorp may unilaterally vary Annexure A, the Wheat Port Terminal Services and Fees Schedule, at any time by providing at least 30 days prior written notice to the Client if there is a Change in Regulations after the date of this Agreement which results in a direct or indirect increase in GrainCorp's costs in providing the Port Terminal Services under this Agreement. GrainCorp will be entitled to increase the fees payable by the Client for Port Terminal Services provided under this Agreement to recover the full amount of the increased direct or indirect costs referrable to the provision of the Port Terminal Services to the Client at the relevant Port Terminal. Subject to **Clause 12.16**, the revised Annexure A will form part of the Agreement and shall apply from the later of 30 days from the date of the notice or such later date as specified in the notice.

12.16. Subject to **Clause 12.17,** GrainCorp acknowledges the Client's rights to negotiate (including to raise a dispute in respect of) and GrainCorp's obligation to negotiate any changes to fees under **Clauses 12.14** and **12.15** in accordance with the Access Undertaking.

12.17. The Client agrees that GrainCorp may vary the Fees to reflect changes in the Consumer Price Index in accordance with the formula contained in Annexure A. The Client's right to negotiate, and GrainCorp's obligation to negotiate, under the Access Undertaking does not apply to a variation under this **Clause 12.17**.

12.18. GrainCorp may unilaterally vary Annexure B, the Port Terminal Services Protocols, by providing at least 30 days prior written notice to the Client where permitted to do so under Clause 9.2 of the Access Undertaking. Following this notice period, the revised Annexure B will form part of the Agreement and shall apply from the date of such notice.

Counterparts

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

Entire understanding

12.20. 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, including any interim access arrangements provided pursuant to the Access Undertaking, 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. INTERACTION WITH ACCESS UNDERTAKING

13.1. To avoid doubt, not all Services provided under this Agreement constitute Port Terminal Services for the purpose of an Access Undertaking. Services which are not Port Terminal Services include:

(a) services relating to Wheat which is not Bulk Wheat;

(b) loading Wheat to rail or road truck;

(c) services relating to Stock Swaps or the transfer of title of all or part of the Accounting Stock Tonnage of Stored Wheat between GrainCorp Clients, including the Client;

(d) supply chain management from GrainCorp Storages to Port Terminals including liaison with the Client's transport provider.

13.2. The Client acknowledges that a new or varied Access Undertaking may be approved by the ACCC during the term of this Agreement.

13.3. The parties agree that any changes to the Port Terminal Services Protocols required by a new or varied Access Undertaking will be automatically incorporated into Annexure B of this Agreement.

13.4. The Client agrees that, if GrainCorp is required under an Access Undertaking to publish aggregated information on stock held at its Port Terminals, GrainCorp may include in the aggregated information, information relating to the Client's Stored Wheat. To avoid doubt,

GrainCorp will not disclose information about the Client's Stored Wheat on an individual basis.

14. INTERPRETATION & DEFINITIONS

Interpretation

14.1. 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 client, and not the Client in this Agreement, shall be a reference to a party who has a relationship with GrainCorp that is governed by a current Bulk Wheat Port Terminal Services Agreement, a Bulk Grain Port Terminal Services Agreement (Non-Wheat) and / or a current Country Storage and Handling Agreement;

(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 or appendix 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.

Definitions

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

Access Undertaking means any undertaking provided by GrainCorp and accepted by the ACCC from time to time under Division 6 of Part IIIA of the *Trade Practices Act 1974 (Cth)* that applies to access to Port Terminal Services at the Port Terminals.

Accounting Stock Tonnage means, in respect of a period, the quantity of each type and grade of Wheat 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 Client, less,

(d) Tonnage title transferred from the Client, plus,

(e) The net of seasonal or grade reclassification in proportion to the Client's interest, plus,

(f) The net of Wheat moved as site to site movements in proportion to the Client's interest, less,

(g) Wheat outloaded from the GrainCorp System at any time during the period in proportion to the Client's interest.

Accreditation Requirements has the meaning set out in **Clause 3.18** of this Agreement, and includes any amendment or re-enactment of any legal or regulatory reqirement which may apply to Client in connection with the Services.

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

AQIS means Australian Quarantine and Inspection Service (ABN 24 113 085 695) of 18 Marcus Clarke Street CANBERRA CITY ACT 2601.

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

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 on its website (http://www.graincorp.com.au/prodserv/SL/Pages/Brochures.aspx).

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.

Commencement Date has the meaning given in **Clause1.2**.

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, each client of GrainCorp who has delivered wheat of that type and grade to GrainCorp and for whom GrainCorp has stored, handled or is storing or handling wheat of that type and grade at any particular time, pursuant to a Bulk Wheat Port Terminal Services Agreement or 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

Downgraded Wheat means Wheat that fails to meet the minimum/maximum of one or more quality specifications in a grade defined by Receival Standards. For clarity, “downgrading” hierarchy occurs through the Grade Cascade, where applicable, as defined in the GTA website, unless otherwise agreed between the Client and GrainCorp

Dynamic Binning Strategy means that a load delivered during harvest to any GrainCorp Storage may be graded and binned outside the grade Receival Standards, provided that the overall bin average is maintained above the minimum grade requirement.

Feed Wheat means Wheat specifically for the purpose of non-human animal stock feed consumption. For Wheat it means FED1 and other grades as advised by GrainCorp from time to time.

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:** *Port Terminal Services Fees Schedule* 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.

Grain Stock Order Form means the form for the outloading of Wheat entitled "Grain Stock Order Form" available from or approved by GrainCorp which is found at http://www.graincorp.com.au/prodserv/SL/Pages/Brochures.aspx.

GrainCorp means GrainCorp Operations Limited (ABN 52 003 875 401) of Level 26, 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 Client'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 receival, storage and handling facilities operated from time to time by GrainCorp, including the GrainCorp Storages, and Port Terminals.

GTA means Grain Trade Australia Incorporated PO Box R1829 Royal Exchange NSW 1225.

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

Grower Warehouse Agreement means an agreement entitled "Grower Warehouse Agreement" between GrainCorp and client 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.

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

Licence means any licence, consent, approval, permit, accreditation or other authorisation 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.

Load Date means the date assigned by GrainCorp to a vessel nominated by the Client and at which date GrainCorp reasonably expects that vessel to be placed on a shipping berth for the commencement of loading.

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.

Market risk means the risk of Wheat being rejected or detained by the importing customer, where 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.

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.

Nominated Capacity means the total mass weight of 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. The Nominated Capacity as at August 1st, 2009 is as per the following table:

Wagon Type	CGDY	NGDX	NGHF	NGIF	NGKF	NGPF	NGVF	NGXH	VGK	VHGF	VHHF	XGAY
Wheat Tonnes	54.47	54.01	48.96	53.05	59.38	58.80	48.00	48.35	49.55	52.44	53.30	52.58

Notice of Readiness means Client 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 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.

Outloading Tonnage / Outloading means tonnage of Wheat removed from a Port Terminal to the Client's rail, road or shipping transport.

Port Corporation means a port corporation or any body 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, Pinkenba, Fisherman Islands, Newcastle, Kooragang, Port Kembla, Geelong and Portland.

Port Terminal Services has the meaning given in the Access Undertaking.

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

Port Terminal Services Price Schedule means the fees and charges for the loading of Wheat to the vessel's side as detailed in Annexure A, which may be varied with at least 30 days prior notice to the Client.

Queuing Order means the position assigned by GrainCorp to a cargo nominated by a client in relation to all other nominated cargos at the same port at and around the same time queuing for access to the port berth.

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

Receival Standards means those standards, including those published on the GTA, AOF, Pulse Australia and GrainCorp Websites. These standards may include harvest management tools utilised by GrainCorp such as commingling of grades and Dynamic Binning Strategy. The grade recorded on the Receipt Docket confirms the entitlement of the Buyer to the outturn of the tonnage of that grade. Additional Receival standards may be created by GrainCorp due to seasonal requirements or agreed between GrainCorp and the Client for specific requirements.

Receival Tonnage means tonnage of Wheat delivered to the Client 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 presented for inspection fails to meet Australian regulations or importing country sanitary or phytosanitary regulations including;

- The presence or possible presence of live insects or other regulated pests.
- The presence or possible presence of quarantine objects like weed seeds, plant diseases, fungi.
- The presence or possible presence of chemical residues or toxins that fail to meet Australian regulatory requirements.
- The presence or possible presence of chemical residues or toxins that fail to meet importing country regulatory requirements.
- 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)*

Specification to Load Advice means the form provided to GrainCorp by the Client specifying the Wheat to be loaded to the nominated vessel.

Stock Swap means where the Accounting Stock Tonnages, or parts thereof, of two Co-owners (which, for the purposes of this definition, are taken to represent the respective Interests of the two Co-owners) at two specific GrainCorp Storages or Port Terminals, as recorded in the GrainCorp Stock Management System, are transferred between the two Co-owners.

Stock Swap Form means the form for the Stock Swap of Grain entitled "Stock Swap Form" available from GrainCorp at http://www.graincorp.com.au/prodserv/SL/Pages/Brochures.aspx.

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

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

Term has the meaning given 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 Client (which, for the purposes of this definition, is taken to represent the Client's Interest) at a specific GrainCorp Storage or Port Terminal, as recorded in GrainCorp Stock Management Systems, is transferred to another GrainCorp client.

Vessel Loading Fee means the fee as listed for the relevant GrainCorp Port Terminal in the **Bulk Wheat Port Terminal Services Price Schedule**

Wheat means Triticum aestivum, Triticum duri, (Durum)

Each individual signing this Agreement on behalf of a party warrants that the individual has been duly authorised to execute this Agreement and to bind that party on whose behalf the individual is signing.

THIS CONTRACT is executed on the day of 20

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 **[INSERT CUSTOMER COMPANY NAME]** -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)

Schedule 6 – Independent Auditor

1 Appointment of Auditor

1.1 Appointment by GrainCorp

If, at any time during the term of this Undertaking, the ACCC issues a notice under clause 5.5(b) of the Undertaking, GrainCorp must, within five Business Days, advise the ACCC in writing of the identity of the person that it proposes to appoint as the auditor, together with such information or documents (including the proposed terms of engagement) that the ACCC requires to assess the skill and independence of the auditor.

1.2 Independence

The proposed auditor must be a person who has the relevant skill to perform the role of auditor and is independent of GrainCorp. Without limitation, an auditor is not independent if he or she:

(a) is a current employee or officer of GrainCorp or a Related Body Corporate of GrainCorp;

(b) has been an employee or officer of GrainCorp or a Related Body Corporate of GrainCorp in the past 36 months;

(c) in the opinion of the ACCC, holds an interest in GrainCorp or a Related Body Corporate of GrainCorp;

(d) has within the past 36 months been a professional adviser to GrainCorp or a Related Body Corporate of GrainCorp;

(e) has a contractual relationship, or is an employee or contractor of a firm or company that has a contractual relationship, with GrainCorp or a Related Body Corporate of GrainCorp;

(f) is a supplier, or is an employee or contractor of a firm or company that is a supplier, of GrainCorp or a Related Body Corporate of GrainCorp; or

(g) is a customer, or is an employee or contractor of a firm or company that is a customer, of GrainCorp or a Related Body Corporate of GrainCorp.

1.3 Notification to ACCC

If, within five Business Days of receipt by the ACCC of the information or documents from GrainCorp referred to in clause 1.1 of this Schedule 6, or such further period as required by the ACCC and notified to GrainCorp:

(a) the ACCC does not object to the proposed auditor, GrainCorp must appoint the proposed auditor as auditor as soon as practicable thereafter (but in any event within five Business Days) on terms approved by the ACCC and consistent with the performance by the

auditor of its functions under this Undertakings and forward to the ACCC a copy of the executed terms of appointment of the auditor; or

(b) the ACCC does object to a proposed auditor, GrainCorp must as soon as practicable (but in any event within five Business Days) appoint a person identified by the ACCC at its absolute discretion as the auditor on terms approved by the ACCC and consistent with the performance by the auditor of its functions under this Undertaking.

2 Scope of the audit

2.1 Audit report

GrainCorp must, within 30 Business Days of the date on which the auditor is appointed in accordance with clause 1.3 of this Schedule 6, provide to the ACCC a written report from the auditor in relation to GrainCorp's compliance with its obligations under clause 5.5(a) of the Undertaking.

2.2 Assistance

(a) GrainCorp must provide to the auditor any information or documents requested by the auditor that the auditor reasonably considers necessary and relevant for fulfilling its obligations in relation to compliance by GrainCorp with its obligations under clause 5.5(a) of the Undertaking or for reporting to or otherwise advising the ACCC.

(b) GrainCorp must procure the auditor to provide information or documents or access to the ACCC, as required by the ACCC to ensure compliance with the Undertaking.

(c) In complying with the obligations in this clause 2 of Schedule 6, GrainCorp must:

(i) take any steps directed by the ACCC in relation to any matter arising from the report of the auditor referred to in paragraph 2.1 of this Schedule 6 within 10 Business Days of being so directed (or such longer period agreed with the ACCC);

(ii) direct its personnel, including directors, managers, officers, employees and agents to act in accordance with the obligations set out in this clause 2 of Schedule 6 and ensure such personnel are aware of the auditor and its role; and

(iii) provide access, information and/or documents required by the auditor.

2.3 Audit costs etc

GrainCorp must maintain and fund the auditor and must indemnify the auditor for reasonable expenses and any loss, claim or damage arising from the proper performance by the auditor of functions required to be performed by the auditor under this Undertaking.

3 Limits on the audit process

3.1 The ACCC must not require GrainCorp to appoint an Auditor to undertake an audit in relation to GrainCorp's compliance with its obligations under clause 5.5(a) of the Undertaking more often than twice in each 12 month period during the term of the Undertaking.

3.2 If:

(a) within the period of 3 months prior to the date on which the ACCC issues any notice under clause 5.5(b) of the Undertaking, GrainCorp has submitted an audit report to WEA (to comply with a requirement by WEA) ("**WEA Audit Report**");

(b) the WEA Audit Report was prepared by a person that satisfies the criteria for independence set out in paragraph 1.2 of this Schedule 6; and

(c) the WEA Audit Report addresses GrainCorp's compliance with its obligations under clause 5.5(a) of the Undertaking,

GrainCorp may provide the WEA Audit Report to the ACCC, and the ACCC may accept that report in satisfaction of the requirement for GrainCorp to provide an audit report to the ACCC in accordance with paragraph 2.1 of this Schedule 6.

3.3 For the avoidance of doubt, the ACCC will not be required to accept the WEA Audit Report in satisfaction of the requirement for GrainCorp to provide an audit report to the ACCC in accordance with paragraph 2.1 of this Schedule 6 if the ACCC (acting reasonably) considers that the matters set out in paragraphs 3.2(a)-(c) are not satisfied in respect of the WEA Audit Report.