Co-operative Bulk Handling Limited

Port Terminal Services
Access Undertaking
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Port Terminal Services Access Undertaking

by

Co-operative Bulk Handling Limited ABN 29 256 604 947 of 30 Delhi Street, West Perth, Western Australia (Port Operator)

in favour of

Australian Competition and Consumer Commission being a body corporate established under section 6A of the Competition and Consumer Act 2010 (Cth) (ACCC)

Background

A The Port Operator operates the Port Terminal Facilities.

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

C The Port Operator has historically provided access to services provided by the Port Terminal Facilities to third parties under open access policies.

D The Port Operator’s or its Related Body Corporate is has applied to become an Accredited Wheat Exporter under the Wheat Export Marketing Act 2008 (Cth).

E Under section 24 of the WEMA, the Port Operator 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 an Accredited Wheat Exporter.

F The ‘access test’ under the WEMA requires:

(a) the person to comply with the Continuous Disclosure Rules in relation to a port terminal service; and

(b) either:

(i) an access undertaking is in operation (under Division 6 Part IIIA of the CCA) relating to the provision to Accredited Wheat Exporters of access to the port terminal service for purposes relating to export of Bulk Wheat; or

(ii) a decision is 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.
The ACCC approved an undertaking from the Port Operator under Part IIIA of the CCA which satisfied the ‘access test’ (Original Undertaking). The Original Undertaking will expire on 30 September 2011.

The Port Operator has submitted this Undertaking to the ACCC for approval under Part IIIA of the CCA to replace the Original Undertaking once it expires for the purpose of satisfying the ‘access test’.

Agreed terms

1 Interpretation

1.1 Definitions

In this Undertaking unless the context otherwise requires:

Access Agreement means an agreement containing provisions requiring the Port Operator to supply Port Terminal Services to a party, whether made before, on or after the Commencement Date.

Access Agreement Variation is defined in clause 4.3(a).

Access Application is defined in clause 7.3(a).

Accredited Wheat Exporter means a person having accreditation as an accredited wheat exporter under the WEAS or, if the requirement to obtain accreditation under the WEMA and WEAS is removed at any time during the term of this Undertaking, means a person otherwise entitled to export Bulk Wheat.

Applicant means the person seeking access to Port Terminal Services under clause 7.

Auction Rules means the Auction Rules set out in Schedule 1 to the Port Terminal Rules (or as varied under clause 10.2).

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 Western Australia.

CCA means the Competition and Consumer Act 2010 (Cth).

Commencement Date means the date specified in clause 4.1.

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 of the Port Operator or an Applicant or a User (or any of their nominated representatives) in relation to the business of any 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 Undertaking; or
(g) was in lawful possession of the recipient of the information prior to being provided by the other party; or
(h) must be disclosed by law, including under the Continuous Disclosure Rules under the WEMA; or
(i) ceases to be confidential in nature by any other lawful means.

Continuous Disclosure Rules has the meaning means the continuous disclosure rules as defined in subsection 24(4) of the WEMA, as amended or replaced by other legislation relating to the provision of Port Terminal Services by the Port Operator.

Credit Support means either:

(a) a Parent Guarantee; or
(b) Security.

Dispute means a dispute between an Applicant and the Port Operator in relation to access to the Port Terminal Services under this Undertaking and includes disputes arising in the course of the negotiation process in clause 7 but does not include:

(a) disputes in relation to an executed Access Agreement;
(b) the terms of the initial Standard Port Terminal Terms or the Standard Port Terminal Terms applying at the time of the Access Application; or
(c) a decision by the Port Operator to vary the prices at which Port Terminal Services are provided to reflect changes to the Perth (All Groups) Consumer Price Index.

Dispute Notice is defined in clause 8.1(b).

Draft PTR Variation Notice is defined in clause 10.4.

Eligibility Requirements means the requirements prescribed in clause 7.4(b).

Effective Date is defined in clause 10.4(f)(ii)(E).

Exceptional Circumstances means circumstances in which urgent variation/s to the Port Terminal Rules are necessary to prevent or reduce systemic or

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technical deficiencies or errors in the process or rules for the conduct of capacity auctions.

**Exceptional Circumstances Variation Notice** is defined in clause 10.5(a).

**Final PTR Variation Notice** is defined in clause 10.4(f).

**Government Agency** means any applicable Western Australian or Australian Federal Government department, authority, instrumentality or agency having jurisdiction in respect of any matter affected by this Undertaking.

**IAMA** is defined in clause 8.3(a)(i).

**Legislative Requirements** means present and future obligations arising under:

(a) applicable laws, statutes, regulations, by-laws, orders, ordinances, proclamations and decrees; or

(b) any binding requirement, instruction, direction or order of a Government Agency.

**Material Default** means any breach of a fundamental or essential term of, or repeated breaches of any of the terms of:

(a) an Access Agreement; or

(b) any agreement for the provision of services by the Port Operator or a Related Body Corporate of the Port Operator.

**Negotiation Period** is defined in clause 7.6(c).

**Original Access Application** is defined in clause 7.8(a).

**Original Undertaking** is defined in Background clause G.

**Parent Guarantee** means a guarantee given by the ultimate holding company of the Applicant or User, or other such body as is acceptable to the Port Operator (acting reasonably), who has an investment grade credit rating or is otherwise acceptable to the Port Operator.

**Port** means the ports of:

(a) Albany;

(b) Esperance;

(c) Geraldton; and

(d) Kwinana.

**Port Schedules** means schedules 4 to 7.

**Port Terminal Facility** is defined in clause 5.2(a).

**Port Terminal Rules** means the rules, policies and procedures in Schedule 3 (or as varied under clause 10.2) and includes the Auction Rules.

**Port Terminal Services** is defined in clause 5.1.
Reference Prices means the prices referred to in clause 6.1(a), as may be varied in accordance with clause 6.1(c), for the services published pursuant to clause 12.5(a).

Related Body Corporate has the meaning given to Related Body Corporate in the Corporations Act 2001 (Cth).

Season means the period commencing 1 October of one year and ending on 30 September the next year (inclusive).

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 the Port Operator and which is in a form reasonably satisfactory to the Port Operator.

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 the Applicant 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 entered into any form of arrangement with its creditors or any of them, including a deed of company arrangement.

Standard Access Terms is defined in clause 6.1(a).

Standard Amendment Process means the process for amending Port Terminal Rules set out in clause 10.4.

Standard Port Terminal Terms means the standard terms and conditions for the supply of Port Terminal Services by the Port Operator as may be amended in accordance with this Undertaking and initially as set out in Schedule 2.

Trading Business means a:

(a) business unit or division of the Port Operator; or

(b) Related Body Corporate of the Port Operator, or any business unit or division of the Related Body Corporate,

which has responsibility for the trading and marketing of Bulk Wheat.

Transition Agreement is defined in clause 7.8(c).

User means a party being supplied with, or with a right to be supplied with Port Terminal Services under an Access Agreement.

Varied Terms of Access is defined in clause 4.3(d).
1.2 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 or a schedule is a reference to a clause, or schedule of this Undertaking;
(f) a reference to an item in a schedule is a reference to the items in that schedule;
(g) a reference to a party includes its successors and permitted assigns;
(h) notices that are required to be given in writing to Port Operator may, if so agreed by Port Operator, be provided in electronic form;
(i) 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;
(j) 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
(k) a reference to $ and dollars is to Australian currency.

1.3 ACCC
(a) The ACCC monitors compliance of undertakings accepted under Part IIIA of the CCA.
(b) The ACCC may approve a Member of the ACCC to exercise a decision making function under this Undertaking on its behalf and that approval may be subject to any conditions which the ACCC may impose.

2 Objectives
This Undertaking has the following objectives:
(a) providing a framework to manage negotiations with Applicants for access to services provided by the Port Terminal Facilities in relation to the export of Bulk Wheat;
(b) establishing a workable, transparent, non-discriminatory and efficient process for lodging and processing Access Applications;

(c) providing a non-discriminatory approach to pricing under which the Port Operator publishes reference prices and terms and conditions for the provision of certain standard services annually;

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

(e) reaching an appropriate balance between:

(i) the legitimate business interests of the Port Operator, including:
   (A) the recovery of efficient costs associated with the granting of access to the Port Terminal Services;
   (B) a fair and reasonable return on the Port Operator’s investment in the Port Terminal Facility commensurate with its commercial risk; and
   (C) the Port Operator’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;

(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 Terminal Facilities; 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 resolution process in the event that the Port Operator 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 Terminal Facilities to the extent practicable having regard to the different characteristics of the Port Terminal Facilities.

3 Structure

3.1 Components

This Undertaking comprises this document and all its schedules. The Undertaking will only apply to the Port Terminal Services provided by means of each Port Terminal Facility as specifically set out in the relevant schedule.
3.2 **Obligation to procure**
If the performance of an obligation under this Undertaking requires a Related Body Corporate of the Port Operator to take some action or refrain from taking some action, the Port Operator must procure that Related Body Corporate to do so.

3.3 **Application of terms**
(a) To the extent of any inconsistency between the Standard Port Terminal Terms and this Undertaking, the terms of this Undertaking will prevail but only to the extent of any inconsistency.
(b) To the extent a provision in this Undertaking is capable of two or more constructions that are consistent with the purpose of the Undertaking then the construction which does not provide for any ambiguity, inconsistency, or conflict between the provisions of the Undertaking and the Standard Port Terminal Terms is to be preferred.

4 **Term and variation**

4.1 **Commencement Date**
The Commencement Date for the purposes of section 24 of the WEMA is 1 October 2011 and the Port Operator will comply with this Undertaking on and from that date.

4.2 **Expiry**
This Undertaking expires on the earlier of:
(a) 30 September 2014;
(b) the date this Undertaking is replaced in accordance with Part IIIA of the CCA; and
(c) the day the ACCC consents to the Port Operator withdrawing this Undertaking in accordance with Part IIIA of the CCA.

4.3 **Variation of Access Agreements**
(a) A User or the Port Operator may seek a variation to the provisions of an Access Agreement relating to the supply of Port Terminal Services (Access Agreement Variation).
(b) A User’s request for an Access Agreement Variation will be dealt with as a new application for access to the Port Terminal Services, to which the process in this Undertaking will apply.
(c) The Port Operator’s request for an Access Agreement Variation will be dealt with as a request for negotiation of an Access Agreement and the provisions of clause 7.6 will apply.
(d) Upon the Port Operator and the User agreeing the terms of the Access Agreement Variation or the terms being determined in accordance with clause 8 (Varied Terms of Access), the provisions of the Access Agreement relating to the supply of Port Terminal Services will be
replaced by the Varied Terms of Access on and from the date specified in the Varied Terms of Access.

(e) For the avoidance of doubt, the provisions of the existing Access Agreement relating to the supply of Port Terminal Services will continue to apply until the Port Operator and the User agree the Varied Terms of Access or the Access Arrangement expires or is terminated.

5 Scope

5.1 Meaning of Port Terminal Services

Port Terminal Services means the services provided by means of the Port Terminal Facilities which enable an Accredited Wheat Exporter to export Bulk Wheat through the Port Terminal Facilities, including:

(a) unloading and receival by the Port Operator of a User’s Bulk Wheat at the Port Terminal Facilities, for the purpose of loading onto a vessel scheduled to arrive at the Port Terminal Facility;

(b) sampling by the Port Operator of a User’s Bulk Wheat received and out-turned, to check for visible evidence of the presence of chemical residue, insect activity, live insects or other contaminants, and providing the User with a composite shipping sample of the User’s Bulk Wheat;

(c) weighing by the Port Operator of a User’s Bulk Wheat received and out-turned, using the Port Operator’s weighing facilities, and providing the User with a weighbridge ticket or other statement certifying the weight and quantity of Bulk Wheat delivered;

(d) storage by the Port Operator of a User’s Bulk Wheat at the Port Terminal Facility for the purpose of export accumulation in a restricted time period and loading onto vessels at the Port Terminal Facility;

(e) fumigation in response to evidence of insect infestation;

(f) accumulating and assembling Bulk Wheat for the purpose of loading cargo onto a vessel scheduled to arrive at the Port Terminal Facility;

(g) administrative and logistics services required for shipping nomination, acceptance, booking and cancellation;

(h) access to inspectors from the Australian Quarantine and Inspection Service, for inspection of the User’s Bulk Wheat received and held at the Port Terminal Facilities; and

(i) out-turning by the Port Operator of a User’s Bulk Wheat received at the Port Terminal Facility, and loading onto the User’s nominated vessel.

5.2 Meaning of Port Terminal Facility

(a) Port Terminal Facility means the facilities for each Port set out in the schedule relating to that Port which generally comprise a ship loader and associated infrastructure that is:

(i) at a Port;
(ii) capable of handling Bulk Wheat; and
(iii) owned, operated and controlled by the Port Operator,
including:
(iv) an intake/receival facility;
(v) a grain storage facility;
(vi) a weighing facility; and
(vii) a shipping belt.

5.3 What this Undertaking does not cover
This Undertaking does not apply to:
(a) the negotiation of any agreement which will have a commencement date
after the expiry of this Undertaking; or
(b) access to services provided by the Port Operator or a Related Body
Corporate of the Port Operator which are not Port Terminal Services; or
(c) services provided by facilities owned by the Port Operator or a Related
Body Corporate of the Port Operator which are not Port Terminal
Facilities, such as up country receival and accumulation facilities; or
(d) fumigation of grain by the Port Operator as a preventative measure; or
(e) the transportation by the Port Operator of Bulk Wheat to port; or
(f) grains which are not wheat; or
(g) wheat which is not Bulk Wheat.

5.4 Obligation to offer access
(a) The Port Operator must offer access to the Port Terminal Services in
accordance with the provisions of this Undertaking.
(b) Access is available by means of the following obligations:
(i) if required to do so by an eligible Applicant in accordance with
clause 7.5(a), the Port Operator is obliged by clause 7.5(a) to
execute an Access Agreement in the form of the Standard Access
Terms;
(ii) if required to do so by an eligible Applicant in accordance with
clause 7.5(b), the Port Operator is obliged by clause 7.5(b) to
negotiate in good faith under the process in clause 7.6 for terms
that differ from the Standard Access Terms; and
(iii) by determination under clause 8.

6 Access terms
6.1 Obligation to publish standard access terms
(a) The Port Operator must publish on its website:
(i) a single set of reference prices (Reference Prices) and, subject to clause 6.1(c), the period to which they apply; and

(ii) a set of standard terms and conditions for the supply of Port Terminal Services (Standard Port Terminal Terms), which, subject to clause 6.1(b) and clause 6.1(c), will apply to access to the Port Terminal Services (together the Standard Access Terms).

(b) The Port Operator may vary the Standard Port Terminal Terms with approval from the ACCC in accordance with the procedure in Division 6 of Part IIIA of the CCA. The Port Operator must publish notice of any approved variation on its website within three Business Days of the ACCC’s approval.

(c) The Port Operator may vary the Reference Prices from time to time, provided that it publishes notice of such fact on its website and sends a copy of the revised Reference Prices to the ACCC within three Business Days of publication. Any variation to Reference Prices under this clause must be published at least 30 days prior to the date on which the variation is to become effective.

(d) The Standard Access Terms and any variation of the Standard Access Terms must be consistent with clause 6.2 and the objectives set out in clause 2.

(e) Schedule 2 sets out the initial Standard Port Terminal Terms applicable under this Undertaking.

6.2 Non-discriminatory access

(a) Subject to clause 6.2(b), in providing access to the Port Terminal Services, the Port Operator must not discriminate between different Applicants or Users (including its own Trading Business) in favour of its own Trading Business including discrimination based on the location or identity of the storage custodian, handler or transporter of the Applicants’ or Users’ Bulk Wheat.

(b) The Port Operator will not be in breach of its obligation under clause 6.2(a) where in providing access to the Port Terminal Services the Port Operator differentiates between different Applicants or Users (including its own Trading Division) on the basis that the cost of providing access to an Applicant or User is higher than the cost of providing access to other Applicants or Users.

(c) Within five Business Days of executing an Access Agreement with its own Trading Business, the Port Operator must provide to the ACCC a copy of that Access Agreement.

6.3 Audit

(a) The ACCC may, by notice in writing to the Port Operator, no more than twice in each 12 month period, require the Port Operator to appoint an Auditor to provide a report in relation to the Port Operator’s compliance with clause 6.2.
(b) If the ACCC gives written notice to the Port Operator in accordance with clause 6.3(a) the provisions set out in Schedule 8 will apply.

(c) The ACCC may approve a Member of the ACCC to exercise any powers under clause 6.3(a) of this Undertaking on behalf of the ACCC.

6.4 Request for information

(a) The ACCC may, by written notice to the Port Operator, require the Port Operator to provide information or documents that are required by the ACCC to enable it to exercise its powers or functions in relation to this Undertaking.

(b) The written notice must set out:

(i) in reasonable detail:
   (A) the information or documents required by the ACCC; and
   (B) the reasons why the ACCC requires the information or documents,

(ii) the form in which the information or documents must be provided; and

(iii) the deadline for the Port Operator to provide the information or documents, which must be no less than 14 days from the date of the Port Operator’s receipt of the notice.

(c) The Port Operator is not required to provide information or documents:

(i) that the Port Operator considers, acting reasonably, would be onerous or oppressive to provide;

(ii) not within the Port Operator’s possession or control;

(iii) that are the subject of a legitimate claim of privilege; or

(iv) that are not necessary for the ACCC to exercise its powers or functions in relation to this Undertaking including, but not limited to, information or documents related to the matters specified in clause 5.3.

7 Application and negotiating for access

7.1 Framework

(a) This clause 7 outlines the process to be followed for an Applicant to gain access to the Port Terminal Services. It provides for:

(i) Preliminary inquiry: requests by the Applicant for information to enable an Access Application to be lodged (clause 7.2);

(ii) Access Application: submission of an Access Application by the Applicant (clause 7.3);

(iii) Standard Access Agreements: procedure where the Applicant wants the Port Terminal Services under the Standard Access Terms (clause 7.5); and
(iv) **Negotiation**: negotiations where an Applicant wants the Port Terminal Services under terms other than the Standard Access Terms (clause 7.6).

(b) For the avoidance of doubt, if a Dispute arises at any time during the processes described in clauses 7.2, 7.3 and 7.6, either party may seek to resolve the Dispute in accordance with the process described in clause 8.

(c) In order for the Port Operator to conduct the auctions specified under the Port Terminal Rules, any negotiations for Port Terminal Services (whether under clause 7.5, clause 7.6 or clause 8) must be completed, and an Access Agreement entered into, by 15 September in any given year.

### 7.2 Preliminary inquiry

(a) An Applicant may request the Port Operator to provide information reasonably required by the Applicant to formulate and lodge its application for access to the Port Terminal Services.

(b) Within five Business Days of receiving a request for information under clause 7.2(a), the Port Operator must, subject to clause 7.2(c), provide the Applicant with the requested information.

(c) In responding to a request for information under clause 7.2(a), the Port Operator is not required to disclose any:

(i) Confidential Information;

(ii) information not within the Port Operator’s possession or control; or

(iii) information which the Port Operator considers, acting reasonably, is not necessary for the Access Application, the provision of Port Terminal Services or would be onerous or oppressive to provide.

(d) Before submitting an Access Application under clause 7.3(a), an Applicant may give written notice to the Port Operator requesting a preliminary meeting to:

(i) seek clarification of the processes described in this clause 7.2 and clauses 7.3 and 7.6, particularly the required form of the proposed Access Application under schedule 1; and

(ii) discuss the proposed Access Application.

(e) The Port Operator must be available to meet with the Applicant within five Business Days of receiving a notice under clause 7.2(d).

### 7.3 Access Application

(a) An Applicant’s request for access to the Port Terminal Services must be submitted to the Port Operator in the form prescribed in schedule 1 (Access Application).
(b) Within two Business Days of receiving an Access Application, the Port Operator must provide the Applicant with written notice acknowledging receipt of the Access Application and:

(i) confirming that it contains sufficient information to enable the Port Operator to properly consider the Access Application; or

(ii) requiring the Applicant to provide the Port Operator with such:

(A) additional information; and

(B) clarification of any information provided in the Access Application,

as is reasonably necessary for the Port Operator to properly consider the Access Application.

(c) Within five Business Days of receiving a notice under clause 7.3(b)(ii), the Applicant must provide the requested additional information or clarification.

(d) Within two Business Days of receiving the additional information or clarification under clause 7.3(c), the Port Operator must provide the Applicant with written notice confirming whether the additional information or clarification enables the Port Operator to properly consider the Access Application.

(e) If the additional information or clarification is insufficient to enable the Port Operator to properly consider the Access Application, the process in clauses 7.3(b)(ii), 7.3(c) and 7.3(d) will be repeated until:

(i) the Applicant provides the information and clarifications required to enable the Port Operator to properly consider the Access Application; or

(ii) the Applicant or the Port Operator serves a Dispute Notice in relation to the Access Application; or

(iii) the Applicant withdraws the Access Application.

7.4 Eligibility

(a) In this Undertaking, **eligible Applicant** means:

(i) an Applicant that:

(A) has lodged an Access Application; and

(B) has received notice from the Port Operator that the Access Application contains sufficient information to enable the Port Operator to properly consider the Access Application, and

(ii) if requested by the Port Operator, has demonstrated that it meets the Eligibility Requirements.

(b) The Port Operator may, by written notice to the Applicant, at the Applicant’s cost, require the Applicant to demonstrate to the Port Operator’s reasonable satisfaction, that:
(i) the Applicant is Solvent;
(ii) the Applicant and its Related Bodies Corporate are not currently in,
and in the previous two years have not been in Material Default;
(iii) the Applicant:
   (A) 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 the ability to pay
   access charges and insurance premiums when they fall due;
   or
   (B) provides Credit Support as specified by the Port Operator;
      and
(iv) the Applicant is an Accredited Wheat Exporter.

(c) The following information may be regarded as sufficient information for
the Port Operator to determine solvency for the purpose of this clause
7.4:
(i) the information required to be provided on a CBH credit application
    form; and
(ii) the Applicant’s audited financial statements for the last financial
    year, including an audited statement of profit and loss and an
    audited statement of assets and liabilities; and
(iii) credit check from an independent credit reporting agency.

(d) The Port Operator may give a written request to the Applicant to
    demonstrate that it satisfies the Eligibility Requirements:
(i) within five Business Days of the Port Operator receiving the
    Applicant’s Access Application; and
(ii) after that time, within five Business Days of the Port Operator
    becoming aware of any credible grounds which, in the Port
    Operator’s opinion, give rise to a reasonable assumption that the
    Applicant may no longer satisfy the Eligibility Requirements.

(e) The Applicant must demonstrate that it meets the Eligibility
    Requirements within seven Business Days of a written request by the
    Port Operator. If the Applicant does not provide information or sufficient
    information to the Port Operator within this time then the Applicant will be
    deemed to have failed or no longer satisfy the Eligibility Requirements
    (as the case may be).

(f) The Port Operator’s obligations under this Undertaking to:
(i) negotiate or continue negotiating with an Applicant under this
    Undertaking; and
(ii) enter into an Access Agreement,
    is subject to the Applicant demonstrating that it meets the Eligibility
    Requirements.
(g) If the Port Operator decides that under this Undertaking it is entitled to refuse or cease to negotiate with the Applicant for any reason, including because the Applicant fails or ceases to satisfy the Eligibility Requirements, within two Business Days of that decision the Port Operator must give written notice of that fact to the Applicant, including the reasons for its decision.

(h) If after receiving a notice under clause 7.4(g) the Applicant disagrees that the Port Operator is entitled under this Undertaking to refuse or cease to negotiate with the Applicant, then that matter will constitute a Dispute and the Applicant may within ten Business Days of receiving the notice refer the Dispute to arbitration under clause 8.4. Subject to any other directions by the arbitrator, if the arbitrator determines that the Port Operator is not entitled under this Undertaking to refuse or cease to negotiate with the Applicant:

(i) the Port Operator must commence or recommence negotiations immediately; and

(ii) where the Negotiation Period had commenced before the Port Operator ceased negotiations, the Negotiation Period will be deemed to have been suspended from the date of the notice under clause 7.4(g) until the date of the arbitrator’s determination.

7.5 Standard Access Agreement

(a) If an eligible Applicant requires the Port Terminal Services to be provided under the terms offered in the Standard Access Terms, then:

(i) when the Applicant submits its Access Application, or at any time after submitting its Access Application, the Applicant may give the Port Operator written notice of that fact; and

(ii) subject to clause 7.5(b), within five Business Days of the Port Operator receiving a notice under clause 7.5(a)(i), the Port Operator and the Applicant must execute an Access Agreement in the form of the Standard Access Terms.

(b) The time period in clause 7.5(a)(ii) will:

(i) be suspended for any period:

(A) taken by the Applicant to demonstrate that it satisfies the Eligibility Requirements pursuant to clause 7.4(e); and

(B) taken to resolve a Dispute referred to in clause 7.4(h), and

(ii) cease on 15 September each year, the obligation on the Port Operator and the Applicant to execute an Access Agreement will cease to apply and clause 7.7 will apply.

(c) If an eligible Applicant requires the Port Terminal Services to be provided under terms other than those offered in the Standard Access Terms, then the Port Operator and the Applicant must comply with the negotiation procedures under clause 7.6.
7.6 **Negotiation of Access Agreement**

(a) This clause 7.6 applies only when:

(i) the eligible Applicant requires the Port Terminal Services to be provided under terms other than those offered in the Standard Access Terms; or

(ii) the Port Operator seeks an Access Agreement Variation.

(b) Each of the Port Operator and the eligible Applicant must negotiate for the Applicant’s access to the Port Terminal Services or the Port Operator’s request for an Access Agreement Variation in good faith and in accordance with this clause 7.6.

(c) The period during which the Port Operator and the eligible Applicant must negotiate the Applicant’s Access Application or the Port Operator’s request for an Access Agreement Variation (**Negotiation Period**):

(i) commences on the later date of:
   
   (A) a notice under clause 7.3(b)(i);
   
   (B) a notice under clause 7.3(d) confirming that the additional information or clarification provided by the eligible Applicant enables the Port Operator to properly consider the Access Application; or
   
   (C) a request for an Access Agreement Variation by the Port Operator under clause 4.3; and

(ii) ceases on the earlier of:

   (A) execution of an Access Agreement in respect of the Access Application or execution of Varied Terms of Access in respect of an Access Agreement Variation;

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

   (C) written notification by the Port Operator that it no longer wishes to proceed with an Access Agreement Variation;

   (D) 15 September each year; or

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

(d) Subject to clause 7.6(e), upon cessation of the Negotiation Period the obligation of the parties to negotiate will cease.

(e) Without limiting the definition of Dispute:

(i) if the eligible Applicant has complied with clause 7.6(b) throughout the Negotiation Period but the parties do not execute an Access Agreement before the conclusion of the Negotiation Period; or
(ii) If the Negotiation Period commences after 15 June, the eligible Applicant has complied with clause 7.6(b) but at any time during the Negotiation Period in the Eligible Applicant’s reasonable opinion the Port Operator is not complying with clause 7.6(b); or

(iii) if the Port Operator has complied with clause 7.6(b) throughout the Negotiation Period but the parties do not execute Varied Terms of Access before the conclusion of the Negotiation Period, that matter will constitute a Dispute which either the Port Operator or the Applicant may refer to arbitration under clause 8.4.

7.7 15 September deadline – Auctions
Where the Port Operator and the Applicant have not executed an Access Agreement whether pursuant to clause 7.5, clause 7.6 or clause 8 and the reason for the failure to execute is that the deadline of 15 September was reached prior to execution of an Access Agreement, the Applicant may resubmit its application at any time after the conclusion of the auction process and the resubmitted application will be dealt with as a new application for access to the Port Terminal Services, to which the process in clause 7.5 or clause 7.6 (as the case may be) will apply.

7.8 Transitional arrangements
(a) Where person lodged an Access Application under the Original Undertaking seeking access to port terminal services (Original Access Application) and the person:

(i) commenced negotiations with the Port Operator prior to the Commencement Date; or

(ii) is in a Dispute (as that term is defined in the Original Undertaking) with the Port Operator concerning access to port terminal services pursuant to the Original Undertaking,

but has not executed an Access Agreement prior to the Commencement Date, then, unless otherwise agreed by the parties, and notwithstanding anything in the Original Undertaking, the Port Operator will be entitled to:

(iii) terminate the negotiations; and

(iv) terminate the Dispute with each party being liable for its own costs and one half of the arbitrator’s costs.

(b) The Port Operator must, within two Business Days of the Commencement Date, notify a person referred to in clause 7.8(a) in writing:

(i) of the termination of the negotiation or Dispute;

(ii) of the person’s rights to enter into a Transition Agreement pursuant to this clause; and

(iii) of the Eligibility Requirements (if the Port Operator is not already satisfied, acting reasonably, that the person meets the Eligibility Requirements) and the date by which the person must

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demonstrate the Eligibility Requirements, being no earlier than seven Business Days from the date of the notice.

(c) Within two Business Days of the later of the date of notice referred to in clause 7.8(b) or the person demonstrating that it meets the Eligibility Requirements, the Port Operator must offer to provide access to the equivalent Port Terminal Services requested in the Original Access Application under a “Transition Agreement” being an Access Agreement in the form of the Standard Access Terms for the relevant Port Terminal Services. The Port Operator’s offer must remain open for at least five Business Days from the date of the notice.

(d) If the person accepts the Port Operator’s offer to provide access to the Port Terminal Services under a Transition Agreement, the parties must execute the Transition Agreement within three Business Days of the person’s acceptance.

(e) The execution of the Transition Agreement does not prevent the parties from entering into an Access Agreement under clause 7.

(f) The Transition Agreement will terminate on the earlier of:
   (i) the date on which an Access Agreement is entered into pursuant to clause 7 (whether by agreement or determination by an arbitrator); and
   (ii) 31 October 2012.

8 Dispute resolution

8.1 Disputes

(a) Any Dispute must, unless otherwise expressly agreed by both parties, be resolved in accordance with this clause 8.

(b) Either party may give to the other party to the Dispute a notice in writing (Dispute Notice) specifying the Dispute and requiring it to be dealt with in the manner set out in this clause 8. The parties must act in good faith and attempt to resolve the Dispute as soon as is practicable.

(c) Any disputes in relation to an executed Access Agreement will be dealt with in accordance with the provisions of that Access Agreement.

(d) The Port Operator will no later than 2 weeks after 31 July of each year provide a report to the ACCC on any disputes in relation to an Access Agreement and any Disputes in the period from 1 August in the previous year to 31 July (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 resolutions and the status of unresolved matters.
8.2 Negotiation
Within five Business Days of a party giving the other party a Dispute Notice, senior representatives from each party will meet and negotiate in good faith to resolve the Dispute.

8.3 Mediation
(a) If the Dispute is not resolved under clause 8.2 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 formal mediation conducted by a mediator appointed by agreement between the parties or as appointed by the President of the Western Australian Chapter of the Institute of Arbitrators and Mediators of Australia (IAMA); or
   (ii) if the parties do not agree 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 8.4.

(b) Unless the parties agree otherwise:
   (i) any mediation will be conducted by a mediator under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner);
   (ii) any mediation must be conducted within ten Business Days of the appointment of the mediator;
   (iii) each party may appoint a person, including a legally qualified person to represent it or assist it in a mediation;
   (iv) each party will bear their own costs relating to the preparation for and attendance at a mediation; and
   (v) the costs of the mediator will be borne equally by the parties.

8.4 Referral to arbitration
(a) If the Dispute is not resolved under clause 8.3 either party may by notice in writing to the other party and to any appointed mediator terminate any negotiation or mediation proceedings and give notice that the Dispute must be referred to arbitration under this clause 8.4.

(b) Where a Dispute is referred to arbitration, it must be referred to the ACCC at the address specified in clause 11(c) in the first instance.

(c) Upon referral to the ACCC of the Dispute:
   (i) within five Business Days of receipt of the referral notice, the ACCC may give notice to the parties as to whether the Dispute must be arbitrated by the ACCC or referred to a private arbitrator; and
   (ii) if the ACCC does not give a notice under clause 8.4(c)(i), the ACCC will be deemed to have given notice to the parties confirming that the Dispute be referred to a private arbitrator.
(d) The ACCC may approve a Member to exercise the power to:
(i) determine whether a Dispute must be arbitrated by the ACCC or referred to a private arbitrator; and
(ii) give a notice under clause 8.4(c)(i).
(e) Where the ACCC determines that it will conduct the arbitration such arbitration must be conducted by the ACCC in accordance with the arbitration provisions of Part IIIA of the CCA. 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.
(f) Where either party serves notice under clause 8.4(a), that notice must include:
(i) the contact details for the parties to the Dispute;
(ii) whether the parties have agreed or are likely to agree upon a private arbitrator if the ACCC does not arbitrate the Dispute; and
(iii) an agreement by that party in the case of referral by the ACCC of the Dispute to a private arbitrator to:
(A) pay any amounts determined in accordance with clause 8.9; and
(B) indemnify the private arbitrator from any claims made against the private arbitrator arising in connection with the performance by the private arbitrator of its duties, such indemnity excluding circumstances where the conduct of the private arbitrator constitutes wilful negligence, or is dishonest or unlawful conduct.

**8.5 Arbitration procedure – private arbitrator**

(a) If a Dispute is referred to a private arbitrator, the parties must act in good faith and attempt to agree upon a suitably qualified person to act as arbitrator.

(b) If the parties fail to agree an arbitrator within ten Business Days of the ACCC giving a notice under clause 8.4(c)(i) referring the Dispute to a private arbitration, or the ACCC being deemed to give a notice under clause 8.4(c)(ii), either party may request the President of the Western Australian Chapter of the IAMA to appoint an arbitrator, such appointment to be made within five Business Days of the request to IAMA.

(c) Subject to the involvement of, and disclosures to, the ACCC, unless the Port Operator and the Applicant agree otherwise, the arbitration by a private arbitrator must be conducted in private.

(d) A party may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration.

(e) The private arbitrator will, when conducting the arbitration:
(i) keep the ACCC informed of the progress of the arbitration, including timelines and processes for making submissions;

(ii) observe the rules of natural justice but is not required to observe the rules of evidence;

(iii) proceed as quickly as possible and consistent with a fair and proper assessment of the matter;

(iv) have the right to decide on the form of presentations;

(v) encourage a written presentation by each party with exchange and rebuttal opportunities and questioning by the private arbitrator;

(vi) call on any party the private arbitrator believes necessary to give evidence;

(vii) permit the ACCC, on its request, to make submissions to the private arbitrator on matters relevant to the Dispute;

(viii) decide how to receive evidence and consider the need to keep evidence confidential and the need to protect the confidentiality of the arbitration process;

(ix) present its determination in a draft form to the parties and hear argument from the parties before making a final determination;

(x) hand down a final determination in writing which includes all 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; and

(xi) provide a copy of the final determination to the ACCC at the time of handing down the final determination.

(f) The private arbitrator may at any time terminate the 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.

(g) The Commercial Arbitration Act 1985 (WA) will apply to an arbitration conducted by a private arbitrator. Subject to law, to the extent of any inconsistency between that Act and the provisions of this Undertaking, the provisions of this Undertaking will prevail.

8.6 Matters which private arbitrator must take into account

(a) In deciding a Dispute the private arbitrator will take into account:

(i) the principles, methodologies and provisions set out in this Undertaking;

(ii) the provisions of Part IIIA of the CCA;
(iii) any relevant guidelines published by the ACCC;
(iv) any submissions provided by the ACCC; and
(v) any other matters that the private arbitrator thinks are appropriate
to have regard to.

(b) In making its determination, the arbitrator:
(i) may deal with any matters referred to in section 44V of the CCA;
(ii) will not make a determination that would have any of the effects
described in section 44W of the CCA; and
(iii) will take into account the matters referred to in section 44X of the
CCA.

(c) The arbitrator 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.

8.7 Confidentiality – private arbitration

(a) The private arbitrator must take all reasonable steps to protect the
confidentiality of information that a party has identified as confidential or
commercially sensitive.

(b) The private arbitrator may require the parties to comply with rules and
orders aimed at protecting the confidentiality of information provided by
the parties, including:
(i) requiring each party to give confidentiality undertakings to the
other party and their external advisers; and
(ii) limiting access to confidential information to specified individuals
subject to confidentiality undertakings provided by those
individuals.

(c) The private arbitrator may make confidential and non-confidential
versions of its determination and limit access to the confidential versions
to specific individuals.

(d) Nothing in this clause 8.7 prevents a private arbitrator from, or limits the
extent to which a private arbitrator may, provide information to the
ACCC.

8.8 Effect of private arbitrator’s determination

(a) The determination of the private arbitrator will be final and binding,
subject to any rights of review by a court of law.

(b) Except where the determination or direction is subject to a review by a
court of law:
(i) if an Applicant does not comply with a determination or direction of
the private arbitrator, then the Port Operator will no longer be
obliged to continue negotiations regarding the provision of access
for that Applicant; and
(ii) the Port Operator will comply with the lawful directions or
determinations of the private arbitrator.

8.9 Private arbitrator’s costs
The private arbitrator’s costs and the costs of the parties to the arbitration will
be borne by the parties in such proportions as the private arbitrator determines.
Each party may make submissions to the private arbitrator on the issue of
costs at any time prior to that determination.

8.10 Backdating of arbitration determination
Subject to clause 8.11, the ACCC and a private arbitrator (as the case may be)
have the discretion to determine that an arbitration determination takes effect
from the:

(a) date of the determination (provided such date is within the term of this
Undertaking); or
(b) date on which the Dispute Notice was served; or
(c) date on which the relevant Access Application was submitted.

8.11 Absolute deadline for Disputes, arbitration or mediation
Notwithstanding anything else in this clause 8, any Dispute, mediation or
arbitration must be concluded and, if applicable, a determination handed down,
by 15 September (regardless when the Dispute, mediation or arbitration
commenced). If the Dispute, mediation or arbitration is not concluded and, if
applicable, a determination handed down, by such date:

(a) the Dispute, mediation or arbitration will be automatically terminated with
each party being liable for its own costs and one half of the arbitrator’s
costs (if applicable); and
(b) the provisions of clause 7.7 will apply.

9 Confidentiality

(a) Subject to clause 9(b), if a party provides Confidential Information to the
other party as part of the negotiation or dispute resolution or arbitration
processes under this Undertaking, the receiver of the Confidential
Information will treat that Confidential Information as secret and
confidential and the property solely of the provider of the Confidential
Information and not use that Confidential Information for any purpose
other than that which the provisions of this Undertaking allow.

(b) A party is permitted to disclose Confidential Information to the extent
necessary for the provision of information:

(i) to a mediator or arbitrator or to the ACCC as provided for under
the provisions of this Undertaking; and
(ii) for the purposes of advice from legal advisors, financiers,
accountants or other consultants (provided they are under a legal
obligation not to disclose the Confidential Information to any third
party).
Nothing in this clause 9 prevents a party or a private arbitrator from providing, or limits the extent to which a party or a private arbitrator may provide, information to the ACCC.

10 Capacity management

10.1 Compliance with Port Terminal Rules

(a) The Port Terminal Rules must be, and continue to be, a comprehensive statement of the Port Operator’s policies and procedures for managing demand for Port Terminal Services.

(b) The Port Terminal Rules set out the methods for allocating capacity at the Port Terminal Facilities, including by an auction system. If the Port Operator intends to amend the Port Terminal Rules to significantly amend the capacity allocation system the Port Operator will seek a variation to the Undertaking pursuant to section 44ZZA(7) of the CCA.

(c) The Port Operator must comply with the Port Terminal Rules when providing or accessing the Port Terminal Services under an Access Agreement.

(d) The Port Operator may require an Applicant to agree to comply with the Port Terminal Rules as a condition of acquiring Port Terminal Services.

(e) The Port Operator must publish the Port Terminal Rules on its website.

10.2 Variation of Port Terminal Rules

(a) The Port Terminal Rules may be varied by the Port Operator provided that:

(i) the variation is consistent with this Undertaking and in particular clauses 6.2 and 10.8;

(ii) the Port Operator complies with:

(A) the process in clause 10.3 for typographical, formatting or grammatical errors;

(B) the process in clause 10.4 for standard amendments; or

(C) the process in clause 10.5 for exceptional circumstances.

(b) The Port Terminal Rules must always include an expeditious dispute resolution mechanism for dealing with disputes over compliance with the Port Terminal Rules or the Auction Rules.

10.3 Typographical, formatting and grammatical amendment process

(a) The Port Operator may amend any typographical, formatting or grammatical error that is apparent on the face of the text of the relevant rule or rules in the Port Terminal Rules.

(b) If the Port Operator amends a typographical, formatting or grammatical error, it must publish on its website within one Business Day of making the amendment:
(i) a notice listing the paragraph or paragraphs to which amendments were made; and

(ii) a marked-up version of the Port Terminal Rules showing the amendments.

(c) An amendment under this clause 10.3.10.3 takes effect when the Port Operator publishes the information in accordance with clause 10.3(b) or other such later date as the Port Operator specifies.

10.4 Standard amendment process

If the Port Operator wishes to make an amendment other than to correct an error under clause 10.3.10.3 or in exceptional circumstances under clause 10.5.10.5, the Port Operator must:

(a) publish a notice (Draft PTR Variation Notice) on the Port Operator’s website containing or annexing the following:

(i) a copy of the relevant part of the Port Terminal Rules with the proposed variation shown in mark-up;

(ii) a statement of the Port Operator’s reasons for the variation;

(iii) a request that interested parties provide written responses in relation to the proposed changes. The deadline for responses must be no earlier than ten Business Days from the date of publication of the Draft PTR Variation Notice;

(iv) a contact name and address for written responses to be addressed to the Port Operator;

(v) an invitation for interested parties to request a meeting to discuss the proposed amendment; and

(vi) the proposed date on which the variation is proposed to take effect, which must be no less than thirty Business Days after publication of the Draft PTR Variation Notice.

(b) within one Business Day of publishing the Draft PTR Variation Notice, send copies to all Users and the ACCC;

(c) publish copies of all non-confidential responses received on the Port Operator’s website and provide copies to all Users and the ACCC within two Business Days of receipt of each response provided that the Port Operator is not required to publish on the Port Operator’s website nor provide copies to Users of any written submission which is offensive, abusive or inappropriate for publication;

(d) if requested to do so by any User or the ACCC, conduct a meeting to discuss the proposed variation with interested parties no later than ten Business Days after publication of the Draft PTR Variation Notice. At the Port Operator’s discretion, separate meetings may be held between the Port Operator and individual parties with confidential interests;

(e) review and consider in good faith any written responses and discussions with Users and the ACCC in relation to the proposed changes; and
(f) the Port Operator must publish, on its website a **Final PTR Variation Notice** which:

(i) may

(A) withdraw any amendment proposed in the Draft PTR Variation Notice; or

(B) amend any amendment proposed in the Draft PTR Variation Notice; or

(C) confirm any or all of the variations stated in the Draft PTR Variation Notice,

(ii) must contain or annex the following:

(A) a copy of the relevant part of the Port Terminal Rules with the proposed variation shown in mark-up;

(B) a statement of the Port Operator’s reasons for the variations to be made;

(C) a report summarising any views expressed by interested parties in relation to the Draft PTR Variation Notice;

(D) a statement of the Port Operator’s reasons for any withdrawal or amendment of a variation proposed in the Draft PTR Variation Notice;

(E) the date on which the variation will take effect, which must be no less than twenty Business Days after publication of the Final PTR Variation Notice (**Effective Date**). For the avoidance of doubt, the Effective Date may differ from the date specified in the Draft PTR Variation Notice.

### 10.5 Variation in Exceptional Circumstances

(a) In Exceptional Circumstances, the Port Operator may amend the Port Terminal Rules on two Business Days notice, provided that the Port Operator publishes a notice (**Exceptional Circumstances Variation Notice**) on the Port Operator’s website containing or annexing the following:

(i) a copy of the relevant part of the Port Terminal Rules with the proposed variation shown in mark-up;

(ii) the Port Operator’s reasons for the variation, including the facts and matters that establish the existence of Exceptional Circumstances.

(b) After amending the Port Terminal Rules in accordance with clause **10.5(a)**, the Port Operator must follow the Standard Amendment Process as set out in clause **10.4**, to allow Users an opportunity to make submissions on the amendments made in Exceptional Circumstances. For the avoidance of doubt, after following the Standard Amendment Process the Port Operator may, after taking into account responses received from interested parties, withdraw, amend or confirm
the proposed variation to the Port Terminal Rules specified in the Exceptional Circumstances Variation Notice.

10.6 Objection notice
(a) If the Port Operator seeks to vary the Port Terminal Rules in accordance with clause 10.4 or clause 10.5, the ACCC may object to the proposed variation (or part thereof). If the ACCC objects to a proposed variation (or part thereof), it must issue a notice to the Port Operator stating that it objects to the proposed variation and providing reasons for its objection. The ACCC will publish any notice issued under this clause 10.6(a) on the ACCC’s website.

(b) Any notice issued under clause 10.6(a) must be issued at least ten Business Days prior to the date on which the variation is proposed to become effective.

(c) At least five Business Days before issuing a notice under clause 10.6(a), the ACCC must provide the Port Operator with a draft notice stating that it objects to the proposed variation and providing reasons for its objection.

(d) The ACCC may only issue a draft notice under clause 10.6(c) or a final notice under clause 10.6(a), where the ACCC considers, acting reasonably, that the proposed variation amounts to a breach of the anti-discrimination provision in clause 6.2 or the no hindering access provision in clause 10.8.

(e) The ACCC may withdraw a draft notice under clause 10.6(c) or a final notice under clause 10.6(a) if in all the circumstances it becomes aware that the reasons specified in the draft notice issued under clause 10.6(c) or the notice issued under clause 10.6(a) no longer exist.

(f) If the ACCC issues a notice under clause 10.6(a), the Port Operator will, within three Business Days:
(i) withdraw the proposed variation and commence a new variation process by placing a notice to that effect in a prominent place on the Port Operator’s website and notifying the ACCC in writing; or
(ii) withdraw the proposed variation and confirm the status of the existing Port Terminal Rules by publishing a notice in a prominent place on the Port Operator’s website and notifying the ACCC in writing.

10.7 Transitional measures
(a) All activities performed in accordance with the Port Terminal Rules prior to the Effective Date of any variation will remain valid notwithstanding any subsequent variation of the Port Terminal Rules.

(b) Unless the User and the Port Operator agree otherwise, the nomination of vessels in accordance with the Port Terminal Rules will be governed in accordance with the Port Terminal Rules published at the time of
nomination notwithstanding any subsequent variation of the Port Terminal Rules.

(c) Vessels nominated after the Effective Date of any variation of the Port Terminal Rules will be required to be nominated under the Port Terminal Rules as varied.

10.8 No hindering

(a) The Port Operator and its Related Bodies Corporate must not engage in conduct for the purpose of preventing or hindering access to the Port Terminal Services by an Applicant or User.

(b) A person may be taken to have engaged in conduct for the purpose referred to in clause 10.8(a) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or from other relevant circumstances. This clause does not limit the manner in which the purpose of a person may be established.

10.9 Continuous Disclosure Rules

The Port Operator must comply with the Continuous Disclosure Rules as they relate to the Port Terminal Services.

11 Contact details

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

Customer Account Manager
Grain Operations
Co-operative Bulk Handling Limited
Gayfer House, 30 Delhi Street
West Perth WA 6005

(b) Applicants are also encouraged to review the Port Operator’s web site at www.cbh.com.au which includes information relevant to the Port Terminal Services.

(c) Persons wishing to contact the ACCC in relation to this Undertaking should contact the ACCC at the following address:

General Manager
Transport and General Prices Oversight
Australian Competition and Consumer Commission
Level 35, 360 Elizabeth Street
Melbourne VIC 3000
Fax (03) 9663 3699
12 Publication of key information

12.1 Stocks at port

(a) Subject to clause 12.1(b), each week during the term of the Undertaking, the Port Operator will publish in a prominent place on its website a statement of:

(i) the total amount of Bulk Wheat situated at each of the Port Terminal Facilities;

(ii) the total amount of grain other than Bulk Wheat situated at each of the Port Terminal Facilities; and

(iii) the three grades of Bulk Wheat contributing the largest tonnage at each of the Port Terminal Facilities.

The Port Operator must use reasonable endeavours to ensure that the statement is accurate within + / - 5%.

(b) The Port Operator will not be obliged to publish any of the information referred to in clause 12.1(a) where the Port Operator, acting reasonably, considers that the disclosure of such information may:

(i) enable particulars relating to any person to be ascertained; or

(ii) adversely affect the interests of a User or the Port Operator.

12.2 Vessel nominations

By the close of the Business Day following the Business Day on which the Port Operator receives a vessel nomination from a User (including its Trading Business), the Port Operator will publish the nomination on the shipping stem and in a prominent place on its website. Vessel nominations received after 4.00pm on a Business Day, or on a non-Business Day will be deemed to be received at 8.00am on the next Business Day.

12.3 Key indicators

(a) Within the last three days of each of December, March, June and September, the Port Operator will publish in a prominent place on its website a statement of the key indicators of its performance of the Port Terminal Services at each Port Terminal Facility, including details of the:

(i) average number of days between the ETA (as defined in the Port Terminal Rules) on original vessel nomination and the date of the presentation of the Notice of Readiness (as defined in the Port Terminal Rules);

(ii) average number of days between presentation of a Notice of Readiness and Commencement of Loading (as defined in the Port Terminal Rules) for vessels that arrive within their contracted Shipping Window (as defined in the Port Terminal Rules);

(iii) average number of days between presentation of a Notice of Readiness and Commencement of Loading for vessels that arrive outside their contracted Shipping Window;
(iv) number of vessels rejected in the year to date;
(v) number of vessels presenting a Notice of Readiness outside of the contracted Shipping Window in the year and month to date;
(vi) quantum of tonnes of wheat exported in the year and month to date; and
(vii) number of vessels loaded in the year and month to date.

(b) The Port Operator will notify the ACCC within five Business Days of publication, that it has published a report on the Port Operator’s website under clause 12.3.

12.4 Capacity

(a) The shipping stem will provide information about the total capacity in relation to the shipping windows available at each Port Terminal Facility and the amount of capacity currently allocated at each Port Terminal Facility.

(b) Where the Port Operator varies capacity in relation to a shipping window available at a Port Terminal Facility by more than + / - 5% from the previously published capacity, it will publish the revised capacity on the shipping stem within 2 Business Days together with a brief explanation for the variation.

12.5 Reference Services

(a) The Port Operator must, throughout the term of this Undertaking, publish in a prominent place on its website (in the same location as the shipping stem) details in relation to:

(i) the specific services covered by the charges set out in the Reference Prices including, where appropriate, the quantity and/or duration of those services; and

(ii) the criteria (if any) which must be satisfied in order to qualify for any charges set out in the Reference Prices.

(b) For clarity:

(i) an eligible Applicant may negotiate with the Port Operator in relation to the Reference Prices and the application of, or Port Terminal Services underpinning, those Reference Prices in accordance with clause 7.6. Any Dispute in relation to such negotiations may be resolved in accordance with clause 8; and

(ii) the criteria referred to in clause 12.5(a)(ii) may include criteria for approved third party storage and/or transport.
DATED the day of 2011.

Executed by Co-operative Bulk Handling Limited:

Signature of director

Signature of secretary/director

Full name of director

Full name of secretary/director
Schedule 1
Access Application information

1 Request details
1.1 Season

1.2 Applicant's Application Type

2 Applicant details
2.1 Company name

2.2 ABN/ACN

2.3 Website

2.4 Address

2.5 Contact details

2.6 Details of authorised company representative (including authorisation)

2.7 Duration of the Access Agreement sought

3 Indicative Export Tonnage
Schedule 2

Indicative Port Terminal Services Agreement
PORT TERMINAL SERVICES AGREEMENT

FOR
Standard Port Terminal Services

PROVIDED TO

XXX
(ABN XXX)

2013/2014
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THIS AGREEMENT dated [                      ]

BETWEEN: CO-OPERATIVE BULK HANDLING LIMITED
(ABN 29 256 604 947)
of Gayfer House, 30 Delhi Street, West Perth WA 6005
("CBH")

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

RECITALS

A. CBH operates Port Terminal Facilities in Western Australia.
B. CBH provides its Customers with Port Terminal Services for the export of Bulk Wheat under the
terms of its Undertaking.
C. The Customer purchases Bulk Wheat and wishes to utilise the Services.
D. CBH has agreed to provide the Customer with the Services pursuant to the terms and conditions of
this Agreement.
E. The Customer has agreed to the terms and conditions of this Agreement and will remunerate CBH
for its provision of the Services in accordance with the terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1  COMMENCEMENT AND TERMINATION

1.1 Commencement

(a) This Agreement will apply to Services provided by CBH in relation to Capacity acquired for
the purposes of shipping Bulk Wheat for a period of a year commencing 1 November to 31
October of the following year ("End Date"), unless otherwise agreed in writing between
CBH and the Customer.

(b) The terms and conditions set out in this Agreement shall be deemed to be accepted by the
Customer if the Customer utilises any of the Services contained in this Agreement
notwithstanding the fact that the Customer has not executed this Agreement.

1.2 General Termination

This Agreement will terminate on the End Date (unless otherwise agreed in writing between CBH
and the Customer) and the Customer must ensure that prior arrangements are made to Outturn all
Bulk Wheat held by CBH prior to this date.

1.3 Immediate Termination

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

(i) the Customer commits a Material Breach of this Agreement;
(ii) an Insolvency Event occurs; or
(iii) the Customer repudiates the Agreement.

(b) If the Agreement is terminated under clause 1.3(a), CBH may require that all the
Customer’s Bulk Wheat be Outturned as soon as possible following termination, and the
Customer’s obligations under this Agreement will continue until all Bulk Wheat has been Outturned.

1.4 Survival of Terms

Clauses 5.5, 9, 10, 13, 15, 18, 20, 21, 23, 24 and 25 shall survive the termination of this Agreement.

2  DEFINITIONS

In this Agreement:

“ACCC” means the Australian Competition and Consumer Commission.

“Accredited Wheat Exporter” means a person having accreditation as an accredited wheat exporter under the WEAS or, if the requirement to obtain accreditation under the WEMA and WEAS is removed at any time during the term of the Undertaking, means a person otherwise entitled to export Bulk Wheat.

“Accumulation Plan” means a plan for the delivery of grain to a Port Terminal Facility in order to accumulate a cargo for shipping.

“Acquirer” means a person who has been nominated as the buyer of grain being delivered to a site owned, operated or managed by CBH for the purposes of receiving or storing grain throughout Western Australia, provided that person has entered into a Grain Service Agreement for the current Season.

“Additional Storage Charges” mean the charge with that description prescribed in the Fees and Charges Schedule.

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

“Agreement” means this agreement and all schedules, annexures and attachments.

“Arrived” “Arrives” and “Arrival” means the time at which a vessel arrives at the waiting area designated from time to time by the relevant port authority for the Port Terminal Facility (whether or not it sets anchor), is ready to proceed to berthing and has presented a Notice of Readiness.

“Auction” means the sale by auction of Auction Capacity.

“Auction Capacity” has the meaning given in the Port Terminal Rules.

“Auction Premium” means any additional amount paid by the Customer for Capacity which is in excess of the start price for Capacity within a Lot in the Auction.

“Auction Premium Rebate” means the rebate calculated in accordance with Schedule 2.

“Auction Rules” means the rules of that name published by CBH from time to time attached as Schedule 1 to the Port Terminal Rules. The current version of these rules can be found on CBH’s website, www.cbh.com.au.

“BAMA Contributions” means contributions that CBH, deducts and remits to the Director General of the Department of Agriculture and Food on a per tonne basis pursuant to the Biosecurity and Agriculture Management Act 2007 (WA).

“Bulk Handling Act” means the Bulk Handling Act 1967 (WA).

“Bulk Handling Regulations” means the Bulk Handling Act Regulations 1967 (WA).

“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.

“Bulk Wheat Entitlement” means the Customer’s entitlement under the Bulk Handling Act or this Agreement to the possession of Bulk Wheat in CBH’s custody.
“Bulk Wheat Receival Services” means the Bulk Wheat receival services provided by CBH pursuant to clause 5.

“Bulk Wheat Storage Services” means the storage services provided by CBH pursuant to clause 6.

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

“Capacity” means the capacity of a Port Terminal Facility, to put grain on board a vessel at a Port Terminal Facility during a defined period, measured in tonnes.

“Capacity Reposition Fee” has the meaning given in the Fees and Charges Schedule.

“Capacity Transfer Fee” means the fee with that description prescribed in the Fees and Charges Schedule.

“CCA” means the Competition and Consumer Act 2010 (Cth).

“Charter Party” means the agreement between the owner of a vessel and the party hiring the vessel for use of the vessel in transporting a cargo.

“Commencement Date” means the later of:
(a) 1 October of the year the agreement was executed; or
(b) the date of execution of this Agreement.

“Contaminant” means a Level 1 Contaminant, a Level 2 Contaminant or a Level 3 Contaminant as the case requires.

“Corynetoxins Contamination” means contamination by low molecular weight chemicals that cause annual ryegrass toxicity.

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

“Customer’s Manager” means the Customer’s representative who is responsible for the Customer’s Bulk Wheat as notified in writing to CBH.

“DAFF” means the Department of Agriculture, Fisheries and Forestry.

“DAFF Approved Officer” means a person approved by DAFF to perform, on behalf of the Australian Government, export inspection, sampling and testing activities under Australia’s export legislation.

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

“Direct to Port Delivery Declaration Form” means the Port Delivery Form as published by CBH from time to time.

“Dispatch” means the money payable by the vessel owner to the charterer if the vessel completes loading within the agreed Laytime. It is customarily expressed in US dollars per day or portion thereof.

“End Date” has the meaning given in clause 1.1(a).

“ETA” means the estimated time of arrival of the Nominated Vessel.

“Export Fee” means the fee with that description prescribed in the Fees and Charges Schedule.

“Export Outturn Request” means an export outturn request in relation to Port Outturning Services.
“Fair Market Price” means the average value at the relevant time and place (of the requirement to determine the Fair Market Price) to be derived from the average of three independent broker valuations by a broker appointed by Grain Trade Australia, with the valuations to take into account the Grade and variety and taking into account the cost of insurance, levies, taxes, charges, Freight and associated costs.

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

“Force Majeure” has the meaning given in clause 15.1.

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

“Freight” means the independent Customer freight charges for delivery of Bulk Wheat to a Port Terminal Facility payable by a Customer.

“Fumigation Statement” means a statement declaring that a particular tonnage of Bulk Wheat has been fumigated, and shall be in the form adopted and prescribed by CBH from time to time.

“Genetically Modified Organism” has the meaning given to that term in the Gene Technology Act 2000 (Cth).

“Good Operating Practices” means the practices, methods and acts engaged in or by a party who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced Australian operators engaged in the same type of undertaking under the same or similar circumstances and conditions.

“Government Agency” means any applicable Western Australian or Australian Federal Government department, authority, instrumentality or agency having jurisdiction in respect of any matter relating to this Agreement.

“Grace Period” means the period of 14 days commencing on the day following the last day of the Shipping Window.

“Grade” means, in relation to Bulk Wheat, the grade of the Bulk Wheat actually delivered to the Port Terminal Facility.

“Grain Service Agreement” means an agreement between CBH and an Acquirer for the provision of storage and handling and other services.

“Gross Negligence” means, if a duty of care is owed, an act or omission done with reckless disregard, whether consciously or not, for the consequences of the act or omission.

“GST” means any tax imposed by or through the GST Legislation on a supply (without regard to any input tax credit).

“GST Legislation” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related tax imposition act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such acts.

“Harvest Shipping Period” means the period from 1 November to 15 January of the following year.

“Heavy Metal Contamination” means any heavy metal that if it comes into contact with or is contained in Bulk Wheat would present, in CBH’s reasonable opinion, a health risk to the environment or humans, irrespective of whether that heavy metal is airborne, solid or contained in solution.

“HMMS” is CBH’s Harvest Mass Management Scheme.

“Indirect or Consequential Loss” means indirect, consequential or remote loss and any loss in the nature of compensation for loss of production, loss of profit, loss of opportunity, loss of markets,
loss of use of money, goods or other property or loss of goodwill or business reputation including any losses that the Customer may suffer in the event that the ability to resell the Bulk Wheat is adversely affected.

“Insolvency Event” means where the Customer:

(a) does not pay its debts as and when they fall due;

(b) commits an act of bankruptcy;

(c) enters into a composition or arrangement with its creditors or calls a meeting of creditors with the view to entering into a composition or arrangement;

(d) has execution levied against it by creditors, debenture holders or trustees under a floating charge;

(e) takes or has taken or instituted against it any actions or proceedings, whether voluntary or compulsory, which have the object of or which may result in the winding up or bankruptcy of the Customer (except, in the case of a corporation, for the purposes of a solvent reconstruction);

(f) has a winding up order made against it or (except for the purposes of a solvent reconstruction) passes a resolution for winding up; or

(g) is a party to the appointment of or has an administrator, official manager, receiver, receiver/manager, provisional liquidator or liquidator appointed to the whole or part of its property or undertaking.

“Laycan” means the earliest date on which Laytime can commence and the latest date, after which the charterer can opt to cancel the Charter Party.

“Laytime” means the amount of time that a charterer has to load a vessel before the vessel is deemed to be on Demurrage.

“Level 1 Contaminant” means a contaminant identified as Level 1 in the CBH contaminant list published by CBH for the current Season as amended from time to time, being contaminants that in CBH’s opinion cannot be removed and constitute a significant food safety or quality risk.

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

“Level 3 Contaminant” means a contaminant identified as Level 3 in the CBH contaminant list published by CBH for the current Season as amended from time to time, being contaminants that in CBH’s opinion present a food safety or processing risk and can be managed on-farm.

“LoadNet® for Marketers™” means CBH’s grain management interface for Acquirers which is available to registered users (including the Customer) at www.cbh.com.au

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

“Lost Capacity” has the meaning given in the Port Terminal Rules.

“Lost Capacity Fee” has the meaning given in the Fees and Charges Schedule.

“Lot” means the Capacity within a Shipping Window at a Port that is offered to Customers at Auction.

“Material Breach” means a breach which:

(a) in the reasonable opinion of CBH, is not capable of being remedied; or

(b) the Customer has failed to remedy after being given at least 14 days written notice by CBH to do so.
“Microbial Contamination” means contamination by pathogenic (disease-causing) microorganisms including *E. coli*, *Cryptosporidium*, *Giardia*, and *Salmonella*.

“NCV” means no commercial value.

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

“Nominated Tonnage” means the tonnage of Bulk Wheat to be shipped in a particular Nominated Vessel and notified to CBH in accordance with this agreement and the Port Terminal Rules.

“Nominated Vessel” means a vessel nominated by the Customer and notified to CBH in accordance with the terms of this agreement and the Port Terminal Rules.

“Notice of Readiness” means a valid notice of readiness served by the owner of the Nominated Vessel pursuant to the Vessel Charter party stating, amongst other things, that the Nominated Vessel is ready to load in all respects (including physically and legally).

“Outturn” means to cause Bulk Wheat to physically leave CBH's custody at a Port Terminal Facility and is deemed to occur when the Bulk Wheat exits the delivery spout into a Bulk Wheat shipping vessel at which point physical possession of the Bulk Wheat passes from CBH to the Customer or a third party authorised by the Customer.

“Pesticide Residue Contamination” means contamination by any substance in Bulk Wheat resulting from the use of a pesticide. The concept of pesticide residue includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of potential toxicological significance.

“Port” means the ports of:

(a) Albany;
(b) Esperance;
(c) Geraldton; and
(d) Kwinana.

“Port Grain Holdings” means the information about quantities of the Customer’s grain held at a Port by CBH and as required to be published in accordance with the Undertaking or Port Terminal Rules.

“Port Outturning Services” means the services provided by CBH pursuant to clause 7.

“Port Terminal Facility” means a ship loader and associated infrastructure that is:

(a) at a Port;
(b) capable of handling Bulk Wheat; and
(c) owned, operated and controlled by CBH, including:
(d) an intake/receiveal facility;
(e) a grain storage facility;
(f) a weighing facility; and
(g) a shipping belt;

that is:
(h) at the port; and

Deleted: *
(i) associated with the ship loader; and

(j) capable of dealing with wheat in bulk.

“Port Terminal Rules” means the port terminal rules published and amended by CBH from time to time in accordance with the Undertaking.

“Port Terminal Service” means the services provided by means of the Port Terminal Facilities which enable an Accredited Wheat Exporter to export Bulk Wheat through the Port Terminal Facilities, including:

(a) unloading and receival by CBH of a Customer’s Bulk Wheat at the Port Terminal Facilities, for the purpose of loading onto a vessel scheduled to arrive at the Port Terminal Facility;

(b) sampling by CBH of a Customer’s Bulk Wheat received and out-turned, to check for visible evidence of the presence of chemical residue, insect activity and live insects or other contaminants, and providing the Customer with a composite shipping sample of the Customer’s Bulk Wheat;

(c) weighing by CBH of a Customer’s Bulk Wheat received and out-turned, using CBH’s weighing facilities, and providing the Customer with a weighbridge ticket or other statement certifying the weight and quantity of Bulk Wheat delivered;

(d) storage by CBH of a Customer’s Bulk Wheat at the Port Terminal Facility for the purpose of export accumulation in a restricted time period and loading onto vessels at the Port Terminal Facility; and

(e) fumigation in response to evidence of insect infestation;

(f) accumulating and assembling Bulk Wheat for the purpose of loading cargo onto a vessel scheduled to arrive at the Port Terminal Facility;

(g) administrative and logistics services required for shipping nomination, acceptance, booking and cancellation;

(h) access to inspectors from the Australian Quarantine and Inspection Service, for inspection of the Customer’s Bulk Wheat received and held at the Port Terminal Facilities; and

(i) out-turning by CBH of a Customer’s Bulk Wheat received at the Port Terminal Facility, and loading onto the Customer’s nominated vessel.

“Pre-Delivery Sample Analysis Form” means the form available from CBH from time to time.

“Related Bodies Corporate” has the meaning given to that term in the Corporations Act 2001 (Cth).

“Relevant Surveys” means all relevant surveys required to be conducted on the Nominated Vessel before it can be loaded with the Bulk Wheat, including, but not limited to a structural survey of the Nominated Vessel and surveys conducted by 

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

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

“Shipping Window” means a half month period of between 14 and 16 days within which a Customer may nominate a vessel to arrive at a Port Terminal Facility for loading of a cargo for which the Customer has been allocated Capacity under the Port Terminal Rules.

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

“Spare Capacity” has the meaning given in the Port Terminal Rules.

“Stack” means a stored quantity of Bulk Wheat delivered to the Port Terminal Facility for export accumulation and loading to a ship.
“Storage” means the silo, bin, Stack or other storage area at a Port Terminal Facility in which Bulk Wheat is accumulated for loading to an export Bulk Wheat shipping vessel.

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

“Tax Invoice” or “Recipient Created Tax Invoice” includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises and/or has the meaning given in the GST Legislation.

“Term” means the term of this Agreement which commences on the Commencement Date and ends on the End Date, unless terminated earlier in accordance with the terms of this Agreement.

“Total Auction Costs” means the cost of auction implementation, preparation, execution, and completion activities, including invoicing and auction reviews.

“Undertaking” means the undertaking provided by CBH to the ACCC under the provisions of the WEMA and Part IIIA of the CCA dated September 2011 and available on the ACCC website.

“Upfront Marketer Fee” means the fee with that description prescribed in the Fees and Charges Schedule.

“Varietal Purity” refers to the consistency in the genetic make-up of seed Bulk Wheat, and is determined by measuring the percentage of seed in the sample of the declared variety.

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

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

“WEMA” means the Wheat Export Marketing Act 2008 (Cth).

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

“Within Tolerance Lost Capacity” has the meaning given in the Port Terminal Rules.

3 INTERPRETATION

In this Agreement:

3.1 Interpretation

(a) headings, sub-headings, captions and service descriptions do not affect the construction or interpretation of this Agreement;
(b) a word in the singular includes the plural of that word and vice versa;
(c) a word of any gender includes the corresponding words of each other gender and a reference to one sex includes a reference to all sexes;
(d) “including” means “including, but not limited to”;
(e) where any word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
(f) a reference in this Agreement to a thing (including an amount) is a reference to the whole and each part of it (but nothing in this clause 3.1(f) implies that performance of part of an obligation is the performance of the whole) and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.
3.2 Documents and Parts of Documents
(a) a reference to any law, document, instrument or agreement, including this Agreement, includes a reference to that law, document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time; and
(b) a reference to a clause or annexure or attachment is (unless the context requires otherwise) a reference to a clause or annexure or attachment to this Agreement.

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

3.4 Time, Money and Measurement
(a) a reference to an amount of money is a reference to the amount in the lawful currency of Australia;
(b) a reference to time is a reference to the local time in Perth, Western Australia (unless otherwise stated);
(c) where any matter or thing is required to be attended to or done on a day which is not a Business Day, it will be attended to or done on the first day thereafter which is a Business Day; and
(d) measurements of physical quantities are in Australian legal units of measurement within the meaning of the National Measurement Act 1960 (Cth).

3.5 Discretions and Approvals
(a) Whenever the Customer is required to form an opinion, give approval, exercise a discretion or perform any act under this Agreement, it must be done reasonably in the circumstances, and based on reasonable grounds, and not capriciously, or arbitrarily refused or unduly delayed.
(b) In making any decision pursuant to this Agreement CBH shall have regard to the efficient running of the CBH Port Terminal Facility and balancing of the interests of all Customers of the Port Terminal Facility.
(c) CBH’s refusal to accept a request for Service will not be a breach of the Agreement for making a decision where the refusal is made in compliance with the provisions of the Port Terminal Rules.

4 PORT TERMINAL RULES
CBH and the Customer:
(a) agree to comply with the Port Terminal Rules; and
(b) acknowledge that in case of any inconsistency between the terms of this Agreement and the Port Terminal Rules, the Port Terminal Rules shall apply.

5 BULK WHEAT RECEIVAL SERVICES
Service Description: This service provides Bulk Wheat receival, storage assessment, weight measurement and handling at the point of receival into a Port Terminal Facility.

5.1 Service Availability
(a) Bulk Wheat Receival Services are provided by CBH under this Agreement for the purpose of export accumulation only and will not be available more than 21 days before the ETA.

(b) CBH agrees to make Bulk Wheat Receival Services available at the Port Terminal Facilities in accordance with the terms and conditions of this Agreement and the Port Terminal Rules.

(c) Prior to requesting Bulk Wheat Receival Services, the Customer must acquire Capacity.

(d) If the Customer requires Bulk Wheat Receival Services, the Customer must submit a Vessel Nomination Form to CBH no later than 22 days prior to the ETA.

(e) At least 22 days prior to the ETA, the Customer must submit a valid Vessel Nomination in accordance with the Port Terminal Rules.

5.2 Before Delivery

(a) CBH requires a representative sample of the Bulk Wheat intended for delivery to minimise the risk of insect or chemical residue contaminated Bulk Wheat being received into the Port Terminal Facility.

(b) The Customer must complete and provide CBH with a Pre-Delivery Sample Analysis Form, paying particular attention to completing the section marked ‘Treatment’.

(c) The Customer must provide a one kilogram representative sample from each source of Bulk Wheat that the Customer intends to deliver to the Port Terminal Facility for placement into Storage. If the grain is from more than one storage type, the Storage identification must be clearly marked on each sample.

(d) The Pre-Delivery Sample Analysis Form with the sample/s for chemical and insect analysis must be couriered direct to: “Australian Grains Centre, 700 Abernethy Road, Forrestfield WA 6058”.

(e) CBH will use all reasonable endeavours to provide the Customer with the sample results within 2 Business Days of the sample being received.

(f) Each acceptable sample analysis will permit the Customer to deliver the Bulk Wheat to the Port Terminal Facility for up to 28 days from the date when the results are reported to the Customer. If the Customer wishes to deliver Bulk Wheat to the Port Terminal Facility after that 28 day period has expired, then the Customer must comply with the procedures in this clause 5.2 again.

(g) If the sample contains any manageable Contaminants, the Bulk Wheat must be treated before a new sample is presented for testing. The costs of assessing the new sample will be paid by the Customer (‘Sample Reassessment Fee’).

(h) The Port Terminal Rules set out the circumstances in which the requirement to provide a pre-delivery sample and conduct chemical residue testing will be waived.

5.3 During Delivery

(a) Upon arrival of each truck load containing the Customer’s Bulk Wheat, CBH staff will assess the VRL of the truck delivering loads to the Port Terminal Facility. Each truck is to have a valid permit to meet the presented combination and the gross weight tendered. Unloading of non-compliant vehicles will be refused and those vehicles will be required to leave the Port Terminal Facility.

(b) The grade, variety and other characteristics of the Bulk Wheat delivered are to be declared in writing by the Customer by no later than the time of delivery and CBH takes no responsibility for the accuracy, completeness or veracity of the information relating to the Bulk Wheat declared by the Customer. If the load is found to be contaminated with Level 1 or Level 2 Contaminants or showing signs of insect infestation or activity the load will be rejected. CBH shall advise the Customer or nominated representative of the rejection as soon as practicable and in any event before the end of the day following the day of delivery.
If a load is found to be contaminated with a Level 1 Contaminant, the Customer will not be permitted to deliver that load or any additional load to CBH Port Terminal Facilities until the Customer has provided CBH with evidence in the form of independent expert verification that there is no further risk of Contamination. Alternatively, the Customer may request CBH to arrange at the Customer's cost for independent expert verification that there is no further risk of Contamination.

Independent expert verification may involve identifying the source site of contamination and the taking of steps by the Customer to ensure that the source site of contamination is not the source site for any future deliveries or that the Customer takes remedial action to ensure that the contaminant has been effectively removed from the source site of contamination.

If a load is found to be contaminated with a Level 2 Contaminant the Customer will not be permitted to deliver that load or any additional load to CBH Port Terminal Facilities until the Customer has provided CBH with evidence that the Customer has taken remedial action to ensure that the contaminant has been effectively removed.

Following completion of the steps outlined in clauses 5.3 (c) and (d) above, the Customer must produce a new representative sample from the source site of the contamination and complete the processes specified under clause 5.2 confirming the absence of contamination, prior to recommencing delivery.

Remedial fumigation following delivery of contaminated grain shall be by means of cylinderised phosphine and the Customer shall pay the Remedial Fumigation charges prescribed in the Fees and Charges Schedule.

### 5.4 Receival Procedures

Where CBH receives a load of Bulk Wheat at the Port Terminal Facility (whether or not delivered by the Customer), CBH will at the time CBH receives the Bulk Wheat:

- record the running Grade of the Bulk Wheat delivered to the Port Terminal Facility declared by the Customer;
- determine the Storage into which the Bulk Wheat will be placed;
- weigh the Bulk Wheat delivered;
- store the Bulk Wheat in accordance with the Bulk Wheat Storage Services and any specific additional storage and handling requirements as agreed to in writing between the Customer and CBH;
- furnish to the Customer a weighbridge ticket or a statement that specifies Bulk Wheat type, running Grade, weight and any other relevant details or specifications; and
- receive from the person tendering a load of Bulk Wheat to CBH at the Port Terminal Facility, the Customer shall deliver to CBH, a written statement declaring:
  - the date of delivery;
  - the place of delivery;
  - the approximate quantity tendered; and
  - the type and variety of Bulk Wheat.

### 5.5 Warranties

The Customer represents and warrants that:

- it owns any Bulk Wheat tendered for delivery by or on behalf of it;
- the full particulars of the variety of the Bulk Wheat disclosed on any form are true and correct;
(c) it has not manipulated or loaded any delivery in any way to prevent the making of an accurate assessment by CBH of the quality of the Bulk Wheat using CBH’s standard sampling procedures;

(d) Bulk Wheat being tendered for delivery will not:
   (i) include any Contaminant; or
   (ii) be in breach of the Bulk Handling Act or the Bulk Handling Regulations;

(e) Bulk Wheat being tendered for delivery will not:
   (i) include any Contaminant; or
   (ii) be in breach of the Bulk Handling Act or the Bulk Handling Regulations;

(f) all of the Bulk Wheat in a delivery has been or is only contained in equipment, bags, farm implements, farm storages and Bulk Wheat motor bodies that have:
   (i) not contained any Bulk Wheat product prior to the containing Bulk Wheat of this current Season and are free from insects and vermin; or
   (ii) previously contained a Bulk Wheat product, but have been freed of all such Bulk Wheat product and is free from insects and vermin;

(g) any vehicle that has previously transported non-Bulk Wheat or contaminated Bulk Wheat products:
   (i) is clean, dry and free of any remaining materials and odours from previous loads;
   (ii) has been washed under high pressure prior to delivering any Bulk Wheat; and
   (iii) has the details of previous loads disclosed on the relevant form;

(h) if any of the Bulk Wheat has been treated with substances for the control of insects, details of the substances and the application of those substances has been provided in writing to CBH on the relevant form and the use of any other chemical in the process of planting, growing and storage of Bulk Wheat has been in accordance with the levels prescribed in any relevant legislation and also in accordance with the usage instructions;

(i) none of the Bulk Wheat in a delivery is a Genetically Modified Organism (unless declared in writing to, and approved in writing by, CBH before the delivery enters the Port Terminal Facility); and

(j) any information it provides to CBH is true and correct and not misleading or deceptive or likely to mislead or deceive.

5.6 HMMS and road vehicle registration

(a) Subclauses 5.6(b) to 5.6(e) inclusive apply in relation to any deliveries from a farm by the Customer or its agent to the Port Terminal Facility during the Harvest Shipping Period or such other period as may be published from time to time by Main Roads WA. All road vehicles delivering Bulk Wheat to a Port must be registered with CBH. Outside of the Harvest Shipping Period (or such other period published by Main Roads WA) CBH is not obliged to receive Bulk Wheat from road vehicles in excess of their relevant mass limits.

(b) The HMMS is incorporated as part of the terms of this Agreement in respect of any deliveries of Bulk Wheat to the Port Terminal Facility by road vehicles that may occur.

(c) If, as part of CBH’s HMMS, the Customer has an option to give CBH a Forfeiture Approval Authority to forfeit Bulk Wheat in excess of the Acceptable Vehicle Mass (as that term is defined in the HMMS), CBH is entitled to deduct, in accordance with the HMMS and the Forfeiture Approval Authority, the relevant tonnage from the delivered Bulk Wheat when calculating the Customer’s Bulk Wheat Entitlement in accordance with clause 6.3. Title to any Bulk Wheat deducted under this clause vests in CBH and CBH may donate the Bulk Wheat or the proceeds from its sale to a charity or local government at CBH’s discretion.

(d) A Forfeiture Approval Authority:
   (i) is valid and binding on the Customer until CBH acknowledges receipt of an instruction to vary it; and
(e) Notwithstanding anything in the HMMS, the Customer agrees:

(i) that it is solely responsible for ensuring that it or its carrier/agent comply with all relevant mass limits prescribed by legislation or regulation for the vehicle used;
(ii) it will take all necessary steps (including unloading of any mass in excess of those prescribed limits) to ensure compliance; and
(iii) to indemnify and keep CBH indemnified against all expenses, Loss or Damage incurred by CBH and all actions, claims and demands which may be made against CBH, that arise in relation to the Customer’s non-compliance with any maximum mass limits prescribed by legislation or regulation for the vehicles used by it or its carrier/agent to deliver Bulk Wheat to a CBH Port Terminal Facility.

6 BULK WHEAT STORAGE SERVICES

Service Description: This service involves storage of Bulk Wheat at Port Terminal Facilities.

6.1 Service Availability

(a) Bulk Wheat Storage Services are provided by CBH under this Agreement for the purpose of export accumulation only.

(b) The Bulk Wheat Storage Services are provided at a Port Terminal Facility if the relevant Storage is available.

6.2 Outturn Specifications

Subject to clauses 6.5 and 6.6, the loads of Bulk Wheat delivered to CBH will be Outturned by CBH upon request from the Customer, subject to the terms of this Agreement.

6.3 Bulk Wheat Entitlement

(a) CBH will maintain a register of the Customer’s entitlement to Bulk Wheat stored at Port Terminal Facilities (the “Bulk Wheat Entitlement”). A certificate by an officer of CBH as to the Bulk Wheat Entitlement shall be prima facie evidence of the loads of Bulk Wheat that have been delivered to CBH and which the Customer is entitled to have Outturned from the CBH Port Terminal Facility, subject always to the terms and conditions of this Agreement.

(b) Upon request and subject always to clause 6.3(d), CBH will provide the Customer with information regarding the Bulk Wheat held at the Port Terminal Facility and delivered to the Port Terminal Facility by the Customer.

(c) The Bulk Wheat Entitlement of the Customer is calculated at any particular point in time by aggregating the weight of the loads of Bulk Wheat received by CBH at the Port Terminal Facility on behalf of the Customer or transferred to the Customer:

(i) less the relevant Shrinkage factor specified in clause 6.5;
(ii) less the relevant Bulk Wheat Dust Deduction in clause 6.6 where the Bulk Wheat is Outturned via the Port Terminal Facility into the Nominated Vessel;
(iii) less the weight of any Bulk Wheat that is damaged or destroyed as a result of a riot, industrial dispute, civil commotion, war, act of God or any unforeseen cause not attributable to the negligence of CBH;
(iv) less the weight of any NCV Bulk Wheat or damaged Bulk Wheat in respect of which an insurance claim has been made and paid to the Customer in accordance with clauses 13.1 and 14.1;
(v) less the weight of any Outturned Bulk Wheat.

(d) CBH does not warrant the correctness or completeness of data that has been supplied by the Customer in relation to loads of Bulk Wheat delivered to the terminal by the Customer.
6.4 Bulk Wheat Fumigation

(a) CBH will not fumigate Bulk Wheat delivered to the Port Terminal Facility unless insect activity is detected by either or both CBH and DAFF.

(b) Fumigation services as set out in the the Fees and Charges Schedule will be carried out by CBH on all Bulk Wheat where required in its Port Terminal Facility to protect the Bulk Wheat. The application of remedial fumigation services as set out in clause 5.3(g) will limit availability of the Bulk Wheat in accordance with standard CBH Bulk Wheat protection practices. CBH will consult with the Customer as to the type of fumigant to be used. The Customer must nominate a representative who is available on a 24/7 basis to confirm available fumigation options. If CBH using reasonable endeavours is unable to obtain confirmation from the representative or agreement with the representative as to an alternative fumigant, CBH will determine the type of fumigant to be used. The Customer will be responsible for all charges for fumigation services incurred pursuant to this clause 6.4(b) at the rates prescribed in the Fees and Charges Schedule unless an alternative fumigant and rate is agreed.

(c) Where the Bulk Wheat delivered by a Customer to a Port Terminal Facility has been fumigated prior to delivery, the Customer shall provide a Fumigation Statement detailing any Bulk Wheat treatment information following a written request from CBH.

(d) Where Bulk Wheat has been fumigated at the Port Terminal Facility by CBH:

(i) CBH shall have no liability for any delays in loading the Customer’s Vessel as a result of the unavailability of the Bulk Wheat under fumigation;

(ii) CBH shall provide a Fumigation Statement detailing any Bulk Wheat treatment information within 3 Business Days of receiving a written request from the Customer.

6.5 Shrinkage

Notwithstanding any other clause in this Agreement, CBH will apply a Shrinkage factor to all Bulk Wheat delivered by the Customer to the Port Terminal Facility to determine the quantity of Bulk Wheat that CBH is obliged to Outturn on behalf of the Customer.

The Shrinkage factor for Bulk Wheat is 0.50%.

6.6 Bulk Wheat Dust

Dust, chaff or fines removed at any stage of the handling process into a CBH dust extraction system is considered be NCV dust and CBH is entitled to dispose of NCV dust as it sees fit. CBH will apply a Bulk Wheat Dust Deduction of 0.25% from a Customer’s Bulk Wheat Entitlement when the relevant Bulk Wheat type is Outturned from a Port Terminal Facility into a vessel.

6.7 Additional Bulk Wheat Storage Charges

CBH will invoice the Customer for Additional Storage Charges at the rates specified in the Fees and Charges Schedule if:

(a) there is any residual Bulk Wheat Entitlement following the loading of the Customer’s vessel; or

(b) the relevant Shipping Window has passed and the Customer’s Nominated Vessel has not commenced loading as a result of:

(i) the failure of the Customer to make a Vessel Nomination which has an ETA in the Shipping Window;

(ii) delays in the date and time of Arrival of the Customer’s Nominated Vessel or delays in the passing of any Relevant Surveys;

(iii) the Customer failing to meet the Accumulation Plan agreed with CBH; or

(iv) quality issues with the Customer’s Bulk Wheat Entitlement, namely:

   A) the presence of insect activity and live insects in the Bulk Wheat;
B) Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination;

C) the presence, at any level or concentration, of Genetically Modified Organisms; or

D) any other quality issue that would result in the Bulk Wheat not meeting an export specification requested by the Customer which does not comply with the Customer’s Bulk Wheat Entitlement.

6.8 Title to surplus Bulk Wheat

Title in any Bulk Wheat remaining in the CBH system which is surplus to the Customer’s Bulk Wheat Entitlement shall transfer to CBH and CBH shall be entitled to sell or dispose of any surplus Bulk Wheat as it sees fit and retain any proceeds.

7 PORT OUTTURNING SERVICES

Service Description: This service provides bulk Outturning of Bulk Wheat at a Port Terminal Facility into a ship’s hold.

7.1 Service Availability

(a) Port Outturning Services are provided by CBH under this Agreement for the purpose of export accumulation only.

(b) Port Outturning Services are offered at all Port Terminal Facilities in accordance with the terms and conditions contained in this Agreement.

(c) Port Outturning Service charges do not include any rail or road transportation costs in moving Bulk Wheat to the relevant Port Terminal Facility.

7.2 Vessel Nominations

The Customer must request any Port Outturning Services required either online through LoadNet® for Marketers TM, or on a Vessel Nomination Form.

7.3 Vessel Nomination Form

On receipt of a Vessel Nomination, CBH will determine its ability to meet the request and advise the Customer in accordance with the Port Terminal Rules if CBH has:

(a) accepted the Vessel Nomination; or

(b) rejected the Vessel Nomination.

7.4 Operational Decision Making

In making any decision to accept or reject the Vessel Nomination or any amendment to a Vessel Nomination, CBH shall make its determination in accordance with the terms of the Undertaking having regard to the following:

(a) that in making decisions relating to the provision of access to the Port Terminal Services, CBH must balance conflicts of interests of Customers of the Port Terminal Facilities;

(b) the application by CBH of objective commercial criteria and practices and policies to promote fair, reasonable and non-discriminatory Operational Decision making;

(c) giving priority to vessels based on the lead time given between nomination and vessel ETA, and the likely availability of sufficient Bulk Wheat Entitlement at the Port prior to vessel ETA, the likely uncommitted storage capacity at the Port Terminal Facility and the uncommitted inloading capacity necessary to make a Nominated Vessel’s Nominated Tonnage;

(d) the objectives of:
(i) minimising Demurrage at the Port over a given period; and
(ii) maximising throughput of Bulk Wheat at the Port over a given period; and

(e) changes in relevant facts and circumstances including:

(i) insufficient Bulk Wheat Entitlement at the Port accumulated by the Customer necessary to make a Customer's Nominated Vessel's Nominated Tonnage;
(ii) variations in vessel arrival times;
(iii) failure of vessels to pass surveys;
(iv) stability and ship worthiness inspections;
(v) vessel congestion;
(vi) variation in cargo requirements;
(vii) lack of performance of freight providers;
(viii) equipment failure;
(ix) maintenance outages;
(x) contamination of accumulated cargoes or contamination of loads; or
(xi) a Material Breach;
(xii) a Customer not working a vessel or accumulating a cargo on a 24 hour/7 day basis where another Customer is able to do so;
(xiii) the Bulk Wheat is unavailable as a result of fumigation activities pursuant to clause 6.4;
(xiv) the Vessel Nomination contains inadequate or inaccurate information; or
(xv) an event of Force Majeure prevents the scheduling of Port Outturning Services.

7.5 Acceptance of Vessel Nomination

Upon acceptance of a Vessel Nomination, CBH shall Outturn the Bulk Wheat in accordance with the Vessel Nomination Form and all other provisions of this Agreement.

7.6 Outturn Standard

CBH is obliged to Outturn the Bulk Wheat delivered to the Port Terminal Facility by the Customer and held in Storage.

7.7 Weigh

CBH shall weigh all Bulk Wheat Outturned using its certified batch weighers. In the absence of manifest error or fraud the CBH weight measurement will be final.

7.8 DAFF Sampling

CBH will make arrangements for Bulk Wheat to be inspected by DAFF inspectors or a DAFF Approved Officer at the Customer’s cost immediately prior to Outturning the Bulk Wheat onto the Nominated Vessel.

7.9 Auction Premium Rebate

CBH will pay the Auction Premium Rebate (if any) to the Customer within 25 Business Days from the End Date. CBH may, in its discretion elect to pay this rebate in one or more instalments prior to the End Date. If payment of the Auction Premium Rebate in instalments results in the Customer receiving more than they would otherwise be entitled to, the Customer agrees to refund any such overpayment within 10 Business Days of CBH sending a written demand for a refund to the Customer.

7.10 Right to Invoice Prior to Outturning

If Bulk Wheat is scheduled to be Outturned into a ship’s hold from a Port Terminal Facility, CBH reserves the right to invoice the Customer and receive payment for the Port Outturning Service charges prescribed in the Fees and Charges Schedule prior to the Bulk Wheat being Outturned.
onto a ship. Where there are variations in respect of the amount of Bulk Wheat actually Outturned and the costs incurred in Outturning, CBH and the Customer agree that:

(a) within 30 days of the Bulk Wheat being Outturned onto a ship, CBH will, subject to clause 9.1(c), refund any amounts paid by the Customer under this clause in respect of Port Outturning Service charges invoiced by CBH relating to Bulk Wheat that was not Outturned onto a ship; and

(b) CBH is entitled to invoice the Customer for any additional charges prescribed in the Fees and Charges Schedule for Bulk Wheat Outturned by CBH as a direct result of the actions of the Customer or the Customer’s agent.

7.11 Bulk Wheat Export Licence

The Customer warrants that the appropriate Bulk Wheat export licence or accreditation (if applicable) continues to be held prior to requesting Port Outturning Services and that the request is within the terms of the licence. CBH reserves the right to request details of the Bulk Wheat export licence or accreditation, at any time, and the Customer agrees to provide a copy of the licence to CBH within twenty-four (24) hours of any such request.

7.12 Misrepresentation

(a) The Customer warrants that the Bulk Wheat and its Grade will not be misrepresented to third parties or incorrectly recorded on commercial or shipping documents.

(b) The Customer indemnifies CBH against all Loss or Damage incurred in any dispute over Bulk Wheat quality arising from such misrepresentation or incorrect recording of the Grade on commercial or shipping documents.

7.13 Cleanliness

(a) The Customer is responsible for ensuring that all vessels arrive at a Port Terminal Facility in a clean, empty and well maintained state free from any Contaminants or residue.

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

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

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

(e) Vessels are not permitted to be cleaned at any Port Terminal Facility without CBH’s consent. If CBH consents to cleaning of the vessel, and if a vessel fails inspection, CBH can instruct a vessel to be removed from the berth if it is preventing another vessel from loading at the same berth.

7.14 Stevedoring

If the Customer requests, CBH is willing to arrange stevedoring services for the Customer’s vessels when they are loaded at Port Terminal Facilities. Upon request CBH will provide the Customer with the necessary terms and conditions (including charges) for CBH’s provision of stevedoring services.

7.15 Demurrage and Dispatch

The parties may enter into Demurrage and Dispatch arrangements by mutual agreement at the time CBH is notified of the Vessel Nomination in accordance with the Port Terminal Rules, subject to the Customer complying with the Port Terminal Rules.

7.16 Non-Shipment of Bulk Wheat

If Bulk Wheat is not shipped from a Port Terminal Facility as detailed in a Vessel Nomination other than as a result of circumstances directly within the control of CBH, then:
(a) CBH will consult with the Customer about the re-positioning within, or removal from the Port Terminal Facility of the Bulk Wheat; and

(b) after 14 days have passed since the ETA contained in the Vessel Nomination, CBH may remove or reposition Bulk Wheat at its discretion and the Customer shall pay all reasonable costs incurred by CBH.

8 ADDITIONAL INFORMATION AND SERVICES

Service Description: CBH may also provide additional information or services over and above the standard information and services that CBH has agreed to provide under this Agreement.

(a) CBH will provide the Customer with an estimate of its costs and any additional terms and conditions required in order to provide additional information or services. Costs may either be a lump sum or in accordance with normal hourly rates.

(b) The Customer agrees to pay CBH's costs in providing any additional information or services requested by the Customer.

(c) The decision of CBH whether to provide any additional information or services requested by the Customer will be at CBH’s absolute discretion unless it is required to provide such additional information by any law.

9 PAYMENT

9.1 Fees and Charges

(a) In consideration for any Services provided by CBH to the Customer under this Agreement, the Customer agrees to pay CBH for all Services rendered in accordance with the charges set out in the Fees and Charges Schedule.

(b) In particular, and without limiting the charges that may be levied under this Agreement the Customer agrees to pay:

(i) the Upfront Marketer Fee set out in the Fees and Charges Schedule within 5 Business Days of the date of the CBH invoice for each tonne of the Auction Capacity that the Customer acquires,

(ii) the relevant Auction Premium within 5 Business Days of the date of the CBH invoice or such other date as stated in the invoice for each tonne of Auction Capacity,

(iii) the Export Fee in accordance with the provisions of clauses 7.10, 9.3 and 9.6 for each tonne loaded onto a Nominated Vessel;

(iv) the Upfront Marketer Fee for each additional tonne loaded that is in excess of the designated Capacity for a particular shipment, but within the upper limit of CBH’s designated loading tolerances;

(v) the Lost Capacity Fee for each tonne of Lost Capacity that is not Within Tolerance Lost Capacity;

(vi) the Additional Storage Charges in accordance with the provisions of clause 6.7 for each tonne of Capacity to which the Additional Storage Charges relate;

(vii) the Capacity Reposition Fee in accordance with the Port Terminal Rules;

(viii) the Capacity Transfer Fee each time Capacity is transferred in accordance with the Port Terminal Rules; and

(ix) the BAMA Contributions.

(c) If the Customer has Within Tolerance Lost Capacity, CBH will refund to the Customer a pro rata portion of the Upfront Marketer Fee paid in respect of that Within Tolerance Lost Capacity no later than 25 Business Days after the end of the Term.

(d) The charges set out in the Fees and Charges Schedule are a realistic assessment of the loss and damage that CBH will suffer as a result of a failure by the Customer to comply with their obligations under the Agreement and the Port Terminal Rules.
(e) CBH is entitled to retain the fees paid or to levy the charges payable as compensation by way of liquidated damages as a result of a failure by the Customer to comply with their obligations under the Agreement and the Port Terminal Rules.

(f) CBH is entitled to invoice the Customer for any additional charges prescribed in the Fees and Charges Schedule for Bulk Wheat Outturned by CBH as a direct result of the actions of the Customer or the Customer’s agent.

9.2 Application for credit terms

(a) If the Customer does not have an existing credit arrangement with CBH the Customer must provide CBH with a completed Credit Application Form at the same time as it executes this Agreement.

(b) The Customer agrees that any credit provided by CBH is for business or investment purposes only and not for personal, domestic or household purposes.

9.3 Credit terms

(a) If CBH agrees to provide credit terms to the Customer, then CBH reserves the right, in its absolute discretion, to:

   (i) place or vary a limit on the amount allowed to be outstanding by the Customer at any time;

   (ii) vary the credit terms by providing not less than 60 days’ written notice of the new or varied credit terms;

   (iii) refuse to extend further credit terms to the Customer; or

   (iv) withdraw the Customer’s credit terms.

(b) It is the Customer’s responsibility to request a credit limit increase if it is going to exceed the approved credit limit. Any refusal, withdrawal or exceeding of credit terms will result in the Services being provided on a prepaid basis.

(c) If CBH has agreed to provide credit terms prior to the Commencement Date and has not withdrawn them prior to this Agreement then those credit terms will be deemed to continue on the terms and conditions set out in this clause 9.

9.4 Credit information

The Customer authorises CBH to provide information contained in the Credit Application Form and acquired as a result of the Customer’s performance of this Agreement to any bank, credit reporting agency, debt collection agency, trade reference and any other person, business or company.

9.5 Invoicing and GST

Terms defined in the GST Legislation have the same meaning in this clause 9.5 unless provided otherwise.

(a) CBH will invoice the Customer for all charges payable in providing Services under this Agreement.

(b) CBH will endeavour to issue invoices pertaining to bulk vessel shipments within 14 days of the vessel departure.

(c) CBH will provide the Customer with a tax invoice that complies with the GST Legislation.

(d) All fees and charges in this Agreement are expressed exclusive of GST.

(e) If GST is or will be imposed on a supply made under or in connection with this Agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this Agreement is not stated to include an amount in respect of GST on the supply:

   (i) increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or

   (ii) otherwise recover from the recipient the amount of that GST.
(f) The right of the supplier to recover any amount in respect of GST under this Agreement on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of this Agreement, the recipient must pay any amount in respect of GST within 14 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

(g) Subject to a Recipient Created Tax Invoice (RCTI) Agreement being in place between CBH and the Customer, CBH will issue:

(i) If the Customer has provided a valid ABN and is registered for GST: a valid RCTI that states the amount of GST the Customer are liable to pay, at the same time that CBH is obliged to pay the Customer;
(ii) If the Customer has provided a valid ABN but is not registered for GST: a payment advice setting out the amount paid to the Customer excluding GST; or
(iii) If the Customer has not provided a valid ABN: a payment advice setting out the amount paid to the Customer excluding GST and subject to any withholding tax in accordance with clause 9.5(j).

(h) If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier:

(i) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; or
(ii) must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.

(i) Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

(j) If the Customer:

(i) does not have an ABN or do not provide a valid ABN to CBH; and
(ii) does not provide an executed Statement by a Supplier form to CBH,
(iii) CBH may be required to withhold 46.5% (or such rate as is prevailing at the time) of the gross supply value by the Australian Taxation Office.

9.6 Payment terms

(a) If credit terms are made available by CBH at its discretion, then the Customer must pay the amount set out in any invoice provided by CBH within 14 days of the date of the invoice.

(b) If:

(i) credit terms are not made available to the Customer;
(ii) the Customer fails to make payment of an invoice in accordance with clause 9.6(a); or
(iii) CBH withdraws the provision of the credit terms to the Customer,
then all existing invoices shall become immediately due and payable and the Customer must tender to CBH the charges for any Service prior to the performance of that Service.

(c) CBH may, in its absolute discretion, suspend the provision of the Services (including credit) if the Customer fails to pay an invoice in accordance with clauses 7.10 and 9. The suspension of the Services is not a breach by CBH of its obligations under this Agreement and CBH may continue to suspend the Services until such time as the invoice has been paid.

9.7 Certificates

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

(a) The Customer must pay interest on all amounts owing to CBH on any invoice that remains outstanding upon expiration of the due date expressed in the invoice at a rate 5% above the 90 day Bank bill rate offered by the Commonwealth Bank of Australia as at 31st October each year or as otherwise amended and notified to the Customer if there is a significant rise in this rate.

(b) Interest will be calculated daily from the due date expressed in the invoice, until all amounts owing on the invoice, including interest, have been paid.

(c) Payments by the Customer marked specifically for a particular invoice will be applied by CBH firstly in reduction of the interest outstanding and accruing on the invoice and then on any amount outstanding on the invoice.

9.9 Cost recoverable

Any Loss or Damage incurred by CBH in recovering any outstanding monies shall be paid in full by the Customer prior to CBH resuming the provision of the Services.

9.10 Set off

(a) Any amounts owing by CBH or any of its Related Bodies Corporate to the Customer whether under this Agreement or otherwise, may, at the election of CBH, be set off (without prior notice) against any amounts owing by the Customer to CBH or any of its Related Bodies Corporate, whether under this Agreement or otherwise.

(b) CBH holds the benefit of this clause and may exercise the rights under this clause on its own behalf and for and on behalf of each of its Related Bodies Corporate but nothing in this clause obliges such Related Bodies Corporate to perform any of the obligations of CBH under this Agreement.

(c) CBH will give notice to the Customer of any set off performed under this clause.

(d) The Customer is not entitled to set off amounts owing to CBH or any of its Related Bodies Corporate.

9.11 Security

The Customer shall provide such security to CBH as CBH reasonably requires (including the execution of personal guarantees by the Customer’s signatories to this Agreement, directors, shareholders or beneficiaries of the Customer).

10 LIEN AND RIGHT TO WITHHOLD BULK WHEAT

10.1 Statutory Lien

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

10.2 Right to withhold Bulk Wheat

Notwithstanding any other term of this Agreement, CBH may, at its sole discretion, refuse to Outturn the Customer’s Bulk Wheat if the Customer has not paid any amounts owing to CBH pursuant to clause 9.

11 DUE CARE AND DILIGENCE

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

(b) The Customer will comply with Good Operating Practices in the carrying out of its obligations under this Agreement.
12 **APPOINTMENT OF AN AGENT**

12.1 Notice and Obligations

The Customer may appoint an agent to undertake the day to day co-ordination of its operational Service requirements. The Customer must notify CBH immediately in writing upon the appointment of any such agent. Any such appointment will not in any way relieve the Customer of its obligations under this Agreement and accordingly any instruction from the appointed agent is, and will be deemed to be, an instruction of the Customer.

12.2 Liability for Agent’s Actions

The Customer agrees to accept full responsibility and to indemnify CBH for all actions, decisions and costs incurred or authorised by any agent appointed pursuant to clause 12.1 above when performing Services on behalf of the Customer under this Agreement.

13 **CBH LIABILITY**

13.1 Liability for Shortfall at a Port Terminal Facility

(a) Subject always to clauses 6.4(d), 13.1(b) and 13.8, CBH will be responsible and liable for any shortfall at a Port Terminal Facility if it cannot Outturn the Customer’s Bulk Wheat Entitlement from the Port Terminal Facility to which the Customer’s Bulk Wheat Entitlement relates.

(b) CBH’s liability for a shortfall in Bulk Wheat Entitlement pursuant to clause 13.1(a) will only extend (in the case of a shortfall in quantity), at the election of CBH, to either the:

(i) provision of sufficient grain of a similar type, variety and Grade from any Port Terminal Facility to ensure the Customer’s Bulk Wheat Entitlement is not diminished; or

(ii) provision of financial compensation for the value of the Bulk Wheat shortfall to be determined at the Fair Market Price for such Bulk Wheat.

For the avoidance of doubt, there is no shortfall in the Customer’s Bulk Wheat Entitlement if CBH is able to Outturn the Bulk Wheat Entitlement following any fumigation.

13.2 Damage for Gross Negligence or Wilful Misconduct

Other than as set out in clause 13.7 and subject to clauses 13.3, 13.4 and 13.8, CBH will only be liable for loss and/or damage, which is caused by the Gross Negligence or Wilful Misconduct of CBH, its officers, employees or contractors.

13.3 Liability Cap

Other than as set out in clauses 13.1 and 13.7, CBH’s maximum liability to the Customer howsoever arising shall be limited to $100,000 for any single event and limited to a maximum in aggregate of $250,000 for the term of this agreement, however caused including Loss or Damage resulting from:

(a) the negligence of CBH, its servants or agents; or

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

13.4 Limitation of Bulk Wheat Loss and Damage

Except as provided for in clauses 13.1, 13.2 and 13.7, CBH will not be liable or responsible for any Loss or Damage (including Indirect or Consequential Loss) to the Bulk Wheat resulting from any variation in the quality of the Bulk Wheat resulting from:

(a) the natural deterioration of Bulk Wheat over time; or

(b) the effects of the normal handling process on the Bulk Wheat held at, or transported within Port Terminal Facility.
13.5 Limitation of Loss or Damage for delay

In the event of:

(a) delays incurred in CBH Outturning the Bulk Wheat that are not caused by the Gross Negligence or Wilful Misconduct of CBH, its officers, employees or contractors;

(b) delays due to the actions of third parties which are beyond the reasonable control of CBH;

(c) delays in respect of the provision of information by CBH to the Customer pursuant to clause 6.3(b);

(d) delays resulting from insect infestation of the Bulk Wheat,

and such delay causes any shortfall in Bulk Wheat Entitlement, then CBH's liability will only extend to the remedies provided in clause 13.1(b). CBH will not be liable for any other Loss or Damage caused by such delay.

13.6 Contribution to loss

Where any express or implied term of this Agreement places on any Party (in this clause 13.6 “Party A”) any duty of care the breach of which would, if the duty of care were imposed by the general law rather than by such express or implied term, constitute an actionable tort against any other Party (in this clause “Party B”):

(a) Party B has an obligation not to commit any negligent act or omission which contributes to any Loss or Damage it suffers or may suffer as a result by any breach by Party A of such express or implied terms; and

(b) the liability of Party A for any such breach is limited to the direct and proximate Loss or Damage of Party B arising out of such breach, less the proportion of such Loss or Damage attributable to any breach by Party B of its obligations under clause 13.6(a).

The obligations imposed on a Party in this clause 13.6 in relation to any breach by Party A of the kind the subject to this clause are additional to, and not in derogation of, any obligation of Party B to mitigate its Loss or Damage in relation to such breach.

13.7 Conditional exclusion of Statutory Liability

This Agreement excludes to the maximum extent permitted by law any warranty or condition implied by common law, practice or statute. However in the case of those warranties under statute which may not be excluded, including the CCA and Fair Trading Act 2010 (WA), CBH's liability for breach of such conditions or warranties shall, to the maximum extent permitted by law, be limited, in the sole discretion of CBH, to the lesser of:

(a) in the case of Services:

(i) the re-supply of the relevant Service; or

(ii) the payment of the cost of re-supply of the relevant Service; and

(b) in the case of goods (including Bulk Wheat provided under clause):

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring replacement goods; or

(iv) the payment of the cost of having the goods repaired.

For the purposes of this clause 13.7, “relevant Service” shall mean the Service in relation to the quantity of affected Bulk Wheat only and does not mean the aggregate value of the relevant Service provided to the Customer.

13.8 No Indirect or CONSEQUENTIAL LOSS

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

13.9 Indemnity and Release

The Customer hereby releases and indemnifies CBH in respect of all actions, claims and demands which may be instituted by the Customer against CBH in respect of the matters dealt with under clauses 13.4 and 13.8.

13.10 Exclusion of warranties

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

(a) conforms to any specification as to Varietal Purity;

(b) is free from the presence, at any level or concentration, of Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination; or

(c) is free from the presence, at any level or concentration, of Genetically Modified Organisms.

13.11 Exclusion Clauses

Notwithstanding anything expressed in or implied by this Agreement, to the extent permitted by law CBH will not be liable to the Customer for any and all Loss or Damage caused by the negligence, breach of contract, breach of statutory duty or any other legal or equitable obligation of CBH, or otherwise howsoever arising in connection with this Agreement from:

(a) any variance in any specification as to Varietal Purity from the actual Varietal Purity of Bulk Wheat received or Outturned for the Customer;

(b) the presence, in any Bulk Wheat received or Outturned for the Customer, at any level or concentration, of any Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination; or

(c) the presence, in any Bulk Wheat received or Outturned for the Customer, at any level or concentration of any Genetically Modified Organisms.

13.12 Indemnity

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

(a) any variance in any specification as to Varietal Purity from the actual Varietal Purity of Bulk Wheat received or Outturned for the Customer;

(b) the presence, in any Bulk Wheat received or Outturned for the Customer, at any level or concentration, of any Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination; or

(c) the presence, in any Bulk Wheat received or Outturned for the Customer, at any level or concentration of any Genetically Modified Organisms.

14 INSURANCE AND RISK

14.1 Insurance

(a) CBH will, to the extent that it is reasonably practicable, take out and keep in force an insurance policy in respect to the risk of loss or damage to the Bulk Wheat whilst:

(i) it is held in the Port Terminal Facilities; and
(ii) during transit organised by CBH within the Port Terminal Facility.

(b) CBH will advise the Customer if it cannot gain insurance coverage as detailed above.

14.2 Transfer of risk

Subject to clause 13, the risk of loss or damage to Bulk Wheat is transferred to the Customer at the point in time when the Bulk Wheat exits the Outturning spout of a Port Terminal Facility into a form of a Bulk Wheat transportation vessel or other transportation vehicle.

15 FORCE MAJEURE EVENT

15.1 Definition

An event of "Force Majeure" is any event or circumstance not within the reasonable control of the party affected by it (the "Affected Party"), including:

(a) acts of God, including storms or cyclones, action of the elements, epidemics, landslides, earthquakes, floods, fire, road or rail closures due to washouts or impassability and natural disaster;

(b) strikes, stoppages, restraints of labour, or other industrial disturbances;

(c) acts of the public enemy, including wars which are declared or undeclared, blockades and insurrections;

(d) riots, malicious damage, sabotage and civil disturbance;

(e) accident (including accidental emissions of pollutants or hazardous substances), fire, explosion, radioactive contamination and toxic or dangerous chemical contamination;

(f) the adverse application of any Australian laws or enforcement actions of any Commonwealth or State court or governmental agency not resulting from any wrongful act or omission of the Affected Party;

(g) the refusal of or delay in obtaining any necessary consents from any government agency, provided that the Affected Party has acted in a timely manner in endeavouring to secure them;

(h) the failure of, or the breakdown of or accident to, plant or machinery of any kind other than breakdowns or damage caused by the Gross Negligence of CBH;

(i) the breach by any third party supplier of its obligations to supply goods or services to the Affected Party, provided that the Affected Party has acted in a timely manner in endeavouring to secure such supply, and provided that the Affected Party itself is not in breach of any relevant obligation; and

(j) any production shutdown or interruption which is validly required or directed by the Commonwealth or State government or any governmental agency which is not due to the act or default of the Affected Party,

and which the Affected Party is not reasonably able to prevent or overcome, or the effects of which the Affected Party is not reasonably able to predict and take measures to avoid, by the exercise of reasonable technical and commercial diligence and prudence.

15.2 Exemption from Force Majeure

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

15.3 Relief from performance and liability

Subject to clause 15.6, an Affected Party will be excused from performance of and will not be liable to the other party for any failure in carrying out any of its obligations under this Agreement if and only to the extent and for the time that it is prevented in whole or in part from doing so by Force Majeure.
15.4 Actions during Force Majeure Events

An Affected Party claiming the benefit or protection of Force Majeure will:

(a) promptly give written notice to the other party of the occurrence and circumstances in respect of which the claim of Force Majeure arises;
(b) take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay;
(c) maintain regular communication with the other party to describe what is being done to remedy the Force Majeure; and
(d) resume performance in full of its obligations under this Agreement as soon as reasonably practicable,

but the settlement of strikes, lockouts, or other industrial disputes or disturbances which constitute Force Majeure will be entirely within the discretion of the Affected Party and the Affected Party may refrain from settling the strike, lockout or dispute or may settle it at such time and on such terms as it considers to be in its best interests.

15.5 Termination

If the Affected Party is relieved from performance and liability in accordance with clause 15.3 due to Force Majeure for a period exceeding 60 days, either party may terminate this Agreement with immediate effect by written notice to the other party.

15.6 Payments by the Customer

Despite any other provision of this Agreement, the occurrence of Force Majeure affecting the Customer will not relieve the Customer of the obligation to pay any amounts owing under this Agreement in relation to Services performed by CBH prior to notice being given in accordance with clause 15.4(a), including but not limited to the payment of the charges set out in the Fees and Charges Schedule as modified from time to time by CBH.

16 TITLE TO BULK WHEAT

(a) Subject to the terms of this Agreement, CBH is a bailee for reward of any Bulk Wheat received from, on behalf of, or for the account of, the Customer, that is within CBH’s power, possession, custody or control.

(b) Subject to clause 10, the proprietary interest in Bulk Wheat is vested in the person who, for the time being, is entitled to obtain it from the stocks held by CBH or under CBH’s control.

17 PORT TERMINAL FACILITY ACCESS

17.1 Access Procedure

In order to protect the safety of the Customer’s employees, agents or contractors and that of CBH’s employees, agents, contractors and invitees:

(a) if the Customer wishes to visit a Port Terminal Facility, then the Customer must give a minimum of 2 Business Days’ notice to the CBH Customer Account Manager stating the date the Customer wishes to attend, the identity of the Customer’s representative and the purpose of the visit;

(b) CBH may, in its absolute discretion, refuse or reject any visitation request or propose alternative times and/or places for the visit; and

(c) subject to clause 17.2, the Customer shall not attend at any CBH Port Terminal Facility without receiving the prior consent of the Customer Account Manager for each visit and shall not enter or stay on the Port Terminal Facility without appropriate CBH supervision.

17.2 Public Reception

If a CBH Port Terminal Facility has a public reception, then clause 17.1(c) is modified to the extent
necessary to allow the Customer to proceed directly following the commonly accepted route to the public reception but does not allow the Customer to proceed to any other part of the Port Terminal Facility without appropriate supervision.

17.3 Port Terminal Facility Safety

Whilst on a Port Terminal Facility, the Customer agrees to:

(a) follow all reasonably necessary directions of CBH personnel, including departure from the Port Terminal Facility;

(b) not create any hazard, or cause any contamination, on the Port Terminal Facility; and

(c) procure that its employees, agents or contractors comply with this clause 17.3.

18 CONFIDENTIALITY

18.1 General obligation

Subject to clauses 18.2 and 18.3, this Agreement and all information exchanged between the parties under this Agreement or during the negotiations preceding the signing of this Agreement is confidential to the party which provided it and may not be disclosed to any person except:

(a) by a party to the legal and other professional advisers, auditors and other consultants ("Consultants") and employees of:
   (i) that party; or
   (ii) that party's Related Bodies Corporate;

(b) to another party with the consent of the party which first supplied the information;

(c) if the information is at the time lawfully in the possession of the proposed recipient of the information through sources other than a party;

(d) to the extent required by any law or by the lawful requirement of any governmental agency having jurisdiction over the party or its Related Bodies Corporate;

(e) to the extent required by a lawful requirement of any stock exchange having jurisdiction over a party or its Related Bodies Corporate;

(f) if necessary or commercially desirable to be disclosed in any prospectus or information memorandum to investors or proposed or prospective investors:
   (i) for an issue or disposal of any shares in a party or its Related Bodies Corporate;
   (ii) for an issue of debt instruments of a party or a party's Related Body Corporate; or
   (iii) for the purposes of a party obtaining a listing on Australian Stock Exchange Limited of any shares;

(g) if the information is at the time generally and publicly available other than as a result of breach of confidence by the party wishing to disclose the information or those to whom it proposes to disclose it;

(h) if necessary or commercially desirable to be disclosed to an existing, or bona fide proposed or bona fide prospective:
   (i) financier;
   (ii) financier of a party or of any of its Related Bodies Corporate; or
   (iii) rating agency in respect of a party or of any of its Related Bodies Corporate;

(i) if necessary or commercially desirable to be disclosed to any bona fide proposed or prospective:
   (i) transferee of an interest in any Bulk Wheat; or
   (ii) financier of such transferee providing or proposing or considering whether to provide
relevant financial accommodation;

(j) if necessary or commercially desirable to be disclosed to consultants or employees of any of the persons referred to in clause 18.1(h) or 18.1(i); or

(k) if CBH is required under the Undertaking or under the Port Terminal Rules to publish Port Grain Holdings.

18.2 Conditions

(a) In the case of a disclosure under clause 18.1(a) or 18.1(b) and, where appropriate, under clause 18.1(d), 18.1(e) or 18.1(f), the party wishing to make the disclosure must inform the proposed recipient of the confidentiality of the information and the party must take customary precautions to ensure that the proposed recipient keeps the information confidential.

(b) In the case of a disclosure under clause 18.1(h), 18.1(i) or 18.1(j) (in the case of consultants only), the party wishing to make the disclosure must not make any disclosure unless:

(i) in the case of a disclosure under clause 18.1(h) or 18.1(i), the proposed recipient has first entered into and delivered to the parties a confidentiality undertaking in a form acceptable to all parties; and

(ii) in the case of a disclosure under clause 18.1(j), the principal or employer of the proposed recipient has first entered into and delivered to the parties a confidentiality undertaking in a form acceptable to all parties which shall incorporate a warranty by the principal or employer of the proposed recipient that the proposed recipient is under an obligation of confidentiality to the principal or employer and that the principal or employer will enforce that obligation to the fullest extent that the law allows upon being called upon to do so by any of the parties.

(c) The Customer consents to CBH publishing Port Grain Holdings pursuant to clause 18.1(k).

The Customer acknowledges that whilst CBH will only disclose Port Grain Holdings, such disclosure to the public in accordance with this clause 18 may enable third parties to identify the quantities of grain stored by a Customer at a Port using this information in conjunction with other publicly available information including the shipping stem published in accordance with the Port Terminal Rules and the WEMA.

18.3 Notice to other Parties

Each party must:

(a) promptly inform all other parties of any request received by that party from any person described in clause 18.1(d) to disclose information under clause 18.1(d);

(b) inform all other parties as soon as reasonably practicable after information is disclosed by the party under clause 18.1(d); and

(c) not disclose any information under clause 18.1(e) unless all other parties have been informed of the proposed disclosure.

18.4 Indemnities

Subject to clause 13, each party indemnifies each other party against any costs, losses or damages suffered by that other party arising out of or in connection with any disclosure by the first-mentioned party of information in contravention of this clause 18.
18.5 Binding nature of confidentiality obligations

The obligations of confidentiality imposed by this clause 18 survive the termination of this Agreement and any person who ceases to be a party continues to be bound by those obligations.

19 DISPUTE RESOLUTION

19.1 Disputes

(a) Save for any dispute arising under:
   (i) the Auction Rules which shall be dealt with in accordance with the provisions of the Auction Rules; or
   (ii) the Port Terminal Rules which shall be dealt with in accordance with the provisions of the Port Terminal Rules,
   all disputes arising out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 19.

(b) A dispute shall be referred to the Customer’s Manager and the CBH Supply Chain Manager for resolution. The CBH Supply Chain Manager and the Customer’s Manager shall meet or confer at least once within 24 hours of the notification of the dispute to discuss the dispute and attempt to resolve the dispute.

(c) Where the dispute relates to invoiced Services, the Customer is to inform the CBH Supply Chain Manager immediately, and before the due date of that invoice.

(d) Any dispute relating to a breach of the terms and conditions of this Access Agreement shall not, of itself, amount to a dispute relating to a breach of the Undertaking or the rules forming part of the Undertaking.

19.2 Escalation of Dispute – Executive Panel

If no resolution of the dispute can be reached in accordance with clause 19.1, within seven (7) days of the dispute being notified to the other party, each party shall refer the dispute to the General Manager - Operations of CBH and the CEO of the Customer (or such person designated by the Customer as having authority equivalent to that of a CEO) (the "Executive Panel"). The Executive Panel:

(a) will meet at least once at a time mutually convenient no later than 2 Business Days after the dispute has been referred to it; and

(b) may decide on the methods and procedure by which it will resolve the dispute, which may include the obtaining of expert advice.

19.3 Payment of invoices pending resolution of a dispute

Notwithstanding anything in this Agreement, the Customer is not entitled to withhold payment of the undisputed amount of any invoice. If the Customer cannot provide a reasonable estimate of the disputed amount the Customer will not be entitled to withhold any payment.

19.4 Arbitration

(a) Referral to arbitration

   (i) If the Dispute is not resolved within ten Business Days after being referred to the Executive Panel under clause 19.2, either of the parties may give notice to the other party to refer the Dispute to Arbitration in Western Australia by a single arbitrator appointed by agreement of the parties or if they fail to agree within ten Business Days, an arbitrator appointed by the President of the Western Australian Chapter of the Institute of Arbitrators and Mediators of Australia (IAMA) acting on the request of either party.

   (ii) CBH must notify the ACCC of the details of any Dispute which has been referred to arbitration. CBH must provide the arbitrator’s final determination to the ACCC.

   (iii) If the Customer serves notice under clause 19.4(a)(i), that notice will also include an
agreement by that Customer to:

(A) pay any amounts determined in accordance with clause 19.4 (f); and
(B) indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 19, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, or is dishonest or unlawful conduct.

(iv) CBH must pay any amounts determined in accordance with clause 19.4 (f) and will indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 19, such indemnity excluding circumstances where the conduct of the arbitrator constitutes wilful negligence, or is dishonest or unlawful conduct.

(v) The arbitrator will not proceed with the arbitration unless and until the Customer has agreed to pay the arbitrator’s costs as determined under clause 19.4(f).

(b) Arbitration procedure

(i) Unless CBH and the Customer agree otherwise, the arbitration must be conducted in private.

(ii) A party may appoint a person, including a legally qualified person, to represent it or assist it in the arbitration.

(iii) The arbitrator will when conducting the arbitration:

(A) observe the rules of natural justice but is not required to observe the rules of evidence;
(B) proceed as quickly as is possible and consistent with a fair and proper assessment of the matter;
(C) while having the right to decide on the form of presentations, encourage a written presentation by each party with exchange and with rebuttal opportunities and questioning by the arbitrator;
(D) call on any party the arbitrator believes necessary to give evidence;
(E) decide how to receive evidence and consider the need to keep evidence confidential and the need to protect the confidentiality of the arbitration process;
(F) present its determination in a draft form to the parties and hear argument from the parties before making a final determination; and
(G) hand down a final determination in writing which includes all 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.

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

(A) the notification of the Dispute is vexatious;
(B) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
(C) the party who notified the Dispute has not engaged in negotiations in good faith.

(c) Matters which arbitrator must take into account

In deciding a Dispute the arbitrator will take into account the principles, methodologies and provisions set out in the Undertaking, in particular clauses 7.4 and 8.6.

(d) Confidentiality

(i) The arbitrator must take all reasonable steps to protect the confidentiality of information that a party has identified is confidential or commercially sensitive.

(ii) The arbitrator may require the parties to comply with rules and orders aimed at protecting the confidentiality of information provided by the parties, including:

(A) requiring each party to give confidentiality undertakings to the other party and their external advisers; and
(B) limiting access to confidential information to specified individuals subject to
confidentiality undertakings provided by those individuals.

(iii) The arbitrator may make confidential and non-confidential versions of its determination
and limit access to the confidential versions to specific individuals.

(iv) For the purpose of clarity, the entire dispute resolution process outlined in this
clause 19 remains subject to clause 18.

(e) Effect of arbitrator’s determination

(i) The determination of the arbitrator will be final and binding subject to any rights of
review by a court of law.

(ii) Except where the determination or direction is subject to a review by a court of law, if
a Customer does not comply with a determination or direction of the arbitrator, then
CBH will no longer be obliged to provide services under this Agreement for that
Customer.

(iii) Except where the determination or direction is subject to a review by a court of law,
CBH will comply with the lawful directions or determinations of the arbitrator.

(iv) The arbitrator shall have the discretion to determine that an arbitration determination
shall take effect from the date of the determination, the date upon which the dispute
was notified or the date of this Agreement.

(v) During any dispute process the parties must continue to comply with their obligations
and exercise their rights under this Agreement.

(f) Arbitrator’s costs

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 that determination.

20 ENTIRE AGREEMENT

(a) This Agreement constitutes the entire Agreement between the parties. Each party warrants
and covenants to the other that there are no written or oral statements, representations,
undertakings, covenants or agreements between the parties, express or implied, except as
provided for in this Agreement.

(b) This Agreement may only be amended or varied:

(i) by agreement in writing signed by both parties expressly amending this Agreement;

(ii) pursuant to the variation procedure prescribed in the Undertaking; or

(iii) by operation of law.

(c) Unless the context otherwise requires, a reference to this Agreement shall include a
reference to this Agreement as amended or varied from time to time.

(d) Notwithstanding that CBH from time to time produces operational guidelines to assist
customers, nothing in those guidelines shall be deemed to impliedly or expressly amend
anything in this Agreement and if there is any inconsistency between any guidelines and a
term of this Agreement, the terms of this Agreement shall prevail.

21 NOTICES

21.1 Types of Notices

Except as provided in clause 21.2, all notices of any kind and all statements, forecasts, advices,
policy statements, procedures manuals, guidelines and the like, and all invoices given or made
under this Agreement (each a “Communication”) shall be:

(a) in writing in the English language;

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

21.2 Operational and Urgent Notices

Where this Agreement expressly so provides, and in those cases or categories of cases where the parties agree in writing, notices of a day to day operational nature or notices given in an operational emergency may be given orally and confirmed in writing. The parties shall also agree upon protocols, contact points and contact telephone numbers for dealing with matters which require urgent action in the administration of this Agreement, and shall ensure that lists of up-to-date contact points and telephone numbers are exchanged as and when required to ensure the currency of those lists.

21.3 Notice Takes Effect

Subject to clause 21.4, a Communication takes effect from the later of:

(a) the time it is actually received; and

(b) any later time specified in the Communication.

21.4 Deemed Receipt

For the purposes of this Agreement:

(a) a Communication delivered by hand to the address of a party shall be deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at that address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries), appears to be and represents himself as a manager or officer of the party to whom the Communication is addressed;

(b) a Communication which is posted is deemed to be received by the party to whom the Communication is addressed on the second Business Day after the day of posting;

(c) a Communication sent by facsimile transmission which is transmitted:

   (i) prior to 4 p.m. on a Business Day shall be deemed to have been received by the party to whom it is addressed on that Business Day; and

   (ii) after 4 p.m. on a Business Day shall be deemed to have been received by the party to whom it is addressed on the first Business Day following the date of transmission; and

   (iii) the production of the transmission report or a printout of a transmission log generated by the sender's facsimile machine (or other facsimile transmission device) showing successful uninterrupted facsimile transmission of all pages of the relevant Communication to the facsimile number of the party to whom it is addressed and proof of confirmation by physical delivery or mailing as provided above shall constitute evidence of receipt of that facsimile transmission; and

(d) a Communication given orally under clause 21.2 shall be deemed to have been received when first given orally.

21.5 Change of Address

A party may at any time, by notice given to the other parties to this Agreement, designate a different person, street address, postal address, electronic mail address or facsimile number for the purpose of Communications pursuant to this clause 21.

21.6 Electronic Mail

(a) The parties agree, that in the absence of evidence to the contrary, an electronic mail message sent by a party to the electronic mail addresses notified by the parties shall be deemed to be received on the day after the day that the electronic mail message is recorded as having been sent by the sender's computer server.

(b) Messages relating to the following subjects will not be valid if sent by electronic mail:
(i) termination of this Agreement;
(ii) disputes;
(iii) change of address, phone number, fax number or electronic mail address.

22 ASSIGNMENT

22.1 General Prohibition

Neither party may assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement without the prior written consent of the other party.

22.2 Deed of Covenant

The assignee must enter into a deed of covenant with the party whose consent is sought, acknowledging that party’s rights under this Agreement and undertaking by way of novation to observe and perform all the assignor’s obligations under this Agreement. Such deed of covenant shall be prepared by the party whose consent is sought in such reasonable form as that party requires, but at the expense of the assignor. The deed shall be stamped by and at the expense of the assignor.

23 WAIVER

(a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.

(b) No default or delay on the part of any party exercising any of its rights or obligations under this Agreement shall operate as a waiver of any such right or obligation under this Agreement.

24 NO PARTNERSHIP

(a) Nothing contained in this Agreement will be deemed or construed by the Customer or CBH or by any third party as creating the relationship of partnership, principal and agent, or joint venture.

(b) No relationship between the Customer and CBH other than that of bailor and bailee upon the conditions and provisions in this Agreement will be created by the payment of any money under this Agreement, any other conditions or provision in this Agreement or any act of the Customer or CBH.

25 GOVERNING LAW AND JURISDICTION

25.1 Governing law

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

25.2 Jurisdiction

Each Party irrevocably submits to and accepts generally and unconditionally the non-exclusive jurisdiction of the courts and appellate courts of Western Australia.

26 ATTORNEYS

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.

27 SUB-CONTRACTING

CBH may in its sole and absolute discretion:

(a) sub-contract the whole or any part of the Services; or

(b) otherwise engage any person to undertake any part of the Services on CBH’s behalf,
without notice to the Customer.

28 SEVERANCE

If any term or other part of this Agreement is or becomes for any reason invalid or unenforceable at law, the remainder of this Agreement shall continue to be valid and enforceable and such term or other part of this Agreement shall be severed or modified without affecting the remainder of this Agreement.

29 RE-NEGOTIATION OF TERMS

29.1 Change in Law

(a) Subject to clauses 29.1(c) and 29.2, if at any time during the Term:

(i) the costs to CBH of operating and maintaining the Port Terminal Facility for the purposes of supply of the Port Terminal Services under this Agreement and otherwise complying with its obligations under this Agreement are increased to a material extent ("Increased Costs"); and

(ii) the Increased Costs are a result of the enactment or promulgation of any new Act of Parliament or regulation or the amendment of any existing Act or regulation by a Government Agency relating to the management or protection of the environment or the health and safety of workers, including any tax on the emission of carbon, sulphur or nitrogen compounds (a "Change in Law").

then CBH shall be entitled to increase the price paid by the Customer under this Agreement for the provision of Port Terminal Services as may be necessary to offset those Increased Costs. In any such case, CBH shall provide the Customer with a statement providing such information as is necessary to demonstrate:

(iii) the causal relationship between the Change in Law and the Increased Costs referred to;

(iv) the reasonableness and necessity of the measures taken by CBH to comply with the Change in Law; and

(v) the nature and extent of any increase in the price paid by the Customer under this Agreement for Port Terminal Services necessary to offset the Increased Costs referred to.

(b) A statement by CBH under clause 29.1(a)(ii) shall be deemed to constitute a request by CBH for a variation of this Agreement and shall be dealt with as a request for a variation under the terms of the Undertaking.

(c) CBH shall not be entitled to seek any increase under clause 29.1(a) in the price paid by the Customer under this Agreement for Port Terminal Services to the extent that the Increased Costs are a consequence in whole or in part of a failure by CBH to operate and maintain any Port Terminal Facility in accordance with Good Operating Practices.

29.2 Income and payroll taxes

Each Party shall be liable for its own income tax and payroll tax levied now or at any time in the future by any Government Agency, whether or not they affect the cost to that Party of complying with its obligations under this Agreement.
Signed for and on behalf of **Co-operative Bulk Handling Limited** (ABN 29 256 604 947) in the presence of:

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Signature of Witness

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Name of Witness in full

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Signed for and on behalf of **xxx** (ABN xxx in the presence of:

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Name of Witness in full

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All charges payable pursuant to this Agreement are to be paid in accordance with clause 9 of this Agreement. As set out in clause 10, CBH has the discretion not to Outturn Bulk Wheat until all outstanding fees and charges have been paid.

The Fees and Charges Schedule is published consistent with the Undertaking and is available at [www.cbh.com.au](http://www.cbh.com.au). The Fees and Charges Schedule forms part of this Agreement. CBH may vary the Fees and Charges Schedule in accordance with the Undertaking. Any amendment to the Fees and Charges Schedule will take effect under this Agreement at the same time as it takes effect under the Undertaking.
SCHEDULE 2

Auction Premium Rebate

AUCTION PREMIUM REBATE

The Auction Premium Rebate shall be calculated based on the following formula for each Auction during the Season:

\[ APR = \left( \frac{TAP - TAC}{TTSAC} \right) \times TTSC \]

Where:

- **APR** is the amount of the Auction Premium Rebate paid to the Customer in respect of an Auction.
- **TAP** is the total Auction Premiums received by CBH for Auction Capacity in respect of an Auction including any interest earned by CBH on those Auction Premiums.
- **TAC** is the Total Auction Costs attributed to that Auction.
- **TTSAC** is the total tonnes of grain shipped from all four Port Terminal Facilities by all CBH Customers using Auction Capacity acquired in that Auction.
- **TTSC** is the total tonnes of Bulk Wheat shipped by CBH on behalf of the Customer from all Port Terminal Facilities using Auction Capacity acquired in that Auction.

ANNUAL SHIPPING AUCTION PREMIUM REBATE

The Annual Shipping Auction Premium Rebate shall be calculated based on the following formula:

\[ AAPR = \left( \frac{ATAPR - A}{ATTSC} \right) \]

Where:

- **AAPR** is the amount of the Annual Shipping Auction Premium Rebate paid to the Customer.
- **ATAPR** is the total Auction Premiums received by CBH for Annual Shipping Period Capacity including any interest earned by CBH on those Auction Premiums.
- **ATAC** is the Total Auction Costs for the Annual Shipping Period Auctions.
- **ATTSC** is the total tonnes of grain shipped from all four Port Terminal Facilities by all CBH Customers using Capacity acquired for Shipping Windows within the Annual Shipping Period through the Auctions.
- **ATTSC** is the total tonnes of Bulk Wheat shipped by CBH on behalf of the Customer from all Port Terminal Facilities using Capacity acquired for Shipping Windows within the Annual Shipping Period through the Auctions.
Schedule 3

Port Terminal Rules
Port Terminal Rules – 2013/2014
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Port Terminal Rules

1 Interpretation

1.1 Definitions

In these Port Terminal Rules unless the context otherwise requires:

Access Agreement means an agreement between a Customer and the Port Operator under which the Port Operator supplies Port Terminal Services to the Customer.

Accumulation Plan means a plan for the delivery of Grain to a Port Terminal Facility in order to accumulate a cargo for shipping.

Annual Capacity means the tonnage of grain capable of being exported through the Port Operator’s grain terminals during a year from November to October, as determined by the Port Operator, taking into account the efficient deployment of resources (including fixed assets and labour) over the year.

Annual Shipping Period means the period 16 January to the next 31 October as modified from the Port Operator from time to time prior to 31 August for the coming Year.

Assembly Window is defined in rule 14(a).

Arrived means the time at which a vessel arrives at the waiting area designated from time to time by the relevant port authority for the Port Terminal Facility (whether or not it sets anchor), is ready to proceed to berthing and has presented a Notice of Readiness. Arrives and Arrival have a corresponding meaning.

Auction means the sale by auction of Capacity for the Harvest Shipping Period or Annual Shipping Period.

Auction Capacity means Capacity allocated at Auction.

Auction Premium means any additional amount paid by the Customer for Capacity which is in excess of the start price for Capacity within a Lot in the Auction.

Auction Rules means the rules of that name published by the Port Operator from time to time. The current Auction Rules are attached as Schedule 1 to the Port Terminal Rules.

Auction System Website means the auction system website at www.portcapacity.com.

Auction Timetable means the auction timetable published on the Auction System Website.

Bulk Wheat means wheat for export from Australia other than wheat that is exported in a bag or container that is capable of holding not more than fifty (50) tonnes of wheat.
**Business Day** means a day that is not a Saturday, Sunday or gazetted public holiday in Western Australia.

**Capacity** means the tonnage capacity of the Port Operator’s Port Terminal Facilities to put grain on board a vessel during a defined period.

**Capacity Reposition Fee** means the fee of that name prescribed in an Access Agreement or GSA.

**Capacity Transfer Fee** means the fee of that name prescribed in an Access Agreement or GSA.

**Charter Party** means the agreement between the owner of a vessel and the party hiring the vessel for use of the vessel in transporting a cargo.

**Core Capacity** means the Capacity of each Port Terminal Facility calculated in accordance with the process set out in rule 3.2(a) as may be increased in accordance with the process set out in rule 3.2(b).

**Core Lots** means Lots that are available at Auction to all Customers, but excluding Surge Lots.

**Customer** means a customer of the Port Terminal Operator that has entered into an Access Agreement or GSA and includes a User.

**DAFF** means the Department of Agriculture, Fisheries and Forestry.

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

**Direct to Port Delivery Declaration Form** means the form substantially in the form attached at Schedule 2.

**Direct to Port Sample Declaration Form** means the form substantially in the form attached at Schedule 3.

**ETA** means the estimated time of Arrival.

**ETC** means estimated time of commencement of loading.

**Export Fee** means the fee of that name prescribed in an Access Agreement or GSA.

**Grace Period** means a period of fourteen (14) days that commences on the day following the last day of the Shipping Window.

**Grade** means the grade of the Grain actually delivered to a Port Terminal Facility.

**Grain** means all grains (including Bulk Wheat), pulses and oil seeds.

**Grain Entitlement** means the Customer’s entitlement under the Bulk Handling Act or an Access Agreement or GSA to the possession of Grain in the Port Operator’s custody.

**Grower** means a grower of grain who as part of their farming business delivers Grain to a Port.
GSA means an agreement between an exporter, trader or marketer of Grain and the Port Operator that includes provisions for the supply of storage and handling services in relation to any Grain but does not include Port Terminal Services in relation to Bulk Wheat.

GSA Capacity means Capacity acquired or sought to be acquired by a Customer under a GSA.

Harvest Mass Management Scheme means the scheme of that name published by Main Roads WA from time to time.

Harvest Shipping Period means 1 November to 15 January as modified from the Port Operator from time to time prior to 31 August for the coming Year.

Laycan means the earliest date on which Laytime can commence and the latest date after which the charterer can opt to cancel the Charter Party.

Laytime means the amount of time that a charterer has to load a vessel before the vessel is deemed to be on Demurrage.

Lost Capacity is defined in rule 10.

Lot means the Capacity within a Shipping Window at a Port that is offered to Customers at Auction.

Nominated Tonnage means the tonnage of Grain to be shipped in a particular Nominated Vessel and notified to the Port Operator in accordance with these Port Terminal Rules.

Nominated Vessel means a vessel nominated by the Customer and notified to the Port Operator in accordance with these Port Terminal Rules.

Notice of Readiness means a valid notice of readiness served by the owner of the Nominated Vessel pursuant to the Charter Party stating, amongst other things, that the Nominated Vessel is ready to load in all respects (including physically and legally).

Outload means to remove Grain from a Port Facility to another location by means other than Outturning to a vessel.

Outturning means to cause Grain to physically leave the Port Operator’s custody at a Port Terminal Facility and is deemed to occur when the Grain exits the delivery spout into a Grain shipping vessel at which point physical possession of the Grain passes from the Port Operator to the Customer or a third party authorised by the Customer.

Passed-in Capacity means the Capacity remaining unallocated for the relevant Shipping Window following the most recent Auction.

Port means the ports of:

(a) Albany;
(b) Esperance;
(c) Geraldton; and
(d) Kwinana.
**Port Blockage** means the situation where a Port Terminal Facility is unable to either receive additional Grain and/or load Grain onto a Nominated Vessel due to a delay in the loading of the previous Vessel, caused by circumstances such as the previous Vessel(s) failing regulatory survey, regulatory impediments to exports, the grain to be loaded fails or likely to fail AQIS requirements or a disruption in the upcountry supply chain.

**Port Terminal Facility** means a ship loader and associated infrastructure that is:

(a) at a Port;
(b) capable of handling Bulk Wheat; and
(c) owned, operated or controlled by the Port Operator, including:

(a) an intake/receival facility;
(b) a grain storage facility;
(c) a weighing facility; and
(d) a shipping belt;

that is:

(a) at the port; and
(b) associated with the ship loader; and
(c) capable of dealing with wheat in bulk.

**Port Terminal Services** means the services provided by means of the Port Terminal Facilities which enable an Accredited Wheat Exporter to export Bulk Wheat through the Port Terminal Facilities, including:

(a) unloading and receival by the Port Operator of a User’s Bulk Wheat at the Port Terminal Facilities, for the purpose of loading onto a vessel scheduled to arrive at the Port Terminal Facility;

(b) sampling by the Port Operator of a User’s Bulk Wheat received and Outturn ed, to check for visible evidence of the presence of chemical residue, insect activity, live insects or other contaminants, and providing the User with a composite shipping sample of the User’s Bulk Wheat;

(c) weighing by the Port Operator of a User’s Bulk Wheat received and Outturn ed, using the Port Operator’s weighing facilities, and providing the User with a weighbridge ticket or other statement certifying the weight and quantity of Bulk Wheat delivered;

(d) storage by the Port Operator of a User’s Bulk Wheat at the Port Terminal Facility for the purpose of export accumulation in a restricted time period and loading onto vessels at the Port Terminal Facility; and

(e) fumigation in response to evidence of insect infestation;
(f) accumulating and assembling Bulk Wheat for the purpose of loading cargo onto a vessel scheduled to arrive at the Port Terminal Facility;

(g) administrative and logistics services required for shipping nomination, acceptance, booking and cancellation;

(h) access to inspectors from the AQIS, for inspection of the User’s Bulk Wheat received and held at the Port Terminal Facilities; and

(i) Outturning by the Port Operator of a User’s Bulk Wheat received at the Port Terminal Facility, and loading onto the User’s nominated vessel.

Port Terminal Service Charges means the charges payable for Port Terminal Services provided by the Port Operator under an Access Agreement.

Product means all Grain or other commodities or materials handled by the Port Operator through the Port Terminal Facilities.

Relevant Surveys means all relevant surveys required to be conducted on the Nominated Vessel before it can be loaded with Grain, including, but not limited to a structural survey of the Nominated Vessel and surveys conducted by AQIS.

Reposition Matrix means the Reposition Matrix and Timeline published on the Port Operator’s Website.

Repositioning Windows has the meaning given to it in the Reposition Matrix.

Season means the period between 1 October of one year and the next 30 September.

Shipping Capacity Allocation Register means the register maintained and held by the Port Operator in order to record allocations of and entitlement to Capacity.

Shipping Stem Policy means the policy prescribed in rule 11.

Shipping Slot means the nominal dates for loading of vessels during a Shipping Window.

Shipping Window means a half month period of between 14 and 16 days within which a Customer may nominate a vessel to arrive at a Port Terminal Facility for loading of a cargo for which the Customer has been allocated Capacity under these Port Terminal Rules.

Spare Capacity means:

(a) Passed-in Capacity that, in accordance with rule 4.2, will not be re-Auctioned; and

(b) any Capacity that may otherwise become available and where offering it in accordance with the relevant Auction timetable would be reasonably likely to preclude compliance with these Port Terminal Rules.
Spare Capacity Allocation means the allocation of Spare Capacity remaining after allocation of Capacity under rule 4.

Spare Capacity Booking Form means the form of that name published by the Port Operator from time to time.

Surge Capacity means the Capacity of each Port Terminal Facility calculated in accordance with the process set out in rule 3.2(c).

Surge Lots means Lots:
(a) available at Auction to all Customers; and
(b) which utilise the Port Operator’s receipt, storage and handling resources other than and in addition to the Port Terminal Services.

TBA means to be advised.

Transfer of Shipping Capacity Form means the form of that name published by the Port Operator from time to time.

Undertaking means the undertaking offered by CBH in favour of the Australian Consumer and Competition Commission in accordance with the provisions of the Wheat Export Marketing Act 2008 (Cth).

User means a person who has entered into an Access Agreement, other than the Port Operator.

Vessel Nomination means a nomination of a vessel to ship the Nominated Tonnage within a Shipping Window held by the Customer under the Access Agreement or GSA.

Vessel Nomination Form means the form which can be obtained either:
(a) from the Port Operator directly; or
(b) via the Port Operator’s Website through the LoadNet® for MarketersTM platform,
on which all bulk export requests are to be made.

Website means the website operated by the Port Operator from time to time and at the commencement of these rules means www.cbh.com.au.

Year means 1 November to 31 October.

1.2 Interpretation
(a) Other defined terms have the meanings given to them in the Undertaking, unless the context otherwise requires.
(b) Reference to a rule is a reference to a rule contained within these Port Terminal Rules.
(c) These Port Terminal Rules apply in relation to all Capacity bookings where the Shipping Window is on or after 1 November 2011. The prior version of Port Terminal Rules applies in relation to all Capacity bookings where the Shipping Window is on or before 31 October 2010.
2 Accuracy and completeness of information

Information provided by a Customer under these Port Terminal Rules must be accurate and complete in all material regards.

3 Capacity Allocation

3.1 Capacity allocation mechanisms

The Port Operator may allocate Capacity to Customers in the Auction process under rule 4 below.

3.2 Criteria and process for estimating available Core Capacity

(a) The Port Operator must determine Core Capacity to be allocated under these Port Terminal Rules on the basis of a conservative estimate of the theoretical average capability of the Port Terminal Facility to load vessels in any given half month operating period. In calculating Core Capacity to be allocated under these rules, the Port Operator will take into account:

(i) the historical performance of the Port Terminal Facilities in loading vessels under usual operating conditions;

(ii) the efficient deployment of labour and other resources in Port Terminal Facilities over the Year based on standard resourcing levels (weekday and daylight working hours only);

(iii) the availability of quarantine inspection services by DAFF (Biosecurity Australia);

(iv) the number of rainy days / hours that are normally expected in a month;

(v) the amount of berth time lost due to vessels failing survey and either being cleaned or being pushed off the berth to allow another vessel to berth;

(vi) average vessel deballasting rate;

(vii) the likely mix of grain types at the Port Terminal Facilities; and

(viii) the ability of the port authority to provide relevant services.

(b) The Port Operator may, in its discretion, determine additional Capacity to be allocated as part of Core Capacity under these Port Terminal Rules. In determining such additional Capacity, the Port Operator will consider the following:

(i) the estimated size and characteristics (including geographic distribution) of the upcoming harvest;

(ii) the services forecast in order to estimate:

(A) the likely shipping requirements of customers; and

(B) the supply chain arrangements likely to be used to get grain to the Port Terminal Facilities;
(iii) the likely distribution of the transport task between road and rail in each port zone;

(iv) the optimal deployment and utilisation of the available rail and road resources;

(v) the amount of planned maintenance down time required in a month (including a contingency for unplanned maintenance downtime); and

(vi) the number of segregations that may be required.

(c) In calculating the Surge Capacity to be allocated under these rules, the Port Operator must:

(i) estimate the extent to which Capacity in excess of Core Capacity may be made available if supply chains deliver Grain at a more accelerated pace than would be expected in normal operating conditions; and

(ii) assess the likelihood that supply chains will deploy additional resources to deliver Grain at a more accelerated pace than would be expected in normal operating conditions.

### 3.3 Publication of information concerning Capacity

The Port Operator must publish on its Website:

(a) on or before 1 August each year, the proposed amount of Capacity it intends to offer for each of its Port Terminal Facilities for the following Year during the Harvest Shipping Period and the Annual Shipping Period which will be not less than the total Core Capacity, and

(b) the proposed dates of Auctions and other significant events in the Capacity allocation process (Capacity Timetable); and

(b) no later than five Business Days before any Auction, the proposed amount of Surge Capacity it intends to offer for each of its Port Terminal Facilities by Shipping Window.

### 4 Auction Capacity allocation for Port Terminal Services

#### 4.1 Acquiring Auction Capacity

(a) Auction Capacity allocation must be conducted in 2 stages, either:

(i) by an Auction; or

(ii) by a Spare CapacityAllocation.

(b) The date and time each Auction is scheduled to be held and a schedule of the Capacity on offer at each Auction must be published by the Port Operator on the Auction System Website not less than five Business Days prior to the date of commencement of the Auction. The scheduling...
of a particular number of Auctions does not represent that Capacity for any period will be available at any Auction after the first Auction scheduled for Capacity in that period because it is possible that all Capacity for that period may be acquired in the first Auction.

(c) Each Auction will be held in accordance with the Auction Rules and the Auction Timetable.

(d) The Auction Timetable for the next Season:
   (i) must be published on the Auction System Website by the Port Operator no later than 1 August; and
   (ii) may be varied by the Port Operator after its first publication in accordance with the Auction Rules.

(e) The Port Operator may make any consequential amendments to the Reposition Matrix resulting from an amendment of the Auction Timetable and any such amendments to the Reposition Matrix will be published at the same time as the amended Auction Timetable.

(f) By no later than 30 Days prior to the first day of a Shipping Window, a Customer must nominate the supply chain arrangements to be used to deliver the relevant Grain to the Port Terminal Facility (i.e. whether serviced under a GSA or another supply chain solution not provided under a GSA). In the absence of a positive nomination of an alternative supply chain, CBH will record a default nomination that the capacity will be serviced by a GSA.

4.2 Passed-in Capacity:

(a) Passed-in Capacity will be offered by the Port Operator at the next scheduled Auction unless:
   (i) the relevant Auction Timetable precludes compliance with these Port Terminal Rules (i.e. time for nomination); or
   (ii) a Customer has validly repositioned acquired Capacity into it in accordance with rule 5.2.

4.3 Spare Capacity Allocation:

(a) If there is Spare Capacity for the relevant Shipping Window, the Port Operator must publish on its Website a statement of the total Spare Capacity available in the relevant Shipping Windows. Schedule 4 may detail the relevant Shipping Windows in which Spare Capacity (if any) will become available after an Auction.

(b) Customers may submit a Spare Capacity Booking Form to the Port Operator at any time before the last day of the relevant Shipping Window for which Spare Capacity is available.

(c) The Customer must nominate the supply chain arrangements to be used in accordance with rule 4.1(f) unless there are less than 30 days before the first day of a Shipping Window, in which case the Customer must nominate at the time of making an application for Spare Capacity the
supply chain arrangements to be used to deliver the relevant Grain to the Port Terminal Facility in order to use the Spare Capacity applied for, (i.e., whether serviced under a GSA or another supply chain solution not provided under a GSA).

(d) Subject to the availability of Spare Capacity and rule 4.3(e), the Port Operator must allocate Spare Capacity to Customers on a first-come first-served basis within two Business Days of receiving the Spare Capacity Booking Form.

(e) If there are less than 22 days prior to the last day of the relevant Shipping Window, the Customer must provide a Vessel Nomination (or an amended Vessel Nomination if the Customer wishes to load additional tonnes on a vessel) in conjunction with the Spare Capacity Booking Form. The Port Operator may reject the request contained in the Spare Capacity Booking Form if it considers that:

(i) allowing the booking on short notice will prejudice the execution of Capacity already booked in the relevant Shipping Window or the following Shipping Window; or

(ii) the accumulation of cargo is not reasonably likely to be accomplished within the required time period;

(iii) it will detrimentally impact the operation of the Port Terminal;

(iv) rule 11.3 will not be breached by the acceptance of the subsequent Vessel Nomination.

If the Port Operator rejects a Spare Capacity Booking Form it will provide reasons for its decision.

(f) The notification to the Customer of allocation of Spare Capacity must include details of:

(i) the summary and particulars of the Capacity allocated to each Customer for each Shipping Window;

(ii) in each case whether the Capacity is Core Capacity or Surge Capacity; and

(iii) the sum payable by the Customer to the Port Operator in accordance with the Access Agreement or GSA in respect of which the Customer will receive the Capacity.

5 Trading or Repositioning Capacity

5.1 Trading Capacity

(a) Customers may trade or transfer Capacity that they have acquired at Auction or through the Spare Capacity Allocation methods provided that:

(i) the transfer complies with the requirements of rule 5.1(c); and

(ii) each Customer has currently in force an Access Agreement or GSA with the Port Operator in relation to the usage of the relevant
Port Terminal and is not subject to a notice by the Port Operator that it is in breach of that agreement.

(b) For the avoidance of doubt, any purported trade or transfer of Capacity that does not comply with rule 5.1(a) will be of no effect.

(c) All transfers must be:
   (i) proposed using the Transfer of Shipping Capacity Form; and
   (ii) signed by the transferor and transferee, prior to submission to the Port Operator.

(d) Subject to the transferor complying with their obligations under this rule, the Port Operator shall immediately sign a copy of the Transfer of Shipping Capacity Form and provide a copy to the transferor and transferee and amend the Shipping Capacity Allocation Register to record the details of the transfer.

(e) The Customer transferring Capacity must pay the Port Operator the Capacity Transfer Fee in accordance with the Access Agreement or GSA under which the Capacity is to be transferred.

(f) The Customer purchasing capacity should be aware of the requirements of rules 8 and 9 in relation to Vessel Nominations and note that CBH is not under an obligation to accept non-compliant Vessel Nominations.

(g) For the avoidance of doubt, no transfer will be effective until approved by the Port Operator.

5.2 Repositioning Capacity

(a) A Customer may reposition any Capacity acquired in a Shipping Window (the Original Shipping Window) to a new Shipping Window (the Target Shipping Window) provided that:
   (i) a vessel nomination has not been provided in relation to the Capacity being repositioned;
   (ii) the Customer’s request is provided with:
      (A) at least 60 days’ written notice prior to the last day of the Original Shipping Window and the Target Shipping Window is within the Repositioning Windows described in the Reposition Matrix of the Original Shipping Window; or
      (B) at least 36 days’ written notice prior to the last day of the Original Shipping Window and the Target Shipping Window is not more than:
         (aa) 2 Shipping Windows before; or
         (ab) 4 Shipping Windows after,

the Original Shipping Window and, in any event, is within the Repositioning Windows described in the Reposition Matrix for the Original Shipping Window;
(iii) the Customer has not attempted to reposition the Capacity before; and

(iv) there is sufficient Spare Capacity in the Target Shipping Window for all Capacity being repositioned or there is sufficient Passed-in Capacity in the Target Shipping Window for all Capacity being repositioned.

(b) The Target Shipping Window does not need to be in the same Port Zone.

(c) A Customer repositioning Capacity must complete the Reposition of Shipping Capacity Form, provide it to the Port Operator and pay the Port Operator the Capacity Reposition Fee in accordance with the Access Agreement or GSA under which the Capacity is to be repositioned.

(d) The Customer repositioning capacity should be aware of the requirements of rules 8 and 9 in relation to Vessel Nominations and note that CBH is not under an obligation to accept non-compliant Vessel Nominations.

(e) For the avoidance of doubt, no reposition will be effective until approved by the Port Operator.

(f) Requests to reposition Capacity in the last 2 Shipping Windows of the Annual Period (i.e. 1-15 Oct and 16-31 Oct) into the first Shipping Window of the subsequent Harvest Period (i.e. 1-15 Nov) will not be accepted from eight days before the Auction of Capacity for the subsequent Harvest Period until the results of the Auction are announced in order to provide certainty of Capacity up for auction.

6 Port Operator’s Obligations following acquisition of Capacity

6.1 Port Operator Obligations

(a) The Port Operator is not obliged to load Grain onto a vessel if:

(i) the Customer has not obtained or delivered the relevant Grain Entitlement; or

(ii) the Customer has not complied with the requirements under rules 7 and 8; or

(iii) the Customer’s Nominated Vessel:

(A) has not arrived within the Shipping Window for the relevant Port Terminal Facility; or

(B) has not passed the Relevant Surveys.

(b) Upon the later of the allocation of Spare Capacity or the allocation of a Shipping Window, Customers will be required to nominate vessels into those Shipping Windows in accordance with these Port Terminal Rules.
6.2 Acquiring allocated Capacity

(a) The Port Operator may agree with one or more Customers to acquire allocated Capacity from those Customers provided that:

(i) the procedure set out in rules 6.2(b) to 6.2(l) (inclusive) is complied with;

(ii) the Port Operator considers on reasonable grounds that the decision to acquire the allocated Capacity:

(A) is for the purpose of conducting preventative maintenance, alterations or capital works at the Port Terminal Facility, which will be likely to significantly impact the operation of the Port Terminal Facility; or

(B) be for the purpose of materially reducing forecast congestion at a Port Terminal Facility at a future date; or

(C) is based on the operation of a Port Terminal Facility being significantly impacted due to one or more of the following operational factors or supply chain disruptions:

(AA) the disruption of rail services to a Port Terminal Facility;

(BB) the closure of a Port Terminal Facility due to mechanical breakdown;

(CC) a closure of a Port Terminal Facility due to a direction from a Port Authority; or

(DD) a Port Blockage, and

(iii) the Port Operator considers on reasonable grounds that the decisions made under rule 6.2 would not be inconsistent with clause 6 (Non-discriminatory access) and clause 10.8 (No Hindering) of the Undertaking.

(b) If the Port Operator wishes to acquire allocated Capacity in accordance with rule 6.2(a), and subject to rule 6.2(c), the Port Operator must notify the ACCC in writing (setting out details in rules 6.2(b)(i) to 6.2(b)(v) (inclusive)) and provide a confidential written proposal to acquire allocated Capacity to each Customer with Capacity in the relevant Shipping Window, which must set out:

(i) total amount of allocated Capacity that the Port Operator seeks to acquire in the relevant Shipping Window (Aggregate Target Capacity);

(ii) the amount of allocated Capacity proposed to be acquired from the Customer (Target Capacity) in the relevant Shipping Window, which will be based on the allocated Capacity held by the Customer prorated by the ratio the Aggregate Target Capacity bears to the total allocated Capacity in the relevant Shipping Window;
(iii) the reason(s) for proposing to acquire the allocated Capacity from Customers; and

(iv) the total consideration that the Port Operator would pay the Customer if it were to accept the proposal to acquire all the Target Capacity based on each Customer receiving the same price per tonne; and

(v) the average Auction Premium for the auction or auctions in which the Customer acquired the Target Capacity (which would be refunded from the relevant Auction Premium Pool).

(The Allocated Capacity Proposal).

(c) An Allocated Capacity Proposal will not be provided to any Customer that has already provided a Vessel Nomination in relation to the Capacity that is proposed to be acquired by the Port Operator or has indicated in writing that it is not interested in an Allocated Capacity Proposal.

(d) Following receipt of an Allocated Capacity Proposal, a Customer will have the greater of 2 business days and the closing date specified in the Allocated Capacity Proposal in which to notify the Port Operator whether:

(i) will not participate in any Capacity acquisition proposed; or

(ii) is making an offer, open for 1 business day from the closing date specified in the Allocated Capacity Proposal, in the form contained in the Allocated Capacity Proposal specifying the amount of Capacity (not being greater than the Target Capacity) that the Customer is willing to sell back to the Port Operator (the Customer’s offer) and indicating whether the Customer wishes to provide the Port Operator an option to acquire more than the Target Capacity and the amount of that Capacity (Option Capacity).

(e) The Port Operator must either accept all Customers offers during the period in rule 6.2(d)(ii) or none. If the Port Operator accepts all offers and if the Aggregate Target Capacity has not been met, the Port Operator may accept any Option Capacity offers, spread pro-rata amongst the Customers offering Option Capacity.

(f) In the event the Port Operator does not accept any of the Customer offers submitted under rule 6.2(d), the Port Operator may provide a revised Allocated Capacity Proposal which sets out:

(i) the revised total amount of allocated Capacity that the Port Operator seeks to acquire in the relevant Shipping Window (Revised Aggregate Target Capacity), which may be the same as the initial Aggregate Target Capacity;

(ii) a revised amount of allocated Capacity that the Port Operator seeks to acquire from the Customer in the relevant Shipping Window (Revised Target Capacity), which will be based on the...
allocated Capacity held by the Customer prorated by the ratio the Revised Aggregate Target Capacity bears to the total allocated Capacity in the relevant Shipping Window; or

(iii) a revised total consideration that the Port Operator would pay the Customer if it accepted the offer for the Revised Target Capacity based on each Customer receiving the same price per tonne; and

(iv) the average Auction Premium for the auction or auctions in which the Customer acquired the Target Capacity (which would be refunded from the relevant Auction Premium Pool).

(a Revised Allocated Capacity Proposal).

(g) The Port Operator may vary the amount of the price it elects to offer to Customers under rule 6.2(f)(iii) providing it would not be inconsistent with clause 6 (Non-discriminatory access) and clause 10.8 (No Hindering) of the Undertaking, such price to be based on each Customer receiving the same price per tonne.

(h) Following receipt of a Revised Allocated Capacity Proposal, a Customer will have the greater of 1 business day and the closing date specified in the Revised Allocated Capacity Proposal in which to notify the Port Operator as required under rule 6.2(d).

(i) This process may continue until the Port Operator either accepts the Customer offers in accordance with rule 6.2(e) or declines to make any further revisions to the Revised Allocated Capacity Proposals under rule 6.2(f).

(j) If the Port Operator acquires allocated Capacity from a Customer in accordance with this rule 6.2, a Customer will not be liable for Lost Capacity. The Port Operator may, but is not obliged, to agree with a Customer to move any Capacity parcel less than 20,000 tonnes that is uncommercial following acquisition of allocated Capacity to another Shipping Window or Port provided that it would not have the effect of any Customer incurring materially greater demurrage at the relevant Port than would have been the case if that Capacity had not been moved.

(k) The Port Operator will not acquire allocated Capacity from a Customer if that Capacity would be considered Lost Capacity under these rules.

(l) Following the completion of the acquisition process as set out in this rule 6.2, within 5 business days from the time the Port Operator either accepts the Customer offers in accordance with rule 6.2(e) or declines to make any further revisions to the Allocated Capacity Proposals under rule 6.2(f), the Port Operator will provide a notice to the ACCC, which will set out the results of the Allocated Capacity Proposals and Revised Allocated Proposals (if any) provided to Customers.
7 Nominating Vessels for Shipping Windows during the Harvest Shipping Period

7.1 Nominating Vessels for Shipping Windows
(a) The provisions of this rule apply in relation to nomination of vessels for Shipping Windows during the Harvest Shipping Period in addition to the provisions of rule 8.

(b) In the case of inconsistency between the provisions of this rule and the provisions of rule 8, the provisions of this rule will apply.

7.2 Nomination prior to ETA
(a) Vessel Nominations must be made no later than twenty-two (22) days prior to the Nominated Vessel’s ETA which must be no later than the last day of the Shipping Window.

(b) The Port Operator may waive compliance with rules 8.1(b) and 8.1(f) during the Harvest Shipping Period provided that the Customer makes a declaration in the Direct to Port Delivery Declaration Form in respect of each load of Grain delivered to the Port Terminal Facility.

7.3 Readiness of cargo
No later than forty-eight (48) hours prior to the ETA, the Customer must have physically accumulated or obtained Grain Entitlement equivalent to or greater than the Nominated Tonnage for each Grade to be loaded onto the Customer’s Nominated Vessel.

8 Nominating Vessels for Shipping Windows

8.1 Non-GSA Cargo
(a) Cargo Accumulation

(i) Following receipt of a notice from a Customer of an intended shipment (a Vessel Nomination Form) within a Shipping Window that is nominated to be serviced by a supply chain other than under a GSA (Non-GSA Cargo), the Port Operator must:

(A) request an Accumulation Plan from the Customer; and

(A) allocate the Customer a shipping date in accordance with the Shipping Stem Policy.

(ii) A Vessel Nomination Form in relation to a Shipping Window must be provided no later than twenty-two (22) days prior to the ETA of the vessel actually nominated to be loaded in the Vessel Nomination.

(i) The Customer must at the time of submitting the Vessel Nomination Form for a Non-GSA Cargo provide to the Port Operator:
(A) a pre-delivery sample of grain from each source of grain to be delivered to the Port Terminal Facility; and

(A) a declaration that the pre-delivery sample is a representative sample of both the Grain to be delivered and the treatment of the Grain, and is not misleading.

(ii) The Customer must propose an Accumulation Plan in relation to a Non-GSA Cargo detailing:

(A) whether deliveries of Grain to a Port Terminal Facility for export are to be made by road or rail, subject to the operational capabilities of the Port Terminal Facility to receive such deliveries; and

(B) the timetable for deliveries to the Port Terminal Facility; fitting in with pre-planned deliveries.

(i) The Port Operator and the Customer must negotiate in good faith toward an agreed Accumulation Plan.

(i) If an Accumulation Plan cannot be agreed within three Business Days, the Customer may lodge a Compliance Complaint under rule 15.

(ii) If deliveries are made by road from a farm during the Harvest Shipping Period (or such other period as published by Main Roads WA), all loads must comply with the requirements of the Harvest Mass Management Scheme in force for the relevant Year.

(iii) All road vehicles delivering Grain to a Port must be registered with the Port Operator and the Port Operator is not obliged to receive Grain from a road vehicle in excess of its relevant mass limits prescribed by the Harvest Mass Management Scheme.

(b) Pre-delivery testing

(i) The Customer must collect and deliver to the Port Operator pre-delivery samples of any Non-GSA Cargo.

(ii) The Port Operator must receive pre-delivery sample test results for Non-GSA Cargo before the delivery of Grain to the Port Terminal Facilities, so as to:

(A) confirm the Grain type and other characteristics of the Grain to be delivered;

(B) check for the presence of chemicals and other contaminants; and

(C) check for the presence of insect activity and live insects, to minimise the risk of cross contamination while the Grain is held by the Port Operator at the Port Terminal Facilities.

(c) Sampling
(i) The Port Operator will sample Grain delivered at the Port Terminal Facility, using Port Operator sampling facilities operated by personnel of the Port Operator who will:

(A) visually inspect the Grain for obvious signs of contaminants as it exits the vehicles; and

(B) sample the Grain unloaded into the grid as it is elevated on the way to storage,

and in all cases, the Port Operator will provide the Customer with a record of the results of the sampling.

(ii) The Port Operator will not sample Grain for Grade or quality or on any other basis except as set out in rule 8.1(c)(i) above.

(d) Unloading

(i) The Port Operator will provide access to the Port Terminal Facilities to road vehicles and rail vehicles (where such facilities exist at the Port Terminal Facilities) for the purpose of Customers unloading deliveries of Grain from the vehicles, for Grain export accumulation.

(ii) Access to the Port Terminal Facilities for unloading Grain will be provided by way of:

(A) road or rail vehicle access (where such facilities exist at the Port Terminal Facilities) including access to roadways, rail track, passing loops and sidings located within the Port Terminal Facilities; and

(B) unloading through a grid capable of accepting deliveries by road or rail (where such facilities exist at the Port Terminal Facilities).

(iii) Where vehicles containing the Customer’s Grain arrive at the Port Terminal Facilities as scheduled (or within a reasonable time before or after the scheduled time, so that it can be unloaded to comply with the scheduled time) the Port Operator must use all reasonable endeavours to ensure that the vehicles are unloaded at a rate (commensurate with the type, condition and volumes of the Grain) that enables the Customer’s Nominated Vessel to be loaded at its ETA, but not greater than the maximum receival rating of the relevant grid.

(e) Weighing

All Grain delivered to the Port Terminal Facilities for unloading must be weighed using the Port Operator’s weighing facilities operated by personnel of the Port Operator who must:

(i) record the gross and tare weights of the road vehicles containing the loads of Grain; or
(ii) at the Port Operator’s discretion where the Port Terminal Facilities have such facilities, batch weigh the Grain unloaded from rail vehicles into the grid,

and in all cases, the Port Operator must provide the Customer with a weighbridge ticket or other statement certifying the weight and quantity of Grain delivered, and confirming the name of the person in whose name the Grain is delivered based on the information contained in the Customer’s Direct to Port Delivery Declaration Form and Direct to Port Sample Declaration Form provided to the Port Operator at or prior to the delivery of each load of Grain at the Port Terminal Facility.

(f) Fumigation

The Customer must provide the Port Terminal Operator with a Fumigation Statement detailing all chemicals applied to the Grain for a Non-GSA Cargo prior to delivery at the Port Terminal Facility, in relation to:

(i) all Grain delivered after 1 February in a Season; and

(ii) all Grain that is not of the current Season.

(g) Grain handling

All delivery and unloading points, including any discharge grids, storage locations, and the movement of Grain following discharge will be nominated and determined by the Port Operator in its sole discretion, acting in accordance with the Port Terminal Rules.

8.2 GSA Cargo

In accumulating a cargo of Grain except Bulk Wheat serviced under a GSA Cargo:

(a) Customers must provide a Vessel Nomination to the Port Operator no later than twenty-two (22) days prior to the last day of the Shipping Window;

(b) the ETA of the Nominated Vessel must be no later than the last day of the Shipping Window;

(c) all Vessel Nominations will be input into the Port Operator’s shipping interface contained on LoadNet® for MarketersTM system; and

(d) at the time the Vessel Nomination is provided to the Port Operator, the Customer must have full Grain Entitlement for the cargo outlined in the Vessel Nomination.

9 Vessel Nominations

9.1 Details

(a) When making a Vessel Nomination, Customers must provide the following vessel nomination and handling instruction details to the Port
Operator by entry into the Port Operator’s shipping interface in LoadNet® for MarketersTM:

(i) maximum nominated tonnage (including Master’s discretion);
(ii) destination details;
(iii) product description (commodity type and other characteristics);
(iv) ETA;
(v) discharge port;
(vi) shipping agency;
(vii) vessel part loading;
(viii) de-ballasting requirements;
(ix) ship loading sequence plan (subject to rule 9.1(c)(ii));
(x) vessel details (including beam, Arrival and departure drafts, dry-weight, vessel type/class, hold and hatch details, net and gross capacities);
(xi) cargo details (including batch reference, load tolerance range, total load tonnage);
(xii) stevedore details (subject to rule 9.1(c)(iii));
(xiii) vessel name (subject to rule 9.1(c)(i));
(xiv) Capacity Contract Reference number; and
(xv) any other details necessary for the Port Operator to process the Vessel Nomination.

(b) All Vessel Nominations must:

(i) provide a vessel ETA that is within the relevant Shipping Window for which the Customer has Capacity of the relevant type; and
(ii) provide Laycans less than or equal to fourteen (14) days;
(iii) have ownership of cargo; and
(iv) provide port, grades, quality and tonnage details.

(c) The Port Operator recognises it may not be possible to provide:

(i) a named vessel with over twenty-two (22) days lead time, so a TBA nomination will be acceptable as long as the above criteria have been met and a vessel name is provided by no later than fifteen (15) days before the ETA;
(ii) a ship loading sequence plan with over twenty-two (22) days lead time, so a TBA response for this category will be acceptable until no later than forty-eight (48) hours before the ETA; and
(iii) stevedore details with over twenty-two (22) days lead time, so a TBA response for this category will be acceptable until no later than 48 hours before the ETA.
9.2 Acceptance of Vessel Nominations

(a) The Port Operator will, within two (2) Business Days of receiving a Vessel Nomination, notify the Customer whether it accepts or rejects a Vessel Nomination that contains all the information required in rule 9.1 provided that:

(i) the ETA of the Nominated Vessel is within a Shipping Window for which the Customer has Capacity of the relevant type;
(ii) in the case of GSA Cargo, the Customer has full Grain Entitlement for the cargo outlined in the Vessel Nomination; and
(iii) the Customer is not in Material Breach of its Access Agreement.

(b) A Material Breach by a Customer of its Access Agreement is a breach which:

(i) in the reasonable opinion of the Port Operator, is not capable of being remedied; or
(ii) the Customer has failed to remedy after being given at least fourteen (14) days written notice by the Port Operator to do so if the Customer:

(A) does not pay its debts as and when they fall due;
(B) commits an act of bankruptcy;
(C) enters into a composition or arrangement with its creditors or calls a meeting of creditors with the view to entering into a composition or arrangement;
(D) has execution levied against it by creditors, debenture holders or trustees under a floating charge;
(E) takes or has taken or instituted against it any actions or proceedings, whether voluntary or compulsory, which have the object of or which may result in the winding up or bankruptcy of the Customer (except, in the case of a corporation, for the purposes of a solvent reconstruction);
(F) has a winding up order made against it or (except for the purposes of a solvent reconstruction) passes a resolution for winding up; or
(G) is a party to the appointment of or has an administrator, official manager, receiver, receiver/manager, provisional liquidator or liquidator appointed to the whole or part of its property or undertaking; or

(iii) repudiates the Access Agreement.

(c) If the Port Operator rejects a Vessel Nomination it will provide details of the reasons behind the rejection of the Vessel Nomination at the time it notifies the Customer of the rejection.
9.3 Amendment of Vessel Nominations

The Port Operator may permit the amendment of a Vessel Nomination by a Customer if:

(a) the Customer:
   (i) provides written details including reasons justifying the requested amendment; and
   (ii) those reasons relate solely to matters beyond the reasonable control of the Customer and were not contributed to by the Customer; and

(b) it:
   (i) would not be inconsistent with the Non-discrimination and No Hindering Access provisions of the Undertaking;
   (ii) is to assist achievement of:
      (A) minimising demurrage at the Port over a given period; or
      (B) maximising throughput at the Port over a given period;
   (iii) does not prejudicially alter the outcome or adversely affect other Customers participating in the Auctions;
   (iv) would not result in other Customers incurring materially greater demurrage than would be the case if the amendment had not been accepted.

9.4 Additional Charges

Additional charges may be payable to the Port Operator to cover the Port Operator’s reasonable costs incurred where a Customer requests amendments to the Vessel Nomination.

10 Lost Capacity and Tolerance

10.1 Harvest Shipping Period

(a) Where, following acceptance by the Port Operator of a Vessel Nomination in respect of Capacity during the Harvest Shipping Period:
   (i) a Customer’s vessel Arrives outside of the Shipping Window but within the Grace Period; or
   (ii) the Customer acquires or accumulates Grain Entitlement sufficient to load the vessel within the Grace Period and the Customer’s Vessel has Arrived,

the Port Operator will use its reasonable endeavours to load the vessel.

(b) Where following acceptance by the Port Operator of a Vessel Nomination in respect of Capacity during the Harvest Shipping Period:
   (i) a Customer’s vessel has not Arrived within the Grace Period; or

...
(ii) the Customer does not have full Grain Entitlement within forty-eight (48) hours of the ETA of the Nominated Vessel,

the Capacity will be treated as Lost Capacity and the Customer will pay the fees specified as payable for Lost Capacity in the Access Agreement.

(c) Where:

(i) the Customer does not submit and have accepted by the Port Operator a Vessel Nomination for **Capacity during the Harvest Period** more than twenty-two (22) days before the last day of the Grace Period; or

(ii) the Customer does not ship all **relevant acquired Capacity** within the Harvest Shipping Period, then,

the Customer will be regarded as not to have shipped the Grain in the relevant Shipping Window and the Capacity will be treated as Lost Capacity and the Customer must pay the fees specified as payable for Lost Capacity in the Access Agreement, subject to **rule 10.3**.

### 10.2 Annual Shipping Period

(a) Where, following acceptance by the Port Operator of a Vessel Nomination in respect of the **Annual Shipping Period**:

(i) a Customer’s vessel Arrives outside of the Shipping Window but within the Grace Period; or

(ii) the Customer acquires or accumulates Grain Entitlement sufficient to load the vessel within the Grace Period and the Customer’s Vessel has Arrived,

the Port Operator will use its reasonable endeavours to load the vessel.

(b) Where:

(i) the Customer does not submit and have accepted by the Port Operator a Vessel Nomination more than twenty-two (22) days before the last day of the Grace Period; or

(ii) the Customer’s Nominated Vessel does not Arrive within the Grace Period; or

(iii) in the case of a GSA Cargo, the GSA Customer does not obtain the full Grain Entitlement for the cargo at the time of Vessel Nomination; or

(iv) in the case of a Non-GSA Cargo, the Customer does not obtain the full Grain Entitlement for the cargo at the time of Arrival of the Nominated Vessel,

the Customer will be regarded as not to have shipped the Grain in the relevant Shipping Window and the Capacity will be treated as Lost Capacity and the Customer must pay the fees specified as payable for Lost Capacity in the Access Agreement, subject to **rule 10.3**.
10.3 Tolerance

(a) Subject to rule 10.3(c) below, the Port Operator will permit a ten per cent (10%) more or less tolerance on all Capacity acquired. Reconciliation of whether or not there is any Lost Capacity will occur on an individual Shipping Window basis for each Port.

(b) Subject to rule 10.3(c) below, if the Customer has Lost Capacity equal to or less than ten percent (10%) of the Capacity acquired in a Shipping Window for a given Port (Within Tolerance Lost Capacity), the Port Operator will waive Lost Capacity charges for the Within Tolerance Lost Capacity under the relevant Access Agreement or GSA. Any Lost Capacity in excess of the Within Tolerance Lost Capacity will accrue Lost Capacity charges.

(c) If, prior to the harvest in any Year, the Port Operator estimates that the likely volume of Grain to be harvested in Western Australia in that upcoming harvest season will exceed ten (10) million tonnes, the Port Operator may reduce the tolerance percentage in rule 10.3(a) above and the Within Tolerance Lost Capacity percentage in rule 10.3(b) above, provided that it publishes on its Website a notice to that effect not less than five (5) Business Days prior to the date scheduled for the first Auction in the Auction Timetable for that Year.

11 Shipping Stem Policy

11.1 Prioritising Loading of Vessels

The Shipping Stem is ordered by the Estimated Time of Commencement of Loading (ETC). In allocating or adjusting an ETC to a Customer the Port Operator will have regard to (in order of decreasing importance):

(a) the ETA of a vessel if the ETA is within the Shipping Window for which Capacity is being utilised and the Vessel actually Arrived within its Shipping Window;

(b) the Nomination Date of the Vessel Nomination;

(c) the Nomination Time of the Vessel Nomination;

(d) changes in the ETA of a vessel (including those that would take it outside of the Shipping Window for which Capacity is being utilised);

(e) changes in the expected Accumulation Plan of a vessel for a GSA Cargo or departures from an agreed Accumulation Plan for a Non-GSA Cargo; and

(f) loading a vessel whose cargo remains at Port but which failed to Arrive prior to the last day of the Shipping Window.

11.2 Adjustments to the Stem

The Port Operator may amend the Shipping Stem either at the request of a Customer or with the agreement of the Customer only if accepting the request or making the agreement:
(a) would not be inconsistent with the Non-discrimination and No Hindering Access provisions of the Undertaking;

(b) is for the purpose of:
   (i) minimising demurrage at the Port over a given period; or
   (ii) maximising throughput at the Port over a given period;

(c) does not prejudicially alter the outcome or adversely affect other Customers participating in the Shipping Stem; and

(d) would not result in other Customers incurring materially greater demurrage than would be the case if the request had not been accepted.

11.3 Discretion to Accept Vessel Nominations

(a) The Port Operator may accept a Vessel Nomination that does not comply fully with the requirements of rule 9 provided that such an action:
   (i) would not be inconsistent with the Non-discrimination and No Hindering Access provisions of the Undertaking;
   (ii) is for the purpose of:
      (A) minimising demurrage at the Port over a given period; or
      (B) maximising throughput at the Port over a given period;
   (iii) does not prejudicially alter the outcome or adversely affect other Customers participating in the Shipping Stem; and
   (iv) would not result in other Customers incurring materially greater demurrage than would be the case if the request had not been accepted.

(b) A Vessel Nomination accepted under this rule 11.3 will in all cases have a lower priority than a Vessel Nomination that does comply fully with the requirements of rule 9.

11.4 Other Information

The Port Operator will publish the Capacity available at each Port Terminal Facility in accordance with clause 12.4 of the Undertaking.

11.5 Publication of Capacity

(a) Within 5 Business Days after confirmation that each Auction is complete, the Port Operator will publish the Capacity that has been acquired by Customers on the Shipping Stem by identifying the:
   (i) name of the Customer that has acquired Capacity;
   (ii) Port Zone in which the Customer has acquired Capacity; and
   (iii) month for which the Customer has acquired Capacity.
12 Storage Priority Policy
The Port Operator will allocate the use of storage capacity in a Port Terminal to meet the order of vessels contained in the Shipping Stem from time to time having regard to the Shipping Stem Policy.

13 Port Queue Policy
13.1 Allocating Priority
(a) The port queue is the berthing priority for each vessel that has Arrived at a Port Terminal Facility and is waiting to be loaded.
(b) Berth priority for vessels is determined by:
(i) cargo accumulation status; and
(ii) the time of Arrival of a vessel and its relationship to the Shipping Window of the Vessel Nomination.
(c) The Port Operator will not call a vessel in to berth until the full cargo is ready for loading at the Port Terminal Facility and the Customer has full Grain Entitlement for the cargo, unless it is necessary in the reasonable opinion of the Port Operator for the efficient operation of the Port Terminal Facility.

13.2 Non compliant vessels
(a) Customers’ vessels must pass all Relevant Surveys within twenty-four (24) hours of berthing.
(b) The Port Operator may require Customers to move their vessel from the berth if it fails survey in accordance with rule 13.2(a) and the non-compliant vessel is holding up the berth from another vessel.
(c) Where a vessel fails any Relevant Surveys it returns to its original priority once it has passed the Relevant Surveys.

13.3 Multi porting
The Port Operator recognises vessels which have received part Grain cargo from a previous call (multi port) at another Western Australian port. If this is applicable, then the actual Arrival date at the first port of call is used to establish its priority in the port berthing queue.

14 Delivery Queue Policy
(a) Each Customer will be allocated an Assembly Window for Non-GSA Cargo once they have a confirmed Vessel Nomination and ETA, during which time the Customer will be permitted to deliver loads of Grain to the Port Terminal Facility for the purposes of Export Accumulation (Assembly Window).
(b) The Port Operator allocates Assembly Windows in order to meet the facilitated order of vessels contained in the Shipping Stem from time to time having regard to the Shipping Stem Policy.
(c) Assembly Windows will be allocated at Kwinana all Year round and at Geraldton, Albany and Esperance outside of the Harvest Shipping Period. During the Harvest Shipping Period at Geraldton, Albany and Esperance, Customer’s Grain delivery vehicles will be required to queue for services along with other vehicles seeking access.

(d) Customers delivering Bulk Wheat for a non-GSA Cargo may not access a delivery queue at a Port Terminal Facility until it has been provided with an Assembly Window by the Port Operator.

(e) Provided that a Customer arrives at the relevant Port Terminal Facility within their Assembly Window, the Customer’s priority in the delivery queue will be determined by the time that they arrived at and joined the delivery queue.

(f) The Port Operator may require Customers to move their vehicle from a delivery queue if the vehicle breaks down or is rejected in accordance with the terms and conditions of the Access Agreement or these Port Terminal Rules and the non-compliant vehicle is holding up the delivery queue for other vehicles.

15 Complaints and Dispute Resolution

15.1 Complaints Resolution process

(a) If a Customer considers that the Port Operator has not complied with any provisions of the Port Terminal Rules, they may lodge a complaint with the Risk and Compliance Coordinator of the Port Operator (Compliance Complaint).

(b) The Compliance Complaint must:

(i) be in writing, including by email to compliance@cbh.com.au or by facsimile to (08) 9322 3942 addressed to the Risk and Compliance Coordinator;

(ii) be notified promptly and in any event by no later than 4.00 pm Western Australian Standard Time on the next business day following the day on which the circumstances giving rise to the complaint occurred;

(iii) contain details of:

(A) the facts and reasons relied upon by the Customer as the basis of the complaint, including the anticipated or actual loss, cost or expense and time or operational impacts of the non-compliance and the names of any representatives, agents or employees of the Customer and Port Operator involved;

(B) the provisions of the Port Terminal Rules relevant to the alleged non-compliance; and

(C) the proposed terms of the decision that the Customer seeks.
(c) A Compliance Complaint must be referred to:
   (i) the Port Operator’s General Manager of Operations;
   (ii) the Port Operator’s General Counsel; or
   (iii) the Port Operator’s Group CEO.

(d) The Port Operator must use its best endeavours to respond to the Customer within one business day following receipt of the Dispute Notice (Complaint Response). The Complaint Response must notify the Customer whether the Port Operator will change its decision and, if not, it must provide written reasons for the Port Operator’s decision.

(e) If the Customer is not satisfied by the Complaint Response, or if the Port Operator fails to respond to the Compliance Complaint within one Business Day of its receipt, the Customer may serve written notice on the Port Operator within one Business Day of receipt of the Complaint Response, or within one Business Day of when the Complaint Response was due (Escalation Notice).

(f) Upon receipt of the Escalation Notice, the Port Operator must use all reasonable endeavours to arrange a meeting between the Port Operator’s General Manager of Operations and the Customer within two Business Days of receipt of the Escalation Notice. Where the Port Operator’s General Manager of Operations is unavailable for such a meeting within the timeframe specified, the Port Operator will make available a suitable alternative authorised representative (Alternate) to meet with the Customer within two Business Days of receipt of the Escalation Notice. The meeting may take place either face to face or by telephone to assist in expediting the determination of the complaint.

(g) At the meeting, the Port Operator’s General Manager of Operations (or Alternate) and the Customer will discuss the subject of the Compliance Complaint and Complaint Response and use all reasonable endeavours to reach an agreed outcome. Where an agreed outcome cannot be reached, the Port Operator’s General Manager of Operations (or Alternate) will make a final written decision including reasons for the decision in relation to the Complaint Notice and notify the decision to the Customer within one Business Day of the meeting (Decision Notice).

(h) In considering the Compliance Complaint and providing the Complaint Response and any Decision Notice, the Port Operator must take into account the circumstances of the complaint and the details set out in the Complaint Notice and, acting reasonably and in good faith, reach a decision that is consistent with the Port Terminal Rules and the Undertaking.
Schedule 1

SHIPPING CAPACITY ACCESS
ALLOCATIONS

AUCTION RULES
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1 Preamble
The following auction rules govern the obligations of parties in the conduct of an online auction. The auction rules for a specific auction are those rules located on the auction system website at the time of the auction. It is the responsibility of the individual bidder to ensure they understand and/or seek appropriate legal advice on the auction rules.

2 Tradeslot registered bidder agreement
Upon completion and submission of the Registered Bidder Agreement (and for all bidding conducted by the bidder while certified/authorised under those details), bidders are deemed to have accepted, and are bound by, the auction rules, as amended and varied in accordance with the Undertaking.

3 Bidder qualification
All entities wishing to participate in the auction (potential bidders) are required to apply for and be assessed as qualified bidders. To qualify as a bidder, entities are required to have signed an Access Agreement.

4 Bidder registration
Qualified bidders will be set up by Tradeslot as users of the auction system. Application to become a registered bidder requires acceptance of the terms and conditions of the Tradeslot Registered Bidder Agreement and participation in the training sessions provided by Tradeslot.

5 Training and system testing
To enable qualified bidders to participate in the auction process, Tradeslot and CBH shall provide training, including the running of "mock" auctions for qualified bidders to familiarise themselves with the auction system. Tradeslot shall also assist with system testing for qualified bidders prior to commencement of the Auctions.

6 Shipping capacity access auction system
In order to participate in an auction, registered bidders must log on to the dedicated auction system website, www.portcapacity.com.

Registered bidders are issued a single system account user name and password via email, with which to access the system for purposes of the Auction. Registered bidders provide their account log on details to others entirely at their own risk. Bids entered by parties or advisors who have been granted access by a registered bidder are deemed to be bids of that bidder and are binding on that bidder.

The auction system website server is hosted within a secure third party hosting facility. Tradeslot independently manages the auction.

Tradeslot provides a telephone based help desk service during the auction. The Tradeslot help desk number is +61 3 8624 0000.
7 Auction format

7.1 Online auction
All bids in the auction are submitted electronically via the internet during the lot bidding period. The auction is conducted in a simultaneous, multi-round, ascending clock auction format.

7.2 Simultaneous auction format
(a) All lots in the auction catalogue for the auction are contested simultaneously. Bidding on all lots commences at the date and time of the auction start (lot bidding period start) and will end on the earlier of:
   (i) the issue of an Auction Closure Notice as determined by the Port Operator in its absolute discretion as modified by this rule; or
   (ii) when bidding on all lots ends (all lots are at or below capacity).

(b) Bidders have the opportunity to submit bids on all lots. Subject to rule 7.2(a), all lots stay open until the end of the auction event. When the auction closes, all lots close simultaneously.

(c) The Port Operator will only issue an Auction Closure Notice set out in rule 7.2(a) if it is reasonably satisfied that the following conditions have been met:
   (i) the total aggregate demand in the auction must be not more than 10 per cent above the aggregate supply offered in the auction; and
   (ii) the Auction Closure Notice has been approved by a nominated representative of the operations division of the Port Operator, which may include but not be limited to any one of the following: General Manager of Operations, the Supply Chain Manager, Customer / Export Manager and Logistics Manager (Nominate Representative).

(d) Prior to the commencement of each auction, the Port Operator will notify Tradeslot as to the identity of the Nominated Representative for that auction.

(e) The Nominated Representative will only approve an Auction Closure Notice where the Nominated Representative, acting reasonably, considers that:
   (i) it is possible to meet the demand profile and the conduct of the auction, if continued, would not result in a fair, efficient and transparent allocation of capacity to all bona fide bidders;
   (ii) the decision to approve would not be inconsistent with clause 6 (Non-discriminatory access) and clause 10.8 (No Hindering) of the undertaking offered by CBH in favour of the Australian Consumer and Competition Commission in accordance with the provisions of the Wheat Export Marketing Act 2008 (Cth);
   (iii) the decision to approve would be for the purpose of maximising throughput at the Ports over a given period; and
(iv) the decision to approve would not result in Bidders incurring materially
greater demurrage than would be the case if the decision was made
not to accept the Auction Closure Notice.

(f) For the avoidance of doubt, in respect to rule 7.2(e), individual
circumstances and the positions of Bidders must not be taken into account
by the Nominated Representative in determining whether to approve an
Auction Closure Notice.

7.3 Multi round auction format
Lots are offered for bidding over a series of separate, pre-scheduled activity
rounds. The auction can span multiple days with scheduled breaks between days.

Activity processing periods are scheduled after each activity round end and prior to
the start of the activity pause period. These periods serve to aggregate bids from
all bidders and determine whether the auction continues into another round. During
activity processing periods all bidding activity is suspended.

Activity pause periods (or auction breaks) can be scheduled between activity
rounds. Unlike activity processing periods, however, auction data will be viewable.

7.4 Ascending clock auction format
In the ascending clock auction format capacity in one lot is being offered at a per
tonne uniform price across all bidders. Bidders indicate how much capacity they
would purchase in that lot at that uniform price per tonne.

The first round uniform price begins at a start price defined as the upfront
marketers fee plus auction premium (the auction premium typically starts at $0.00).
As long as total demand for one lot is higher than total supply, the uniform price
increases by one increment each round. With every new round bidders are asked
to submit a new volume bid at the new price per tonne.

Bidders may change their bid at any time during the round. The submitted bid
current at the time the round finishes is the bid processed for that round.

7.5 Auction timetable
The auction timetable, including the date and time of all auction phases is
determined by CBH who will publish the auction timetable prior to the auction start

CBH will also publish the auction catalogue of lots to be included in the scheduled
auction prior to the auction start.

CBH may alter the auction timetable by notifying qualified bidders of the revised
auction timetable, and publishing the revised auction timetable prior to the
previously published auction start.

8 Event and round timing
The server time on the auction system website is the official time clock for all
activities associated with the auction. Australian Western Standard time (WST) will
be displayed.

The time remaining in each round, known as the round time, will be displayed
during bidding periods. In each round, the round timer counts backwards towards
zero. When zero is reached, bidding is stopped and the system processes all bids of the closed round activity processing period and may start an activity pause period. During an activity pause period the system displays the time remaining till the live bidding process resumes.

Round length can be flat (all rounds have the same duration) or can be set round by round. CBH will advise bidders prior to the auction event of the round timing.

The auction does not have a scheduled end time but CBH anticipates the auction to run no longer than five business days. If necessary, the auction timetable will include breaks without bidding activity (activity pause period).

9 Auction pricing
All auction pricing is in Australian Dollars for each lot delivered to the specified delivery point for each bidder.

All auction and bid pricing is exclusive of Goods and Services Tax (GST), per tonne of capacity. The system will display total committed dollars and total confirmed capacity.

Goods and Services Tax (GST) will be included upon invoicing of the capacity won for that bidder.

9.1 Clock price
The clock price for each lot will be displayed as an exact price per tonne. As long as total demand exceeds total supply the clock price will increase by one bid increment (as defined prior to the auction) at the beginning of each new round. Bidders will express bids in terms of capacity (minimum increment one (1) mt) requested at that price per tonne. Round-by-round price increments can be flat (same increments for all rounds) or can differ between rounds. CBH will inform bidders about bid increments prior to the auction event.

If at the end of a round, total demand matches total supply or falls below total supply, the clock price stays constant in the next round. Other lots with total demand exceeding total supply increase in price by one increment. Subject to rule 7.2(a)(i), the auction rounds continue until demand in all lots is equal or less than supply.

The payable amount per tonne is a uniform price – when capacity of one lot is awarded, all successful bidders will pay the same (uniform) price per tonne of capacity (mt). The uniform price is determined as follows:

Upfront Marketers fee + Auction bid price + Surge fee (if applicable)

The clock price will be displayed lot by lot to allow direct comparison between per tonne lot pricing.

9.2 Start prices
The opening clock price per lot is based on the Upfront Marketers Fee plus any Surge Fees (if applicable) set by CBH prior to the auction.
10 **Registration period**

The registration period is the period before the first activity round where bidders are able to log in to the system and update contact details and email addresses online on the bidder profile page. They are also able to view the auction catalogue (lot information).

11 **Auction bidding activity**

11.1 **Bids**

Bids on lots can only be submitted during an activity round.

Bidders can submit multiple bids during each activity round.

Valid bids submitted in previous activity rounds during the auction cannot be withdrawn by the bidder under any circumstances. The last valid bid placed in the previous activity round is binding on the bidder.

Bidders may change their bids between rounds, but:

- the aggregate total of their bids (in tonnes) must not exceed the aggregate capacity they bid across all lots in the previous round; and
- bidders are only permitted to reduce the aggregate capacity they bid across all lots by a maximum of 150,000 tonnes per round.

11.2 **Starting the lot bidding period**

The lot bidding period for all lots commences at the date and time of the auction start. The lot bidding period continues subject to the scheduling of activity rounds.

The lot bidding period for a given lot ends at the end of the overall auction and lot award.

11.3 **Valid bid**

Bidders can bid for up to 100% of the total capacity in a given lot. The system will reject bids for more than 100% of the lot volume.

The minimum increment for a bid is one (1) mt. The system will not allow fractions of the minimum increment.

Subject to rule 11.1, bidders may alter their bid at any time whilst a round is open.

Total capacity requested across all lots in a round cannot exceed the total capacity requested in the previous round (total capacity rule). The system does not accept a bid that would bring the total capacity to exceed last round’s total capacity. This means that the aggregate capacity bid represents the maximum aggregate capacity that may be bid in following rounds. As the auction progresses, bidders may change the way that they allocate their maximum aggregate capacity between lots but may not exceed the aggregate capacity bid for in the first round. Bids will stay open and remain valid until a bidder alters the bid.

If, at the end of an activity round, the aggregate capacity bid by a bidder across all lots involves a reduction of more than 150,000 tonnes from the aggregate capacity bid in the previous round, each of those reductions in bids will be disregarded (i.e.,
the bidder will be taken to have bid for the same amount of capacity as in the previous round).

11.4 Activity round length
Activity rounds last for a given duration of time, which is set by CBH before the auction begins. Activity round time can be flat (uniform across all rounds) or can be set round-by-round.

The time remaining to adjust bids in each current activity round is indicated on the screen by the round timer. Activity rounds are advanced when the round timer reaches zero.

11.5 Advancing activity rounds
At the end of each activity round there will be a round processing period. During this period the system will calculate the aggregate demand for each lot by adding together the capacity demanded by all valid bids.

The aggregate demand of the previous round will be displayed in the system. Past round data can also be viewed and downloaded from the Bid History section of the system.

(a) Aggregate demand exceeds supply
If the aggregate capacity demanded is greater than the capacity supplied in a lot and the Port Operator has not issued an Auction Closure Notice, the round will advance with the clock price:

- remaining at $0.00 (from round 1 to round 2);
- increased by one price increment (from round 2 to 3 and following).

(b) Aggregate supply exceeds demand
If the aggregate demand for a lot is less than or equal to the aggregate supply for that lot and the auction event is not closing, the lot progresses into the next round without increasing the price per tonne.

Activity rounds continue to advance until all lots have aggregate demand less than or equal to aggregate supply or the Port Operator issues an Auction Closure Notice. At this point, the overall auction event closes.

If the Port Operator elects to close the auction as per rule 7.2(a)(i) by issuing an Auction Closure Notice, Bidders will be awarded and allocated the demand requested by each relevant Bidder at the last concluded Round and Premium applicable at the time the Auction Closure Notice is received by Tradeslot as auction manager.

11.6 Lot Award
A given capacity volume within each lot is awarded to one or more winning bidders at the close of the auction event.

The clock price per lot at the end of the auction determines the payable price per tonne.

The award of a lot may be subject to grievance proceedings.
11.7 **Overshoot**
When, at the end of the auction event aggregate demand in one lot is less than supply it creates left over capacity, or overshoot. In the case of overshoot:
- the volume that has been bid for will be allocated at the uniform price reached for the given lot;
- the excess supply or Passed-in Capacity (the volume that has not been assigned) may be repositioned into, offered at a subsequent auction or allocated through the Spare Capacity procedure in accordance with the Port Terminal Rules.

11.8 **Passing in capacity**
If a lot is not awarded as there have been no bids for the lot at the end of the entire auction event, the capacity within that lot will be passed in and may be repositioned into, offered at a subsequent auction or through booking spare capacity in accordance with the Port Terminal Rules.

11.9 **Disruption to an auction**
If the auction system fails at the server, or there is any unexpected disruption to services prior to auction start, the auction will be re-scheduled. All qualified bidders will be notified of the rescheduling of the auction.

If the system fails, or there is any unexpected disruption to services after the auction start and during the lot bidding period, the status of competition for all lots, reverts to that existing at the end of the activity round immediately prior to the disruption. The auction recommences as soon as the problem is rectified, and as scheduled by CBH.

11.10 **Auction Member Queries**
A Query is where an Auction Member seeks clarification of a rule or process in connection with the Auction.

All queries from a Bidder are to be directed to the Tradeslot helpdesk.

11.11 **Auction Member Grievance**
A Grievance is where an Auction Member wishes to lodge a formal complaint with respect of the Auction.

A Bidder must indicate the intent to lodge a grievance with the Tradeslot helpdesk during the execution of the Auction.

Grievances lodged after the auction has ended will not be considered.

12 **Post auction**
12.1 **Invoicing**
Following the auction end, confirmation to winning bidders, of lot award and corresponding charges are included into the Invoice and issued electronically.

Bidders are normally notified of the lot award via email within two (2) business days after the end of the auction.
12.2 Publication of results
CBH will publish the end price and capacity sold within each lot at the end of the auction. The results of the auction will not disclose winning bidders or information allowing the identification of individual bidders.

If a grievance is submitted, winning bidders will be notified that their lot award is provisional until the grievance is determined by the Auction Review Committee. Confirmation of lot award to winning bidders will be made after determination of the grievance by the Auction Review Committee.

12.3 Grievance procedure
The grievance procedure aims to provide a framework for raising and dealing with grievances which arise from the relevant online auction. It aims to provide an efficient, clear, fair and accessible mechanism for dealing with problems which arise and for ensuring that the determination of any grievances, and the online auction itself, has been conducted properly.

The grievance shall be determined having regard to the following factors only:

- the application of the auction rules;
- the bidder agreement between the aggrieved bidder and Tradeslot;
- the aggrieved bidder's participation in the online auction;
- the operation of the technical auction system;
- any oral submissions made by the aggrieved bidder related to the above factors;
- any recommendations made by the Auction Review Committee; and
- any other factor that the Auction Review Committee considers appropriate in its absolute discretion, provided that notice of such consideration is given to the relevant aggrieved bidder(s).

If a bidder indicated their intent to lodge a grievance during the auction with the Tradeslot helpdesk, the grievance and any supporting documentation must be lodged by 5.00 pm on the first business day following the auction end. Bidders are to submit grievances to the Tradeslot auction manager either electronically or by facsimile as follows:

- Electronically at: auctionmanager@tradeslot.com.
- By facsimile at: (03) 9621 1811.

Grievances will be determined the Auction Review Committee.

CBH, Tradeslot and each aggrieved bidder have the right to maintain as confidential the grievance, application of the grievance procedure and the determination of the grievance.

Each bidder authorises and consents to the use of any personal information provided in connection with these auction rules for the purposes set out herein, subject only to the Privacy Act 1988 (Cth) and any other applicable legislation.
Without limiting the forgoing, such information may be used by the Auction Review Committee as reasonably necessary to determine any grievance.

13  

13.1  

Auction Review Committee

Responsibility

The Auction Review Committee is responsible for the oversight of the Auction process. Its primary goal is to ensure the Auction proceeds in an orderly and fair manner. As a result of this goal the Auction Review Committee is charged with investigating any outcomes that it believes may contravene the operations of a fair and equitable market.

13.2  

Structure

The voting members of the Auction Review Committee will comprise a mix of risk oversight skills, auction knowledge, understanding of market demand mechanisms and independence as follows:

(a)  CBH Group Chief Risk Officer (or representative) – Chairman;

(b)  Representative of Tradeslot;

(c)  One independent representative.

For the purposes of rule 13.2(c), ‘independent’ means an individual who is not affiliated or associated with, or employed by, a Bidder or a Related Body Corporate (as defined in the Corporations Act 2001 (Cth)) of a Bidder but excluding a contract between the Port Operator and the member in his/her capacity as a member of the Auction Review Committee.

The Chairman’s powers are administrative only and will include but not be limited to the power to convene meetings and to co-ordinate the provision of any required notices. For the avoidance of doubt the Chairman does not hold any additional voting power compared to other Auction Review Committee members.

The Port Operator will put forward a minimum of 3 independent representatives as candidates for the position identified in rule 13.2(c).

Each entity that participated in an Auction in the previous applicable season (Voter) will have one vote for the purposes of electing the independent representative in rule 13.2(c).

A candidate put forward pursuant to rule 13.2(c) must poll an absolute majority of the total formal votes cast (i.e. in excess of 50%) in order to be elected to the vacancy and the Port Operator will employ the same ‘preferential voting system’ used by the Legislative Assembly in Western Australia and as described on the Western Australia Electoral Commission website to determine the successful candidate. Therefore, each Voter will be required to indicate a preference for each candidate when voting. In the event of a deadlock, the Port Operator will run another poll.

The successful candidate will be elected as the independent representative of the Auction Review Committee and may be provided with remuneration as reasonably determined by the Port Operator as compensation for their time. This remuneration will be deducted from the Auction Premium before the Auction Rebate is calculated.
13.3 **Meeting procedures**
A quorum is established when all voting members (or their representatives) are present.

A representative of CBH Operations may be invited to attend but does not carry a vote.

Auction Review Committee Meetings shall be held at the end of each auction and as required during each auction. Minutes shall be recorded and where necessary reports presented to the meeting.

13.4 **Responsibility**
The Auction Review Committee is responsible for the oversight of the Auction process. Its primary goal is to ensure the Auction proceeds in an orderly and fair manner. As a result of this goal the Auction Review Committee is charged with investigating any outcomes that it believes may contravene the operations of a fair and equitable market.

13.5 **Powers**
The powers of the Auction Review Committee will include but are not limited to:

- Monitoring and overseeing the compliance by Bidders with these Auction Rules;
- Investigating and making determinations on any allegations by any person that a Bidder has breached these Auction Rules, and for this purpose, requesting information reasonably relevant to that investigation or determination;
- Imposing binding orders and sanctions on any Bidder for a breach of this Code;
- Enforcing a trading halt to the Auction process;
- Querying Bidders regarding trading activity, outcomes and auction participation generally;
- Cancelling auction trades during the auction and prior to validation;
- Suspend/cancel Bidder registration;
- Validating the Auction;
- Recommending improvements to the Auction process;
- Giving written and verbal warnings to the Bidders;
- Publishing the name of a Bidder(s) who is found not to have complied with the Auction Rules or ignored the Auction Review Committee’s request to provide information or remedy a breach (or failed to do so within a reasonable period of time).

13.6 **Requests for information**
Bidders must respond to any reasonable query or request from the Auction Review Committee within the time specified unless:
a) a reasonable person would not expect the information to be disclosed;

b) the information is confidential and the Auction Review Committee has not formed the view that the information has ceased to be confidential or refused to undertake to keep the information confidential; or

c) one or more of the following applies:

- it would be a breach of a Legislative Requirement to disclose the information; or
- the information is a trade secret.

If a Bidder considers that the information requested falls within the grounds described above it must set out in writing to the Auction Review Committee why the information requested falls within each ground that the Bidder intends to claim protection under.

If a Bidder fails to respond to any query or request from the Auction Review Committee or fails to claim an exemption listed above, the Auction Review Committee may, in the circumstances draw an adverse inference from the failure to respond or validly claim an exemption and the Auction Review Committee will have the power to exercise any of the powers given to it under rule 13.5.

### 14 Communication of Decisions

The Auction Review Committee will make available its decisions and the background to its decisions to the party that lodged the grievance. The decisions of the Auction Review Committee will be made publicly available where that information is not market sensitive, confidential or in breach of relevant regulations. Where necessary the decisions will also be communicated to the ACCC with supporting rationale and information.

### 15 Limitation of liability and indemnity

#### 15.1 Limitation of liability

Each individual member of the Auction Review Committee, CBH and Tradeslot hereby exclude, to the fullest extent permitted by law, all liability to bidders arising out of or otherwise in connection with the participation by bidders in the auction including, without limiting the foregoing, any liability:

- for failure of the system prior to the auction start;
- for failure of the system during the lot bidding period;
- for failure by the system to accept a valid bid;
- for errors in the reserve price for a lot;
- for any capacity limit of a bidder, whether such limits are nominated by a bidder or otherwise;
- for interruption of any other kind to access to the online auction website;
- for loss or delay in the receipt by a bidder of any electronic notification.
from CBH;

- for loss or delay in the receipt by CBH of any electronic notification from a bidder;

- for indirect, incidental, special or consequential damages whether or not the bidder knows of the possibility of such damage or such damage was otherwise foreseeable;

- for loss of profits or savings (actual or anticipated) and loss of goodwill, whether or not the bidder knows of the possibility of such damage or such damage was otherwise foreseeable; and

- contributed to directly or indirectly by the bidder's acts or omissions,

except to the extent that such liability arises from acts or omissions of CBH that are negligent or unlawful or which amount to wilful misconduct.

15.2 Indemnity

Each bidder indemnifies each individual member of the Auction Review Committee, CBH and Tradeslot, their officers, employees and agents, from and against any claim, action, liability, loss, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character arising directly or indirectly from any:

- Breach by the bidder of these auction rules; or

- Acts or omissions (including any negligence, unlawful conduct or wilful misconduct) by the bidder arising out of or otherwise in connection with the bidder's participation in the online auction.
Schedule 2

Direct to Port Delivery Declaration Form
### Direct Port Access Receivals

**Customer Information**
- **Owner:**
- **Customer Title:**
- **Address:**

**Commodity Details**
- **Season:**
- **Grain:**
- **Grade:**

**Weights**
- **Vehicle ID:**
- **Gross Tonnes:**
- **Tare Tonnes:**
- **Net Tonnes:**

**Quality Information**
- **Result:**

### Vehicle Load Details

**Ship Identifier:**

**Is this grain coming directly off farm?**
- Yes [ ]
- No [ ]

**Mass Management Scheme**
- **< 42.5 Permit NA**
- **CWMMs**
- **STD**
- **CLS**

**Permit Number:**
- **GCM** = **GVM**
- **Acceptable Vehicle Mass**

**Weighed Time**
- **In:**
- **Out:**
- **34hr Time In:**

**Discharge Details**
- **Date:**

**Load Details entered into Yes [ ] No [ ]**

**Computer?**

**Customer or their Representative (Transporter)**
- **Name (Please Print in Block Letters):**
- **Signature:**

**CBH Representative**
- **ENTERED BY Signature:**
- **ENTERED BY Name (Please Print in Block Letters):**
- **CHECKED BY Signature:**
- **CHECKED BY Name (Please Print in Block Letters):**
Schedule 3

Direct to Port Sample Declaration Form
# Direct Port Access Pre-delivery Sample Analysis

## 1.0 Customer Information
- **Company Name:**
- **Address:**
- **Phone:**
- **Fax:**
- **Mobile:**

## 2.0 Grain Details
- **Grain Type:**
- **Season Grown:**
- **Variety:**

## 3.0 Intended Delivery Details
- **Intended Site for Delivery:**
- **Intended Date of Delivery:**

## 4.0 Storage Details
<table>
<thead>
<tr>
<th>Storage Description</th>
<th>Storage Capacity</th>
<th>Approximate Terms for Delivery</th>
<th>Sample Reference for Enclosed Samples</th>
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</table>

Note: samples should be a 1kg sample per source of grain.

## 5.0 Treatment Details
<table>
<thead>
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<th>Name and Nature of Substance</th>
<th>Date Used</th>
<th>Rate of Application</th>
<th>Method Used</th>
</tr>
</thead>
</table>

**TREATMENTS**
- If the grain has been treated with substances for the control of insects, such substances are listed above.
- The application of the substances listed and the use of any other chemical in the process of planting, growing and storage of grain has been in accordance with any relevant legislation and also in accordance with the usage instructions.

## 6.0 Deliverer Signatory
- **Signature:**
- **Print Name:**
- **Date:**

## 4.0 CBH Use Only
- **Date Received:**
- **Date Delivered:**
- **Bill Number:**
  - **CBH Number:**
  - **Account Manager:**
  - **Shipping Manager:**

## Quality Information
- **Result:**
Schedule 4

[NOT USED]

Deleted: CBH_DMS_PROD
1184636v1
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### Placement of Proxy Bids

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If a given bidder is disconnected from the system during the lot bidding period due to individual system or connection failure, the bidder can continue to participate in the auction indirectly if proxy bids have been submitted. The Tradeslot help desk is not authorized or technically able to submit bids on behalf of bidders.

Placement of Proxy Bids

Proxy bids are bids placed before the beginning of an activity round or before the beginning of the auction during the registration period. Bidders can but are not obliged to, set volume bids in anticipation of round clock prices. Proxy bids can be deleted or over-written during the registration period and at any time during activity rounds.

Proxy bidding is highly recommended as a safety net to ensure bidders stay in the bidding process even if they are temporarily disconnected from the system. This is particularly important as the auction rules prohibit the Tradeslot help desk from placing bids or proxy bids on behalf of bidders even in the case of internet connection issues.

Proxy bids and activity rules

Proxy bids are subject to activity rules. Proxy bids will not be accepted by the system if a volume bid is higher than the bid of the previous round.

Over-writing proxy bids during the auction

During the auction round, a bidder may elect to replace a pre-determined proxy bid with a lower volume (or higher provided that the total aggregate capacity limit is not exceeded) live bid.

The bidder will be asked to confirm or cancel this decision. Should they confirm to overwrite their pre-determined proxy bid, all existing proxy bids for that given lot that are greater than the overwriting live bid will be reduced to the volume of the overwriting live bid. Existing proxy bids for the given lot that are less than the overwriting live bid will remain unchanged.

If the live bid that overwrites an existing proxy bid is higher than the proxy, the bid will be accepted for that round without affecting the proxy setting for future rounds.
Schedule 4

Port Terminal Facility - Geraldton

1 Location
The Geraldton port terminal is located in the Western Australian city of Geraldton, which is approximately 428km north of Perth. The port terminal address is Corner Marine Terrace and Crowther Street, Geraldton WA 6530.

2 Port Terminal Facilities
(a) The Port Terminal Facilities consist of the conveyors, elevators, sample rooms, grids, batch weighers, ship loaders and site roads owned by the Port Operator and contained in the shaded areas below.

(b) Grain receival
   (i) 1 x 200 tonne weighbridge and 2 x 120 tonne weighbridges (located at west end depot).
   (ii) 1 x 1,000 tonne per hour road receival bin and 4 x 500 tonne per hour road receival bins across the port facility.
(iii) 1 x 1,000 tonne per hour rail receipt station with associated rail line.
(iv) 17 dust control systems.
(v) 55 grain conveyors with 7 associated grain elevators.

(c) Grain storage
(i) The total grain storage capacity is 295,000 tonnes.
(ii) 24 x 2,200 tonne reinforced concrete vertical cells (current capacity is 1400 tonnes, until cell restoration is complete in 2011).
(iii) 14 x 500 tonne star cells with associated working house.
(iv) 14 x 10,000 tonne steel silos with self-discharging base and associated working house.
(v) 1 x 95,200 tonne capacity reinforced concrete horizontal storage cell.

(d) Inload capacity
(i) Rail
(A) The port terminal has one rail receipt station, which can also be used for road receipts when it is not being used by rail. The rail receipt station is rated to receive grain at 1,000 tonnes per hour by rail or by road.
(B) The grid into which the grain is received can discharge at a minimum of 400 tonnes per hour, up to 1,000 tonnes per hour. The rate of discharge is dependent upon the silo to which the grain is to be discharged.
(C) Various factors reduce the ability of the rail receipt station to receive grain at its rated capacity. These include:
   (1) operational constraints and the need to handle multiple segregations, which adds time when changing between grains and grades;
   (2) the physical configuration of rail wagons moving into the port terminal;
   (3) external factors beyond the Port Operator’s control, for example a rail provider’s locomotive breakdown; and
   (4) the Port Operator having to weigh grain on receipt using its batch weighers.

(ii) Road
(A) The port terminal has 5 road receipt stations. One is rated to receive grain at 1,000 tonnes per hour. The other 4 receipt stations are rated to receive grain at 500 tonnes per hour. In total, the Geraldton port terminal can receive grain by road at a maximum of 3,000 tonnes per hour.
(B) The 1,000 tonne per hour grid can discharge grain at a minimum of 400 tonnes per hour, up to 1,000 tonnes per hour. The other 4 receipt stations operate on a grid valve system, and can discharge grain at between 400 and 450 tonnes per hour.

(e) Ship loading capacity

The Geraldton port terminal has 2 luffing ship loaders, each rated to a loading capacity of 1,000 tonnes per hour. The operational capacity of the ship loaders averages between 950 and 1,400 tonnes per hour, depending on the following factors:

(i) hatch changes – changing from one hatch to another affects loading rates, because of the time required to raise, move and lower the ship loaders into the required hatch. Hatch changes are necessary to keep the vessel stable during loading;

(ii) trimming hatches – loading rates are reduced to 'half feed' when the grain comes close to filling a hatch. This is to prevent over-filling and allow instead for hatches to be level filled;

(iii) filling weep holes and bulkheads – loading rates are also reduced to half feed when filling weep holes to allow flow to fill these areas. Due to the relatively light weight of grain (as compared with iron ore, for example) hatches must be filled to the highest level to achieve the maximum weight, and ensure there is no wasted space in the hatch;

(iv) ballast discharge – some ships are not designed to discharge stabilising water tanks at the same rate as the ship loaders can load grain. In these cases, grain loading stops to allow the ship time to discharge ballast;

(v) draught surveys – towards the end of the ship loading, grain flow from the loaders is stopped to allow the ship's captain to check the ship's draught. This is to ensure that the tonnage being loaded will allow the ship to sail and arrive at the discharge port;

(vi) initial loading of large ships – due to the steep angle and height of the ship loaders which is necessary when loading larger ships, there is a reduced feed rate to avoid spillage. As the ship loading continues and the ship becomes lower in the water, the ship loaders can be lowered and feed rates increased;

(vii) grain changes and separations in hatches – when changing from loading one grain type to another, all weighers, belts and loaders must be cleaned before the second grain type can be loaded. Loading will also stop if a physical separation of grain is required in the ship's hatches; and

(viii) weather – grain cannot be loaded on ships in rain or high winds.
(f) Associated system control and communication networks, Site office, ablution and workshop facilities.

(g) The port terminal is accredited to the international standard ISO 9001 and HACCP Codex Alimentarius.
Schedule 5

Port Terminal Facility - Kwinana

1 Location

The Kwinana port terminal is located in the Kwinana industrial area of Western Australia, approximately 40km south Perth. The port terminal address is Rockingham Beach Road, Kwinana Beach WA 6167.

2 Port Terminal Facilities

(a) The Port Terminal Facilities consist of the conveyors, elevators, sample rooms, grids, batch weighers, ship loaders and site roads owned by the Port Operator and contained in the shaded areas below. The rail loop is also included, but not the land surrounding the loop.

(b) Grain receival

(i) 1 x 4,000 tonne per hour rail receival station with associated rail loop.

(ii) 76 grain conveyors with 14 associated grain elevators.

(iii) 34 x dust control systems.
(iv) 1 x 160 tonne certified weighbridge.

(c) Grain storage

(i) The total grain storage capacity is 1,013,900 tonnes.

(ii) 144 x 2,350 tonne reinforced concrete vertical cells with associated working house (due to high level sensors and purge capacity, the operational capacity of these cells is 2,200 tonnes each).

(iii) 104 x 500 tonne star cells with associated working house (due to high level sensors and purge capacity, the operational capacity of these cells is 450 tonnes each).

(iv) 1 x 285,800 tonne and 1 x 238,100 tonne capacity reinforced concrete horizontal storage cells with associated working house (the capacity of these cells is based on one grain type – when segregated, storage capacity in these cells is reduced).

(v) 4 x corrugated galvanised steel open bulkheads with a total capacity of 120,100 tonnes, comprised of:

(A) O1: 30,100 tonnes

(B) O2: 40,000 tonnes;

(C) O3: 23,000 tonnes;

(D) O4: 27,000 tonnes.

(d) Inload capacity

(i) Rail

(A) The port terminal has 1 rail receival station, which is comprised of 2 receival grids. The rail receival grids can also be used for road receivals. When shipping demand requires, rail accumulation tonnage is supplemented with road receivals. The receival grids are rated to receive grain at 4,000 tonnes per hour by rail, and 700 tonnes per hour by road.

(B) Operational constraints and the need to handle multiple grain segregations severely impact the port terminal’s ability to achieve the rated rail receival capacity of 4,000 tonnes per hour. For example, changing the receival facilities to swap between receiving two grades of wheat takes 15-30 minutes. The process involves emptying the receival grid, purging the receival lines and moving trippers in the seventh floor workhouse. Changing the receival facilities to swap from receiving wheat to lupins can take 20-40 minutes, as this process additionally requires the grid to be blown down and the receival elevators to be air blasted.

(C) The physical configuration of rail wagons for discharge can also affect the ability of the receival station to operate at maximum capacity. This is because the grain discharges
from the wagons into the grid at a slower pace than the conveyors are able to remove it. The trains move slowly for set ups and the train must be stationary to allow the Port Operator to open wagons with the rail gun.

(D) Various other factors reduce the ability of the rail receiveal station to receive grain at its rated capacity. These include:

1. operational constraints and the need to handle multiple segregations, which adds time when changing between grains and grades;

2. the physical configuration of rail wagons moving into the port terminal;

3. external factors beyond the Port Operator's control, for example a rail provider's locomotive breakdown; and

4. the Port Operator having to weigh grain on receipt using its batch weighers.

(ii) Road

The Port Terminal operates one road receiveal station consisting of 4 road receiveal grids each rated at 750 tonnes per hour. As a result of the configuration of the receiveal grids discharging generally only occurs on 2 grids and is limited to two (2) grain types at any time. In practice, the road receiveal station does not achieve aggregate receiveal rates in excess of 1500 tonnes per hour.

(e) Ship loading capacity

(i) Ship loading occurs between 0730 and 2230, because:

(A) ships need time to empty their ballast. Due to the fast loading rate at Kwinana, some ships cannot empty their ballast tanks fast enough, so they are allocated time from 2230 and 0730 to catch up; and

(B) as part of the Port Operator's environmental commitments to keep dust and noise to a minimum for residents, the Port Operator does not load ships at the port terminal 24 hours per day.

(ii) 4 x 2,500 tonne per hour travelling and luffing ship loaders (only 2 can be used simultaneously) with associated batch weighing and sampling systems. The ship loaders are fed by 4 conveyor belts, each with a loading capacity of 1,250 tonnes per hour. Because the ship loaders are dual fed (that is, 2 conveyors feed 1 loader), ships can be loaded at full capacity through less infrastructure.

(iii) 291 metre long ship loading berth with associated access jetty.
(iv) A number of factors influence the port terminal's ability to achieve its maximum shipping capacity of 5,000 tonnes per hour. These include:

(A) hatch changes — changing from one hatch to another affects loading rates, because of the time required to raise, move and lower the ship loaders into the required hatch. Hatch changes are necessary to keep the vessel stable during loading;

(B) trimming hatches — loading rates are reduced to ‘half feed’ when the grain comes close to filling a hatch. This is to prevent over-filling and allow instead for hatches to be level filled;

(C) filling weep holes and bulkheads — loading rates are also reduced to half feed when filling weep holes to allow flow to fill these areas. Due to the relatively light weight of grain (as compared with iron ore, for example) hatches must be filled to the highest level to achieve the maximum weight, and ensure there is no wasted space in the hatch;

(D) ballast discharge — some ships are not designed to discharge stabilising water tanks at the same rate as the ship loaders can load grain. In these cases, grain loading stops to allow the ship time to discharge ballast;

(E) draught surveys — towards the end of the ship loading, grain flow from the loaders is stopped to allow the ship's captain to check the ship's draught. This is to ensure that the tonnage being loaded will allow the ship to sail and arrive at the discharge port;

(F) initial loading of large ships — due to the steep angle and height of the ship loaders which is necessary when loading larger ships, there is a reduced feed rate to avoid spillage. As the ship loading continues and the ship becomes lower in the water, the ship loaders can be lowered and feed rates increased;

(G) grain changes and separations in hatches — when changing from loading one grain type to another, all weighers, belts and loaders must be cleaned before the second grain type can be loaded. Loading will also stop if a physical separation of grain is required in the ship’s hatches; and

(H) weather — grain cannot be loaded on ships in rain or high winds.

(f) Associated system control and communication networks, Site office, ablution and workshop facilities.

(g) The port terminal is accredited to the international standard ISO 9001 and HACCP Codex Alimentarius.
Schedule 6

Port Terminal Facility - Albany

1 Location
The Albany port terminal is located in the Western Australian city of Albany, which is approximately 420km south east of Perth. The port terminal address is Princess Royal Drive, Albany WA 6330.

2 Port Terminal Facilities
(a) The Port Terminal Facilities consist of the conveyors, elevators, sample rooms, grids, batch weighers, ship loaders and site roads owned by the Port Operator and contained in the shaded areas below. The sample sheds related to harvest activity are within the shaded area, but are not included in the Port Terminal Facilities.

(b) Grain receival
(i) 2 x 140 tonne weighbridges with associated hut.
(ii) 2 x 700 tonne per hour and 3 x 400 tonne per hour road receival grids.
(iii) 1 x 700 tonne per hour road receival grid (which only services one particular 113,000 tonne capacity storage cell).
(iv) 1 x 2000 tonne per hour rail receiveal station with associated rail line.
(v) 12 x dust control systems.
(vi) 59 grain conveyors with 16 associated grain elevators (some are task specific, such as for discharging by rail or shipping).

(c) Grain storage
(i) The port terminal's total storage capacity is 474,000 tonnes.
(ii) 2 x 2,200 tonne and 5 x 1300 reinforced concrete vertical cells and 6 x 500 tonne star cells with associated working house.
(iii) 24 x 2,300 tonne reinforced concrete vertical cells.
(iv) 12 x 500 tonne star cells.
(v) 10 x 10,000 tonne reinforced concrete silos with bottom rake discharge.
(vi) 10 x 6,000 tonne steel silos with self discharge base.
(vii) 1 x 120,000 tonne and 1 x 113,000 tonne capacity reinforced concrete horizontal storage cells.

(d) Inload capacity
(i) Rail

(A) The port terminal has 1 rail receival station, which can also be used for road receivals (when not in use for rail receivals). The rail receival station is rated to receive grain at 2,000 tonnes per hour by rail, and 1,000 tonnes per hour by road.

(B) To receive grain by rail at 2,000 tonnes per hour, the rail receival station must have two lines and two storage cells available for use. Additional staff are also required to discharge at this maximum rate. The rate of discharge is also dependent upon the silo to which the grain is to be discharged. For example, if the grain is to be discharged to either the 500 or 2,000 tonne cells, the discharge rate from the rail receival station is only 400 tonnes per hour. On average, wheat is discharged from the rail receival station at around 1,300 tonnes per hour.

(C) Various factors reduce the ability of the rail receival station to receive grain at its rated capacity. These include:

(1) operational constraints and the need to handle multiple segregations, which adds time when changing between grains and grades;

(2) the physical configuration of rail wagons moving into the port terminal;
(3) external factors beyond the Port Operator's control, for example a rail provider's locomotive breakdown; and

(4) the Port Operator having to weigh grain on receipt using its batch weighers.

(ii) Road

(A) The port terminal has 6 road receival stations. There are 2 stations rated to receive grain at 700 tonnes per hour, 3 stations rated to receive grain at 400 tonnes per hour and 1 station rated to receive grain at 700 tonnes per hour (this station is at Annexe 2, which is a different area of the port).

(B) The number of grids that can be used simultaneously largely depends on the rail, shipping and transferring activities being carried out at the same time. The control system only allows a set number of grain flows to be set up at once. For example, if shipping a 4-way blend of grain, 8 flows are required (4 flowing into the weigher, 4 flowing out) leaving only 4 flows for other activities.

(C) Once storage space begins to reach its capacity, both storage options and flow path options reduce. The number of road pits available for use may also reduce. Segregating grain will increase the likelihood of this.

(D) The rail grid is rated at 1000 tonnes per hour for road discharge. The 3 road grids are rated at 700 tonnes per hour. However, the actual discharge rate achieved is around 500 tonnes per hour, which is the maximum rate at which a truck can discharge 3 trailers.

(e) Ship loading capacity

(i) The Albany port terminal has 3 luff and swing ship loaders with associated batch weighing and sampling systems, each with a rated loading capacity of 1,000 tonnes per hour. While any 2 ship loaders can be used simultaneously, the actual load rate achieved is on average 1,500 tonnes per hour.

(ii) A number of factors influence the port terminal's ability to achieve its maximum shipping capacity of 2,000 tonnes per hour. These include:

(A) hatch changes -- changing from one hatch to another affects loading rates, because of the time required to raise, move and lower the ship loaders into the required hatch. Hatch changes are necessary to keep the vessel stable during loading;

(B) trimming hatches -- loading rates are reduced to 'half feed' when the grain comes close to filling a hatch. This is to
prevent over-filling and allow instead for hatches to be level filled;

(C) filling weep holes and bulkheads – loading rates are also reduced to half feed when filling weep holes to allow flow to fill these areas. Due to the relatively light weight of grain (as compared with iron ore, for example) hatches must be filled to the highest level to achieve the maximum weight, and ensure there is no wasted space in the hatch;

(D) ballast discharge – some ships are not designed to discharge stabilising water tanks at the same rate as the ship loaders can load grain. In these cases, grain loading stops to allow the ship time to discharge ballast;

(E) draught surveys – towards the end of the ship loading, grain flow from the loaders is stopped to allow the ship’s captain to check the ship’s draught. This is to ensure that the tonnage being loaded will allow the ship to sail and arrive at the discharge port;

(F) initial loading of large ships – due to the steep angle and height of the ship loaders which is necessary when loading larger ships, there is a reduced feed rate to avoid spillage. As the ship loading continues and the ship becomes lower in the water, the ship loaders can be lowered and feed rates increased;

(G) grain changes and separations in hatches – when changing from loading one grain type to another, all weighers, belts and loaders must be cleaned before the second grain type can be loaded. Loading will also stop if a physical separation of grain is required in the ship’s hatches; and

(H) weather – grain cannot be loaded on ships in rain or high winds.

(f) Associated system control and communication networks, Site office, ablution and workshop facilities.

(g) The port terminal is accreditation to the international standard ISO 9001 and HACCP Codex Alimentarius.
Schedule 7

Port Terminal Facility - Esperance

1 Location
The Esperance port terminal is located in the Western Australian city of Esperance, which is approximately 721km south-east of Perth. The port terminal address is Corner Harbour Road and Esplanade, Esperance WA 6450.

2 Port Terminal Facilities
(a) The Port Terminal Facilities consist of the conveyors, elevators, sample rooms, grids, batch weighers, ship loaders and site roads owned by the Port Operator and contained in the shaded area in figure 1 below.
(b) The weighbridge and access roads at Chadwick, approximately 3km from the Esperance port terminal, also form part of the Port Terminal Facilities, and are contained in the shaded area in figure 2 below.
(c) Grain receipt
   (i) 5 road receipt bins:
       (A) 2 x 800 tonne per hour;
       (B) 2 x 200 tonne per hour; and
       (C) 1 x 500 tonne per hour.
   (ii) 1 x 800 tonne per hour rail receipt station with associated rail line.
   (iii) 15 dust control systems.
   (iv) 47 grain conveyors with 12 associated grain elevators,
   (v) 1 x 180 tonne weighbridge located at the Chadwick depot.

(d) Grain storage
   (i) The port terminal’s total storage capacity is 249,400 tonnes.
   (ii) 8 x 5,000 tonne steel silos.
   (iii) 8 x 2,100 tonne concrete silos.
   (iv) 10 x 6,000 tonne steel silos with self discharging base and
        associated working house.
   (v) 101,600 tonne capacity reinforced concrete horizontal storage cell.
   (vi) 31,000 tonne capacity corrugated galvanized steel circular storage cell.

(e) Inload capacity
   (i) Rail
       (A) The port terminal has 1 rail receipt grid, which can also be
           used for road receipts. The rail receipt grid is rated to
           receive grain at 800 tonnes per hour by rail and by road.
       (B) The operational capacity of the rail receipt grid, and the rate
           at which it is able to receive grain, depends upon the type of
           grain being received and the destination silo of that grain.
           The following rates are based on wheat receipts:
           (1) 800 tonnes per hour when grain moving to 10 x 6,000
               tonne cells;
           (2) 400 tonnes per hour when grain moving to 8 x 5,000
               tonne cells;
           (3) 250 tonnes per hour when grain moving to 8 x 2,100
               tonne cells;
           (4) 500 tonnes per hour when grain moving to horizontal
               storage; and
           (5) 500 tonnes per hour when grain moving to circular
               storage.
(C) Various factors reduce the ability of the rail receival station to receive grain at its rated capacity. These include:

1. operational constraints and the need to handle multiple segregations, which adds time when changing between grains and grades;
2. the physical configuration of rail wagons moving into the port terminal;
3. external factors beyond the Port Operator's control, for example a rail provider's locomotive breakdown; and
4. the Port Operator having to weigh grain on receipt using its batch weighers.

(ii) Road

(A) The port terminal has 5 road receival stations:

1. Grids 1 & 2 can receive grain at 800 tonnes per hour;
2. Grids 3 & 4 can receive grain at 200 tonnes per hour; and
3. Grid 5 can receive grain at 500 tonnes per hour.

(B) The road receival grids are limited to servicing specific storages within the port terminal:

1. Grids 1 & 2 fill can fill anywhere within the terminal and are used as the main discharge grids;
2. Grids 3 & 4 are used to fill the small concrete cells and annexe; and
3. Grid 5 fills part of the annexe and circular storage.

(f) Ship loading capacity

(i) The Esperance port terminal has 7 fixed shipping spouts, with a combined total rated loading capacity of 2,500 tonnes per hour, with associated batch weighing and sampling systems. The port terminal has the ability to load ships using 2 spouts loading into 2 hatches simultaneously, with each being able to load 1,250 tonnes per hour (depending on grain type and cargo position in the terminal). The Port Operator endeavours to position cargo so that ships can be loaded at the maximum rate. However, vessel requirements and weather delays must be taken into account. Given these restrictions, the port terminal aims to achieve an overall 1,800 tonnes per hour loading rate.

(ii) Ship loading rates at the port terminal are affected by the following factors:

(A) hatch changes – changing from one hatch to another affects loading rates, because of the time required to raise, move and lower the ship loaders into the required hatch. Hatch
changes are necessary to keep the vessel stable during loading;

(B) trimming hatches – loading rates are reduced to 'half feed' when the grain comes close to filling a hatch. This is to prevent over-filling and allow instead for hatches to be level filled;

(C) filling weep holes and bulkheads – loading rates are also reduced to half feed when filling weep holes to allow flow to fill these areas. Due to the relatively light weight of grain (as compared with iron ore, for example) hatches must be filled to the highest level to achieve the maximum weight, and ensure there is no wasted space in the hatch;

(D) ballast discharge – some ships are not designed to discharge stabilising water tanks at the same rate as the ship loaders can load grain. In these cases, grain loading stops to allow the ship time to discharge ballast;

(E) draught surveys – towards the end of the ship loading, grain flow from the loaders is stopped to allow the ship’s captain to check the ship’s draught. This is to ensure that the tonnage being loaded will allow the ship to sail and arrive at the discharge port;

(F) initial loading of large ships – due to the steep angle and height of the ship loaders which is necessary when loading larger ships, there is a reduced feed rate to avoid spillage. As the ship loading continues and the ship becomes lower in the water, the ship loaders can be lowered and feed rates increased;

(G) grain changes and separations in hatches – when changing from loading one grain type to another, all weighers, belts and loaders must be cleaned before the second grain type can be loaded. Loading will also stop if a physical separation of grain is required in the ship’s hatches; and

(H) weather – grain cannot be loaded on ships in rain or high winds.

(g) Associated system control and communication networks, Site office, ablation and workshop facilities.

(h) The port terminal is accreditation to the international standard ISO 9001 and HACCP Codex Alimentarius.
Schedule 8– Auditor

1 Appointment of Auditor

(a) If, at any time during the term of this Undertaking, the ACCC issues a notice under clause 6.3(a) of the Undertaking, the Port Operator 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.

(b) The Proposed Auditor must be a person who has the relevant skill to perform the role of Auditor and is independent of the Port Operator. Without limitation, an Auditor is not independent if he or she:

(i) is a current employee or officer of the Port Operator or a Related Body Corporate of the Port Operator;

(ii) has been an employee or officer of the Port Operator or a Related Body Corporate of the Port Operator in the past 36 months;

(iii) in the opinion of the ACCC, holds an interest in the Port Operator or a Related Body Corporate of the Port Operator;

(iv) has within the past 36 months been a professional adviser to the Port Operator or a Related Body Corporate of the Port Operator;

(v) has a contractual relationship, or is an employee or contractor of a firm or company that has a contractual relationship, with the Port Operator or a Related Body Corporate of the Port Operator;

(vi) is a supplier, or is an employee or contractor of a firm or company that is a supplier, of the Port Operator or a Related Body Corporate of the Port Operator, or

(vii) is a customer, or is an employee or contractor of a firm or company that is a customer, of the Port Operator or a Related Body Corporate of the Port Operator,

save that an Auditor that has been appointed by the Port Operator for the purposes of preparing an audit report to WEA (to comply with a requirement by WEA) or for the purposes of preparing an audit report to the ACCC (to comply with the audit requirements in respect of the exclusive dealing notification N93439 lodged by the Port Operator) will not be considered as being not independent by reason of having been so appointed or having prepared such audit reports.

(c) If, within five Business Days of receipt by the ACCC of the information or documents from the Port Operator referred to in paragraph 1(a) of this Schedule 8, or such further period as required by the ACCC and notified to the Port Operator:
(i) the ACCC does not object to the Proposed Auditor, the Port Operator 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

(ii) the ACCC does object to a Proposed Auditor, the Port Operator 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

(a) The Port Operator must, within thirty Business Days of the date on which the Auditor is appointed in accordance with paragraph 1(c) of this Schedule 8, provide to the ACCC a written report from the Auditor in relation to the Port Operator's compliance with its obligations under clause 6.2(a) of the Undertaking.

(b) The Port Operator 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 the Port Operator with its obligations under clause 6.2 of the Undertaking or for reporting to or otherwise advising the ACCC.

(c) The Port Operator 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.

(d) In complying with the obligations in paragraph 2 of this Schedule 8, the Port Operator must:

(i) take any steps reasonably directed by the ACCC in relation to any matter arising from the report of the Auditor referred to in paragraph 2(a) of this Schedule 8 within ten 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 paragraph 2 of this Schedule 8 and ensure such personnel are aware of the Auditor and its role; and

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

(e) The Port Operator must maintain and fund the Auditor's reasonable costs 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

(a) If:

(i) within the period of 3 months prior to the date on which the ACCC issues any notice under clause 6.3 of the Undertaking, the Port Operator has submitted an audit report to WEA (to comply with a requirement by WEA) ("WEA Audit Report") or to the ACCC (to comply with the compliance audit requirements in respect of the exclusive dealing notification N93439 lodged by the Port Operator) ("Compliance Audit Report");

(ii) the Compliance Audit Report was prepared by a person that satisfies the criteria for independence set out in paragraph 1(b) of this Schedule 8; and

(iii) the Compliance Audit Report addresses the Port Operator's compliance with its obligations under clause 6.2 of the Undertaking,

the Port Operator may provide the Compliance Audit Report to the ACCC, and the ACCC will may accept a Compliance Audit Report in satisfaction of the requirement for the Port Operator to provide an audit report to the ACCC in accordance with paragraph 2(a) of this Schedule 8.

(b) For the avoidance of doubt, the ACCC will not be required to accept the Compliance Audit Report in satisfaction of the requirement for the Port Operator to provide an audit report to the ACCC in accordance with paragraph 2(a) of this Schedule 8 if the ACCC (acting reasonably) considers that the matters set out in paragraphs 3(a)(i)-(iii) of this Schedule 8 are not satisfied in respect of the Compliance Audit Report.