



GRAINFLOW PTY LTD – STORAGE AND HANDLING SERVICES COMMERCIAL DETAILS

1 GrainFlow	AWB GrainFlow Pty Ltd (ABN 62 088 928 858) trading as GrainFlow Address: Level 11, Twenty8 Freshwater Place, Southbank, Victoria, 3006 Facsimile: 03 9686 3756 Email: andrew_witney@cargill.com
2 Client	Name and ABN: Address: Facsimile: Email:
3 Term	From 1 October 2021 until 30 September 2022 (subject always to termination and arrangements for Carry-Over Commodity – see clause 9 attached terms and conditions)
4 Storage Facilities	NSW: Beanbri, Nyngan, Narromine, Narrabri, West Wyalong and Oaklands. Vic: Sea Lake, Birchip, Charlton and Dimboola. SA: Pinnaroo, Mallala, Crystal Brook and Maitland. QLD: Talwood &The Gums
5 Date of Agreement	

GrainFlow and the Client have agreed that GrainFlow will supply certain storage and handling services to the Client subject to the attached Storage and Handling Services Terms and Conditions. The agreement between GrainFlow and the Client in relation to the supply of these services is constituted by these Commercial Details, the attached Storage and Handling Services Terms and Conditions, and any annexed Special Condition(s).

EXECUTED AS AN AGREEMENT ON THE ABOVE DATE OF AGREEMENT

SIGNED for and on behalf of **AWB GRAINFLOW PTY LTD (ABN 62 088 928 858)** by its duly authorised representative in the presence of:

.....
Signature of Witness

.....
Name of Witness (please print)

.....
Signatory sign here

.....
Name of signatory (please print)

.....
Position

SIGNED for and on behalf of **THE CLIENT** by its duly authorised representative in the presence of:

.....
Signature of Witness

.....
Name of Witness (please print)

.....
Signatory sign here

.....
Name of signatory (please print)

.....
Position

GRAINFLOW PTY LTD – STORAGE AND HANDLING SERVICES TERMS AND CONDITIONS

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GRAINFLOW PTY LTD – STORAGE AND HANDLING SERVICES TERMS AND CONDITIONS

These are the terms and conditions on which GrainFlow will supply the Services to the Client.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Expressions defined in the attached Commercial Details have their defined meaning wherever they appear in these terms and conditions. In addition, in these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

Agreement means the agreement constituted by the Commercial Details and these terms and conditions (including the Schedule).

Alternative Storage Facility has the meaning given in clause 7.2.

Appropriately Certified, in relation to the Approved Equipment, means having been certified for each relevant commodity:

- (a) in accordance with the certification requirements from time to time set out in the trading standards published by Grain Trade Australia (**GTA Trading Standards**), the certification standards set by the NMI and all relevant State and Federal regulatory standards;
- (b) by a person or entity approved by NMI for the purpose of conducting such certifications; and
- (c) within 12 months prior to the date of the Client using its Approved Equipment.

Approved Equipment means testing and weighing equipment that has been approved for use under the GTA Trading Standards for each relevant commodity and Trade Certified.

Approved Testing Methodology means the sampling and testing methodology set out in the GTA Trading Standards for each relevant commodity together with all additional or supplementary requirements set out in the GrainFlow Sample Manual.

Brokers means Fox Commodities Pty Ltd (ABN 27 102 515 015), Perkins Commodity Brokers (ABN 90 087 195 935), McDonald Pelz Australia (ABN 30 637 416 138) and any other broker acceptable to GrainFlow.

Business Day means a day which is not a Saturday, Sunday or public or bank holiday in the place where an act is to be performed or payment is to be made.

Carry-Over Commodities means any Commodity that has not been, or in GrainFlow's reasonable opinion is not likely to be, completely Outturned in accordance with these terms and conditions before the applicable Carry-Over Date.

Carry-Over Date means 1 October 2022.

Carry-Over Fee means the fee or fees specified or referred to in the Schedule which are payable at the times and in the manner specified or referred to in the Schedule.

Cash Prices means the price offered for Grain held in a GrainFlow Storage Facility.

Change in Law means the repeal, amendment, introduction or change in any applicable law (including any carbon scheme) or tax of any jurisdiction or the change or

introduction of any license, directive, regulations or rules of a government agency or port corporation.

Client Delivery Location means the location to which particular Commodities Outturned are to be transported by a Transport Service Provider. The GrainFlow Order Form requires this location to be specified therein.

Client Receival Weight Figure means, in relation to the Commodities Outturned, the weight of such Commodities recorded at the Client Delivery Location.

Commercial Details means the document headed GRAINFLOW - STORAGE AND HANDLING SERVICES COMMERCIAL DETAILS, to which these terms and conditions are attached.

Commodities means, subject to these terms and conditions, all grain, pulses, oilseeds and other commodities received on behalf of the Client, other than cottonseed, transferred to the Client and held by GrainFlow on behalf of the Client in respect of which the Client requires GrainFlow to supply Services from time to time.

Confidential Information means information of either party (**Disclosing Party**) (irrespective of whether or not it has been reduced to material form) that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the party receiving or obtaining the information (**Receiving Party**) knows or ought to know is confidential;

provided that the information is not:

- (d) information in the public domain at the time that it is provided to or obtained by the Receiving Party; or
- (e) information which after it is provided to or obtained by the Receiving Party becomes a part of the public domain other than through a breach by the Receiving Party of any provision of these terms and conditions.

Consequential, Incidental or Indirect Loss and Damage includes loss of profits or anticipated profits, loss of revenue, loss of opportunity, loss of savings or anticipated savings, any shipping or demurrage costs or fees, damages or penalties payable under the Client's customer or charter party's contract (whether direct or indirect) (including any losses that the Client may suffer in the event that the ability to resell Commodities is adversely affected or delayed), any damage to property including damage to or spoiling of other goods, property or product which the Commodities are intermingled or mixed with, any loss in the nature of compensation for loss of production, business interruption, loss of contract/s or future contract/s, loss of markets, loss of use of money, goods or other property, loss of or damage to goodwill or business reputation or any increase in operating costs.

Delivery Option means the basis of sale by the Grower to the Client.

Domestic Destination means a rail receival facility other than a Port or a container packing facility.

Dynamic Binning Strategy means a receival strategy allowing a range of receival limits for protein, screenings and moisture depending on the site running stack average for

these parameters in a particular binning line, details of which are available upon request from GrainFlow.

Electronic Communications means message transmitted and/or received by any electronic notice board on your account, email, through our electronic app, short message service (SMS), multimedia message service (MMS) or instant messaging or WAP.

Export Destination means a rail receival facility at a Port or a container packing facility.

Fees means the amounts payable by the Client calculated in accordance with the Schedule.

Genetically Modified Materials means plant or animal material whose genetic code has been altered in order to give it characteristics that it does not have naturally.

GrainFlow Domestic Rail Outturn Weight Figure means the figure determined by GrainFlow for the relevant Commodities Outturned for transportation by rail to a Domestic Destination.

GrainFlow Export Rail Outturn Weight Figure has the meaning given in clause 7.26.

GrainFlow Order Form means the standard GrainFlow form to be completed by the Client on each occasion the Client requires GrainFlow to Outturn Commodities or any corresponding client order form which contains at least the same information and which is in a form reasonably acceptable to GrainFlow.

Grain Receival Ticket means GrainFlow's standard commodities delivery confirmation form completed by GrainFlow each time a Grower makes a delivery of commodities to the Client in the manner contemplated by clause 4.1 and which is transmitted electronically by GrainFlow to the Client and which contains details of the weight, commodity type, variety and quality of the commodities delivered and Delivery Option.

GrainFlow Sample Manual means the manual setting out the methodology followed at the Storage Facilities for the sampling and testing of commodities on receival at those facilities.

Grower means a person who grows Commodities and sells them to the Client.

GST has the same meaning as in section 195.1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GTA Trading Standards has the meaning given in the definition of **Appropriately Certified**.

Independent Testing means testing of samples of Commodities in accordance with the Approved Testing Methodology, to be conducted by Agrifood Pty Ltd or such other testing laboratory that the parties agree in writing.

Market Price means average of the per tonne price of a particular grade and variety of commodity determined by three Brokers on request from GrainFlow in relation to the particular commodity, and as at the particular time, required under these terms and conditions. The Brokers shall determine the price on a GTA "Natural Terminal Port" port basis, plus GrainFlow bulk handling receival fee minus GTA freight rates for the relevant Storage Facility to which the determination relates. For the removal of doubt, if a price is

unable to be obtained from any one of the three Brokers for any reason within 1 clear Business Day of being sought, the Market Price will be the average of the prices actually obtained from the remaining Brokers.

NMI means the National Measurement Institute being part of the Australian Government Department of Innovation, Industry, Science and Research.

Original Storage Facility has the meaning given in clause 7.2.

Other Clients means a person (other than the Client) who is provided with a Service at the Storage Facility. For the avoidance of doubt, GrainFlow may be an 'other client'.

Outloading Weight Ticket means the form produced by GrainFlow at the time of Outturn which details the weight of the Commodities Outturned.

Outturn means the removal of Commodities from a Storage Facility and the loading of those Commodities for transportation by a Transport Service Provider.

Outturned Amount means the total weight of Commodities (in tonnes) Outturned by GrainFlow under the Agreement, being the aggregate weight of Commodities Outturned as recorded in each Outloading Weight Ticket.

Outturn Defect has the meaning given in clause 7.11.

Outturn Entitlement means, at any particular time, the total weight of Commodities in metric tonnes being the aggregate weight, type and grade of Commodities as recorded in each relevant Grain Receival Ticket excluding;

- (a) the Shrinkage Allowance;
- (b) the weight of any Commodities that are damaged or destroyed as result of any cause beyond the reasonable control of GrainFlow;
- (c) the weight of any Commodities that are damaged or destroyed as a result of any cause not attributable to negligence of GrainFlow;
- (d) the weight of any Commodities that are damaged and in respect of which an amount (whether by way of insurance, compensation or otherwise) has been paid to the Client;
- (e) the weight of any Commodities Outturned for and on behalf of the Client;
- (f) the weight of any Commodities transferred to Other Clients/Transferees for and on behalf of the Client.

Permitted Tolerance means parameters specified in the Receival Standards as modified by clause 7

Port means an Australian port including Fisherman Islands, Queensland Bulk Terminals, Newcastle, Port Kembla, Melbourne Port Terminal, Geelong Port Terminal, Port of Portland, Port Adelaide Inner and Outer Harbour, Wallaroo and Port Giles.

Privacy Laws means the *Privacy Act 1988* (Cth) including the national privacy principles contained in the *Privacy Act 1988* (Cth) as updated from time to time, and all other applicable laws and regulations in force relating to or impacting on the processing and/or privacy of personal information.

Receival Information means the information GrainFlow requires persons delivering a load of commodities to the Storage Facility to supply, as notified by GrainFlow from time to time and which must include (but is not limited to) the relevant Grower registration number, Delivery Option

(including whether delivery is to a specified marketer or the relevant Commodity is to be warehoused), type of commodity and variety and treatment history.

Receival Standards means GrainFlow's standards for the receival and classification of commodities delivered to the Storage Facility as notified by GrainFlow to the Client from time to time.

Related Bodies Corporate takes its meaning from section 50 of the *Corporations Act 2001* (Cth).

Schedule means the schedule to these terms and conditions which, for the removal of doubt, forms part of these terms and conditions.

Season means 12 consecutive calendar months commencing 1 October each year.

Services includes one or more of:

- (a) the receival of Commodities at the Storage Facility;
- (b) the administrative/transfer services provided under clause 4;
- (c) the storage and handling of Commodities;
- (d) the Outturn of Commodities; and
- (e) the Throughput Services (if agreed by GrainFlow).

Shrinkage Allowance means the percentages specified as such in the Schedule.

Storage Facility means the grain storage facilities operated from time to time by GrainFlow.

Storage Period, in relation to particular Commodities, means the period during which GrainFlow supplies Services in respect of those Commodities under the Agreement.

Tax Invoice has the same meaning as in section 195.1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the period specified in item 3 of the Commercial Details.

Third Party Claim means any action, claim or demand in relation to ownership of, or the enforcement of any lien, charge, security interest or other encumbrance in relation to, any Commodities.

Throughput Services means Receival and Outturn of Commodities classified by GrainFlow to be solely throughput services at the Storage Facilities operated by GrainFlow, including the administrative/transfer services provided with respect to the short term storage and handling of Commodities.

Time of Discharge means, in relation to particular Commodities, completion of Outturn of those Commodities.

Time of Receipt means, in relation to particular Commodities, the time of delivery to GrainFlow of those Commodities.

Trade Certified means certification within the previous 12 month period by NMI pursuant to *National Measurement Act 1960* (Cth) and *National Measurement Regulations 1999* (Cth) and having an accuracy of 99.5% or better.

Transport Service Provider means a third party contractor of the Client (including any personnel) who transports Commodities by road vehicle or rail wagon following

completion of the supply of the Services in relation to those Commodities.

Weight Discrepancy Notice means the written notice that must be provided by the Client to GrainFlow, advising GrainFlow that the GrainFlow Domestic Rail Outturn Weight Figure is outside the one per-cent range of the Client Receival Weight Figure.

1.2 Interpretation

In these terms and conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include the other genders;
- (c) other grammatical forms of defined words or phrases have corresponding meanings;
- (d) a reference to "dollar", "\$" or "\$A" is a reference to Australian currency;
- (e) a reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form;
- (f) headings are for convenience of reference only and do not affect interpretation;
- (g) unless specified otherwise, "day" means a calendar day;
- (h) including must not be treated as a word of limitation;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity; and
- (j) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

2. TERM

2.1 Subject to clause 9 and unless terminated earlier, the Agreement is in force during the Term.

2.2 The terms and conditions of the Agreement are deemed to be unconditionally accepted by the Client at the time any of the Services are first provided to the client, unless the Client has executed the Agreement prior to provision of the Services in which case the Agreement will become binding between the parties on and from the date of the Agreement specified in the Commercial Details or the date of the provision of the Services, whichever occurs earlier.

3. GrainFlow - GENERAL OBLIGATIONS

GrainFlow will, subject to these terms and conditions, supply the Services to the Client in respect of Commodities from the Storage Facilities as and when required by the Client from time to time.

4. RECEIVAL

4.1 Subject to the provisions of this clause 4, in connection with the supply of the Services by GrainFlow, GrainFlow will, in accordance with GrainFlow's applicable procedural requirements, provide an administrative service to the Client enabling the direct delivery to the Storage Facilities by Growers of certain commodities and at the request of the Growers the sale of those commodities to the Client on a cash, contract or pool price basis. The Client must, in accordance with GrainFlow's requirements notified to the

Client from time to time, provide such information (including details of the Client's available Delivery Option(s) and applicable pricing) as GrainFlow requires to supply the administrative service referred to in this clause 4.1. The Client agrees and acknowledges that it is solely responsible for the accuracy and posting of its prices.

- 4.2 GrainFlow will receive commodities which:
- 4.2.1 meet the applicable Receival Standards, subject to the Dynamic Binning Strategy; and
- 4.2.2 are delivered with the relevant Receival Information and in respect of which the person delivering the commodities provides such confirmations and declarations in respect of the Receival Information as GrainFlow reasonably requires.
- 4.3 For the removal of doubt:
- 4.3.1 at all times GrainFlow retains the sole, absolute and final discretion as to what specifications and quantities of commodities or grades it will receive into the relevant Storage Facility;
- 4.3.2 GrainFlow may at its sole discretion, decline to receive any commodities which do not satisfy the requirements of clause 4.2.
- 4.4 The Client acknowledges and accepts that GrainFlow will rely on the accuracy and completeness of the Receival Information in its storage and handling of the commodity and in its dealings and is not responsible in any way for any errors, or for any claims, damages, losses, costs, expenses or liabilities suffered, sustained or incurred in connection with the Receival Information or resulting from any inaccuracy, error, falsity or omission howsoever arising, in or from the Receival Information.
- 4.5 In addition to the above, GrainFlow may decline to receive particular commodities on behalf of the Client where:
- 4.5.1 GrainFlow determines, in its sole discretion that the relevant Storage Facility does not have capacity to receive those commodities; and
- 4.5.2 the Client fails to comply with these terms and conditions including with respect to payment of Fees.
- 4.6 GrainFlow may, where reasonably necessary or practicable, commingle any Commodities with commodities belonging to or stored on behalf of any third party, provided that the Commodities will not be commingled with commodities of a different commodity type. Commingled commodities will be deemed to be common commodity of specified quality stored in bulk and title to the common commodities will be held jointly by the Client, the Other Clients and Growers whose commodities form part of the common commodities stored in bulk at the Storage Facilities. Subject to the provisions of this Agreement, at any time the Client's interest in the common commodities will be equal to the Client's Outturn Entitlement.

Each Client will hold its interest in the common commodities as tenants in common and the Client will not have the right to nominate any particular parcel of common commodity as being owned by the Client. For the avoidance of doubt, subject to the provisions of these terms and conditions, the Client's interests represent an ownership right to commodities of the same type and grade that was

determined by GrainFlow and delivered by or transferred to the Client (and not the same physical commodity that was delivered by the Client or transferred to the Client as delivered by a Grower.)

- 4.7 Without limiting clause 4.4, the Client acknowledges that where GrainFlow provides an administrative service to the Client for the delivery and sale by a Grower to the Client of commodities on a cash price basis, there may be occasions where GrainFlow does not accurately record in its records the details of that sale. The Client agrees that where, within 5 Business Days of the day of the delivery of the relevant commodities by or on behalf of a Grower to GrainFlow, GrainFlow demonstrates to the reasonable satisfaction of the Client that the data originally recorded by GrainFlow in its records is incorrect, the Client agrees to honour the correct terms of the sale. The Client agrees that GrainFlow may verify the correct terms of sale by producing for inspection by the Client the delivery form supplied by or on behalf the Grower to GrainFlow giving GrainFlow delivery instructions and information.
- 4.8 While GrainFlow has possession of the Client's Commodities:
- 4.8.1 the relationship between GrainFlow and the Client in respect of the possession of the Commodities is one of bailment;
- 4.8.2 that relationship will continue to exist despite the Commodities losing their identity by becoming part of the common commodities or despite the inability of GrainFlow to redeliver to the Client the same physical Commodity the subject of the bailment.
- 4.9 Subject to the terms of this Agreement and to the extent permitted by law the Client bears all risk of loss or damage to the Commodities howsoever arising and all Services are provided at the Client's own risk. The Client agrees to release and hold GrainFlow, its agents and contractors harmless from and against all claims, damages, losses, costs, expenses or liabilities suffered, sustained or incurred by the Client in connection with the provision of the Services in this clause 4.
- 5. GrainFlow - SPECIFIC OBLIGATIONS**
In supplying the Services, GrainFlow will take reasonable steps to:
- 5.1 provide and maintain all equipment, facilities and materials (including pesticide and fumigation treatments), necessary to perform GrainFlow's obligations under these terms and conditions;
- 5.2 keep complete and accurate records in respect of the Services;
- 5.3 ensure the safe storage of Commodities and that they remain free of insects and contaminants; and
- 5.4 maintain a high standard of hygiene at the Storage Facilities.
- 6. STORAGE FACILITIES - OPERATING HOURS**
The Client acknowledges that GrainFlow has an absolute discretion in relation to the days and times that the Storage Facilities will be kept open for business and that GrainFlow provides no guarantees that the Storage Facilities will be open on any particular days or at any particular times.

7. OUTTURN

Introduction

7.1 Subject always to the Client having an Outturn Entitlement and these terms and conditions, GrainFlow will Outturn Commodities on request by the Client from time to time subject to the following provisions of this clause 7.

Outturn from an Alternate Storage Facility

7.2 The Client agrees that GrainFlow may, in its discretion, Outturn Commodities from a Storage Facility (**Alternative Storage Facility**) other than the Storage Facility at which the Client acquired the Commodities (**Original Storage Facility**) if GrainFlow determines, in its reasonable opinion, that it is operationally efficient to Outturn the Commodities from the Alternative Storage Facility.

7.3 Subject to clause 7.4, where the Commodities are Outturned from the Alternative Storage Facility:

7.3.1 the parties must calculate the applicable freight differential as follows:

Freight Differential = (Published GTA Location Differential for Alternative Storage Facility – Published GTA Location Differential for Original Storage Facility) x \$1 x metric tonnes of Commodities Outturned.

Where the Freight Differential is positive, GrainFlow must pay the value of the Freight Differential to the Client. Where the Freight Differential is negative, the Client must pay the value of the Freight Differential to GrainFlow.

7.3.2 the Client agrees that in respect of that part of the Outturn Entitlement that comprises oilseed, a quality differential (if applicable) for the difference in the average oil and impurities quality (being either a loss or gain) between the Original Storage Facility and the Alternative Storage Facility will be determined by GrainFlow having regard to the applicable Receival Standard.

GrainFlow Order Form and Time for Outturn

7.4 On each occasion the Client requires GrainFlow to Outturn Commodities, the Client must provide GrainFlow with a GrainFlow Order Form, which must include the following details in respect of the Commodities requested to be Outturned:

7.4.1 the quantity and grade;

7.4.2 the quality specifications;

7.4.3 the name of the Transport Service Provider;

7.4.4 the Client Delivery Location;

7.4.5 the estimated time (during any working week) of arrival of the Transport Service Provider at the Storage Facility having regard to the notice periods under clause 7.5; and

7.4.6 for transport by rail, the number of wagons to be loaded

GrainFlow will not allocate Commodities for Outturn until it has received a GrainFlow Order Form properly completed in accordance with this clause 7.4.

The Client must comply with all of GrainFlow's ordering procedures from time to time, including in respect of any implementation by GrainFlow of an online ordering system during the Term.

For road Outturn the minimum order is 200mt per day. GrainFlow is not obliged to accept any orders below this amount. For orders less than 200mt GrainFlow will endeavour to combine Outturn with other orders of that grade so that the 200mt minimum is met.

7.5 Subject to clauses 7.4 and 7.8, GrainFlow will use all reasonable efforts to complete Outturn of the Commodities specified in each GrainFlow Order Form:

7.5.1 for transport by road, at the time specified in the GrainFlow Order Form, provided that the relevant GrainFlow Order Form must be given to GrainFlow before 2.00 pm on the Thursday immediately preceding the working week during which Outturn is requested; and

7.5.2 for transport by rail, at the time specified in the GrainFlow Order Form, provided that the applicable GrainFlow Order Form must be given to GrainFlow at least 10 days prior to the day on which Outturn is requested.

7.6 For transport by rail it is the Client's responsibility to order the correct amount of Commodity for Outturn and in doing so to take account of all required legal weight limits of each wagon type to be loaded for each load site and destination.

GrainFlow will not be liable for any claims, damages, losses, costs, expenses or liabilities suffered, sustained or incurred by the Client in respect any matters the subject of this clause 7.6.

7.7 Unless advised to the contrary by GrainFlow, the Outturn into rail wagons by GrainFlow does not include:

7.7.1 the movement or shunting of rail wagons;

7.7.2 the cleaning of rail wagons;

7.7.3 the repair of rail wagons; or

7.7.4 the opening and closing of wagon lids/hatches and discharge doors.

7.8 GrainFlow does not guarantee that it will Outturn the Commodities by the time periods specified in clause 7.5 and GrainFlow will have no liability to the Client or any third party arising in connection with any failure to Outturn any of the Commodities by the time periods specified in clause 7.5. However, GrainFlow will advise the Client from time to time of any potential delays and revisions to the estimated time for completion of Outturn of particular Commodities.

7.9 Despite anything to the contrary stated in these terms and conditions, the Client agrees that GrainFlow will not be obliged under these terms and conditions to Outturn Commodities during any period(s) during which:

7.9.1 Commodities are undergoing programmed fumigation;

7.9.2 Commodities are subject to insect infestation;

- 7.9.3 the Storage Facility and any relevant equipment is undergoing routine or emergency maintenance and/or repair work;
- 7.9.4 GrainFlow determines that adverse conditions (including but not limited to strikes, stop works, lock-outs, boycotts or any other form of labour dispute or industrial action, social unrest or dispute, acts of god, rain, winds, fire, storm, lightning, floods or other form of severe weather or disruptions caused by health concerns, malicious damage, cyber attacks, disruption to infrastructure, national emergencies, government directives or restrictions, epidemics, pandemics (including but not limited to COVID 19)) prevent or are likely to affect the safe Outturn of Commodities at that Storage Facility or give rise to a risk that such Commodities may be damaged during Outturn;
- 7.9.5 GrainFlow determines that any plant and equipment necessary for, or used in connection with, the Outturn of Commodities is malfunctioning, broken down or otherwise unavailable for any reason;
- 7.9.6 harvest receival activities or preparation for harvest receival activities are taking place at a Storage Facility that is open to receive grain or preparing to open to receive grain;
- 7.9.7 unacceptable risks to health and safety exist or may exist;
- 7.9.8 any outstanding fees or charges are owed to GrainFlow;
- 7.9.9 the Client has an insufficient Outturn Entitlement;
- 7.9.10 the Client does not comply with clause 7.4.

The Client agrees that any determination made by GrainFlow under this clause 7.9 shall be final and binding on the parties and that in such circumstances GrainFlow will not be liable for any delay, claims, damages, losses, costs, expenses or liabilities suffered, sustained or incurred.

GrainFlow Outturn Obligations – Receival Standards

- 7.10 Subject to the following provisions of this clause 7, GrainFlow will Outturn Commodities which, as a minimum, meet the Receival Standards that apply in relation to the Commodities to be Outturned. For the avoidance of doubt, GrainFlow does not take into account the Permissible Tolerances in assessing whether the Outturn Commodities meet the Receival Standards.
- The Client acknowledges and agrees that for assessment purposes, it is the truck/train grade composite sample of the entire truck/train that is used to classify the Outturned Commodities, not individual trailer/wagon samples.
- 7.11 The Client must notify GrainFlow in writing (using GrainFlow's standard form Product Failure Report or client form containing at least the same information in a form reasonably acceptable to GrainFlow) of any alleged failure to comply with the applicable Receival Standards (**Outturn Defect**) (together with the Client's test results which demonstrate the Outturn Defect):
- 7.11.1 immediately upon it becoming aware of an Outturn Defect; and

- 7.11.2 in any case and without limiting clause 7.13.1, within 24 hours after the earlier of the time when the Commodities have been received at the Client Delivery Location and the 4th day after completion of Outturn.

Where a Client alleges an Outturn Defect, GrainFlow may agree to the Client returning at its own expense the relevant Commodities to a Storage Facility. The Client agrees and acknowledges that the return of Commodities to a Storage Facility is in no way an admission by GrainFlow of the presence of an Outturn Defect. GrainFlow will conduct its own tests using Approved Equipment to determine whether the relevant Commodities have any Outturn Defect. If testing conducted by GrainFlow does not reveal the presence of any Outturn Defect, GrainFlow may charge a re-receival fee for return of the relevant Commodities to the Client Delivery Location and the Client agrees to pay any such fee levied and all other standard GrainFlow Fees will continue to apply.

- 7.12 For the removal of doubt, GrainFlow will have no liability to the Client or any third party whatsoever and howsoever arising in relation to Outturn Defects where written notification is not received by GrainFlow from the Client in accordance with the requirements of clause 7.11. Without limitation, the Client agrees to provide all reasonable cooperation to GrainFlow to mitigate any loss arising from an Outturn Defect. Nothing in this clause limits the succeeding provisions of this clause 7.
- 7.13 The parties agree that the despite anything to the contrary contained or implied in these terms and conditions:
- 7.13.1 GrainFlow shall have no liability for an Outturn Defect where the Client did not specify the Client Delivery Location in the GrainFlow Order Form relating to the Outturn of the relevant Commodities that are the subject of the Outturn Defect; and
- 7.13.2 the following circumstances shall not constitute an Outturn Defect for the purposes of these terms and conditions and GrainFlow shall have no liability to the Client for these circumstances:
- 7.13.2.1 the protein and moisture parameters of the relevant Commodities as tested by the Client, or on the Client's behalf, using Approved Equipment are in the range of +/- 0.3% applied to the percentage protein and moisture parameters specified by the Receival Standards and +/- 1.0% of the percentage screenings parameters specified by the Receival Standards (e.g. if the maximum percentage moisture parameter specified by the Receival Standards is 12.5%, the permissible maximum moisture parameter under this clause is in the range of 12.2% to 12.8%);
- 7.13.2.2 contaminants and grain defects specified in the Receival Standards as having nil tolerance are, detected as a result of testing by the Client, or on the Client's behalf using Approved Equipment, at levels of less than or equal to 0.05% by weight **provided that** in relation to bin burnt, storage mold and heat damaged grain, unless a greater

tolerance exists, there is a maximum of 1 grain per half litre (**Permitted Tolerance**);

7.13.2.3 an attribute is present in the Commodities and that attribute does not form part of GrainFlow's testing procedure, or cannot be reasonably or practically ascertained or conclusively determined at the Time of Receipt. This includes, but is not limited to, Commodities that normally deteriorate over time, germative quality of barley, varietal purity of grain, free fatty acids, the presence of aflatoxins, vitreousness of durum wheat and the presence of toxic and chemical residues;

7.13.2.4 in the case of Commodities that are pulses, where the percentage level of defective grain as tested by the Client, or on the Client's behalf using Client Equipment or other Approved Equipment, is +/-2% of the applicable Receival Standard (e.g. if the relevant percentage level specified by the Receival Standard is 6% the permissible level under this clause is in the range of 4% to 8%); or

7.13.2.5 where, in the case of Commodities to be transported by road, GrainFlow has tested the relevant truck load on Outturn and the test results do not evidence an Outturn Defect for which GrainFlow is otherwise responsible pursuant to the provisions of this clause 7 and those test results are displayed on the Outloading Weight Ticket.

7.13.3 The Client acknowledges and agrees that each Permitted Tolerance allows for testing discrepancies, without any limitation, such as discrepancies which may arise due to, among other things, the Client or a third party on the Client's behalf using different Approved Equipment or using a different composite sample of the truck/train.

7.14 Within 24 hours of request by GrainFlow the Client must provide GrainFlow with written details and/or evidence (in a form reasonably satisfactory to GrainFlow) of:

7.14.1 the equipment used in performing the tests which the Client alleges evidences an Outturn Defect (including details of NMI class, type, make and model) (**Client Equipment**), which equipment must be Approved Equipment;

7.14.2 the Client Equipment being Appropriately Certified; and

7.14.3 the methodology followed in performing the tests, which methodology must in all respects be consistent with the Approved Testing Methodology.

7.15 Unless the Client complies with the requirements of clause 7.14 (within the time required), GrainFlow shall have no liability for the alleged Outturn Defect (notwithstanding the Client complied with the requirements of clause 7.11).

7.16 Upon the Client providing the written evidence required under clause 7.14, the Client agrees that GrainFlow may (but is not obliged to):

7.16.1 attend the Client Delivery Location and observe the client testing methodology;

7.16.2 attend the Client Delivery Location and test a GrainFlow sample of the Commodities that are alleged to be the subject of the Outturn Defect (being a sample which has been kept by GrainFlow) (**GrainFlow Own Sample**) using the Client Equipment; and/or

7.16.3 request, and the Client must provide, such evidence as GrainFlow reasonably requires (including by allowing inspection by appropriately qualified persons) to verify each of the matters set out in clause 7.14.

7.17 If:

7.17.1 GrainFlow observes any part of the testing methodology applied at the Client Delivery Location which is not consistent with the Approved Testing Methodology; or

7.17.2 GrainFlow tests the GrainFlow Own Sample under clause 7.16.2 in accordance with the Approved Testing Methodology using the Client Equipment and the test results do not match the test results arising from GrainFlow's testing of that sample (within the Permitted Tolerances) using GrainFlow equipment (which must be Approved Equipment); or

7.17.3 the Client does not provide evidence reasonably satisfactory to GrainFlow which verifies the matters referred to in clause 7.16.3 or does not procure that GrainFlow is enabled to conduct the testing contemplated by clause 7.16.2,

then GrainFlow shall have no responsibility for the alleged Outturn Defect.

7.18 Within 72 hours of GrainFlow receiving the Client's written notice of an Outturn Defect and irrespective of whether GrainFlow takes any other action GrainFlow may (but is not obliged to) by notice in writing to the Client, require Independent Testing to be conducted to ascertain whether the relevant Commodities are affected by an Outturn Defect for which GrainFlow is liable under these terms and conditions. If GrainFlow has retained a sample of Commodities from the relevant Outturn, the Client agrees that that sample shall be used by GrainFlow for the purposes of the Independent Testing. Otherwise, the Client must supply a sample of Commodities from the load alleged to be the subject of the Outturn Defect for the Independent Testing in accordance with the requirements of the entity responsible for the conduct of the Independent Testing. The parties must provide all materials and assistance and undertake all necessary actions to give effect to the requirements of this clause as promptly as is reasonably practicable. The Client agrees that the results of the Independent Testing shall be final and binding on the parties. If the results of the Independent Testing establish an Outturn Defect in the relevant Commodities for which GrainFlow is liable under these terms and conditions, the costs of the Independent Testing shall be paid by GrainFlow. Otherwise, the costs of the Independent Testing shall be paid by the Client.

7.19 If under any of the preceding provisions of this clause 7, GrainFlow is liable for any Outturn Defect, GrainFlow will, at its option:

7.19.1 pay to the Client an amount equal to $V \times (M1 - M2)$ where:

V is the quantity in tonnes of Commodities affected by the Outturn Defect;

M1 is Market Price per tonne of the Commodities on the date of Outturn assuming they were not affected by the relevant Outturn Defect; and

M2 is the Market Price per tonne of the Commodities on the date of Outturn taking into account the Outturn Defect and the resultant impact that defect has in downgrading those Commodities; or

7.19.2 replace the affected Commodities with commodity that is free from the Outturn Defects.

GrainFlow will have no liability to the Client or any third party whatsoever howsoever arising in relation to any Outturn Defect other than as set out in this clause 7.19. Further and for the removal of doubt, GrainFlow shall not have liability for any quality issues, defects or contaminants affecting Outturned Commodities unless they constitute an Outturn Defect for which GrainFlow is liable in accordance with this clause 7.

Weights – Outturn by Rail (Domestic Destination)

7.20 Where the GrainFlow Domestic Rail Outturn Figure is determined by use of a weighbridge located at a Storage Facility, then the weight recorded over the weighbridge (GrainFlow bin charge record) shall be conclusive evidence of the weight of the relevant Commodities Outturned and shall be final and binding on the parties. Clauses 7.21 to 7.25 apply only where the GrainFlow Domestic Rail Outturn Figure is determined other than by use of a weighbridge located at a Storage Facility.

7.21 In relation to Commodities Outturned for transportation by rail to a Domestic Destination, if the GrainFlow Domestic Rail Outturn Weight Figure is:

7.21.1 within or equal to a one per cent range of the Client Receival Weight Figure and the Client notifies GrainFlow of this fact in writing within 48 hours after the time when the relevant Commodities are received at the Client Delivery Location, GrainFlow will, having regard to industry practice and without any admission or acceptance of responsibility on its part, adjust the GrainFlow Domestic Rail Outturn Weight Figure to be equal to the Client Receival Weight Figure; or

7.21.2 in excess of the one per cent range of the Client Receival Weight Figure as referred to in clause 7.21.1, the Client must provide GrainFlow's logistics coordinator with a Weight Discrepancy Notice within 48 hours after the time when the relevant Commodities are received at the Client Delivery Location, and in these circumstances GrainFlow and the Client will meet to discuss and use reasonable endeavours to agree a resolution to the alleged discrepancy on mutually acceptable terms. In the absence of agreement within a reasonable time after

the Weight Discrepancy Notice is delivered to GrainFlow, the provisions of clause 26 will apply.

7.22 The Client must, within 48 hours after the time when Commodities Outturned for transportation to a Domestic Destination are received at the Client Delivery Location, provide GrainFlow with full details in writing of the Client Receival Weight Figure and any other information and documentation reasonably required by GrainFlow. The Client must comply with its obligations under this clause 7.22 whether or not it has notified GrainFlow pursuant to clause 7.21 of any discrepancy between the GrainFlow Domestic Rail Outturn Weight Figure and the Client Receival Weight Figure.

7.23 GrainFlow's sole liability where the GrainFlow Domestic Rail Outturn Weight Figure is less than or equal to one per cent above the Client Receival Weight Figure is as set out in clause 7.21.1.

7.24 For the removal of doubt, GrainFlow will have no liability to the Client or any third party whatsoever howsoever arising in relation to any discrepancy between the GrainFlow Domestic Rail Outturn Weight Figure and the Client Receival Weight Figure where:

7.24.1 written notification is not received from the Client within the 48 hour period referred to in clause 7.21.1 or clause 7.21.2, as the case may be; and/or

7.24.2 the Client fails to comply with its obligations under clause 7.22; and/or

7.24.3 the equipment used to calculate the Client Receival Weight Figure has not been Trade Certified.

7.25 The Client must provide written notification to GrainFlow of all details of all Client Receival Weight Figures within 48 hours after the time when all relevant Commodities are received at the Client Delivery Location.

Weights – Outturn by Rail (Export Destination)

7.26 In relation to Commodities Outturned for transportation by rail to an Export Destination, the weight figure recorded on each Outloading Weight Ticket (**GrainFlow Export Rail Outturn Weight Figure**) is final and binding and GrainFlow will have no liability to the Client whatsoever howsoever arising if the Client Receival Weight Figure is less than the GrainFlow Export Rail Outturn Weight Figure.

7.27 The Client must, within 48 hours after the time when Commodities Outturned by rail to an Export Destination are received at the Export Destination, provide GrainFlow with full details in writing of the Client Receival Weight Figure and any other documents or records reasonably requested by GrainFlow.

Weights – Outturn by Road (Domestic and Export Destinations)

7.28 In relation to Commodities Outturned for transportation by road, the weight figure recorded on each Outloading Weight Ticket (**GrainFlow Road Outturn Weight Figure**) is final and binding and GrainFlow will have no liability to the Client whatsoever howsoever arising if the Client Receival Weight Figure is less than the GrainFlow Road Outturn Weight Figure.

7.29 The Client must, within 48 hours after the time when Commodities Outturned for transportation by road are received at the Client Delivery Location, provide GrainFlow with full details in writing of the Client Receival Weight

Figure and any other documents or records reasonably requested by GrainFlow.

- 7.30 Nothing in the preceding provisions of this clause 7 limits clause 13.4.

Indemnity – over Outturn due to inaccurate records

- 7.31 The Client must, if it knows or if it ought reasonably to know, that GrainFlow's records or documents are incorrect, inaccurate or out of date, promptly inform GrainFlow of the matter and, if possible, promptly provide GrainFlow with correct, accurate and up to date records and information. The Client indemnifies GrainFlow against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by GrainFlow howsoever as a result of, or in connection with, a breach of this clause by the Client.

8. TRANSPORT SERVICE PROVIDERS

- 8.1 The Client agrees to ensure that, in delivering Commodities to or collecting Commodities from any Storage Facility, all Transport Service Providers will:

- 8.1.1 comply with GrainFlow's operating procedures, environmental policies and procedures and occupational health and safety guidelines and all requirements and directions given by GrainFlow;
- 8.1.2 comply with all applicable laws including without limitation those relating to the environment, occupational health and safety, driving hours, driver fatigue management, loading, unloading, weight or mass limits, dimension limits, load restraint limits, road and rail safety and regulation, vehicle maintenance and vehicle emissions, vehicle mass limits and similar freight and safety obligations and any act, regulation, code or standards of industry best practice applying to the operation of the Transport Services Provider's business or the engagement or management of its personnel (**Applicable Laws**) and use vehicles that are entirely fit for purpose;
- 8.1.3 provide reasonably detailed evidence of its (and its personnel's) compliance policies and procedures (including its Driver Fatigue Management System) when requested by GrainFlow from time to time;
- 8.1.4 fully, accurately and properly complete, and provide to GrainFlow, all vehicle and container weight declarations and information and any other required documentation relating to loading, weights and freight and safety obligations where required to do so by any Applicable Laws;
- 8.1.5 maintain all equipment and materials used in delivering or collecting Commodities to a standard that allows compliance with all Applicable Laws;
- 8.1.6 keep the Client and GrainFlow and their employees, agents and sub-contractors informed at all relevant times of all up to date information and documentation reasonably required to allow each of the Client and GrainFlow to comply with all Applicable Laws;
- 8.1.7 have all approvals, licences and authorisations required to operate the transport services being provided, where the transportation is rail, have all required interface agreements and service level

agreements in place and have adequate systems in place to provide the necessary services to GrainFlow in a timely, safe and professional manner;

- 8.1.8 minimise and avoid all risk of damage or injury to all persons and the protection of same including the protection of GrainFlow employees, agents and contractors;
- 8.1.9 participate in safety audits as and when required by GrainFlow;
- 8.1.10 only present vehicles that are clean and free from contaminants, safe, fit for purpose, registered, insured and or operated by licensed and experienced trained, qualified and physically capable persons;
- 8.1.11 upon request by either the Client or GrainFlow promptly provide information and documentation about a vehicle's prior load; and
- 8.1.12 comply with all reasonable directions of GrainFlow and its employees and representatives and avoid or minimise unreasonable interference with the passage of people, vehicles and the operations and activities carried out at the Storage Facility.

- 8.2 The Client acknowledges and accepts that:

- 8.2.1 GrainFlow is not responsible for the cleanliness, fitness for loading or carriage of Commodities for any mode of transportation nominated by the Client;
- 8.2.2 GrainFlow may at its sole discretion and without any liability whatsoever to the Client or any third party, refuse to allow any Transport Service Provider to deliver Commodities to, or collect Commodities from, any Storage Facility if GrainFlow considers that the transportation vehicle or wagon is not clean or fit for loading or carriage or for any other reason reasonably related to the safety or security of any person or property. Where GrainFlow refuses to allow the delivery or collection as a result of GrainFlow considering that the transportation vehicle is not clean or fit for loading or carriage, GrainFlow shall not be liable to the Client for the cost, liabilities or expenses incurred as a result of GrainFlow's actions under this clause;
- 8.2.3 GrainFlow is not liable for the conduct of the Transport Service Provider including, without limitation, for the performance of the rail network operator or related services, where the vehicle fails to meet outload equipment requirements, is short-loaded or where a wagon fails to meet the nominated capacity of individual wagons or taken together, an entire train;
- 8.2.4 the Client bears all liability for the actions and/or omissions of its Transport Service Provider including in respect of any claims, damages, losses, costs, expenses or liabilities suffered, sustained or incurred by the Client or any third party.

- 8.3 The Client must:

- 8.3.1 bear all costs arising from the exercise by GrainFlow of its rights under clauses 8.1 and 8.2;
- 8.3.2 bear all costs arising from any alleged Outturn Defect detected at a Client Delivery Location arising out of

or in connection with a breach or suspected breach of clause 8.1.10, including without limitation the payment of any re-receival fees charged by GrainFlow and any costs incurred by GrainFlow in removing grain in any way connected with the alleged Outturn Defect; and

- 8.3.3 indemnify GrainFlow against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by GrainFlow as a result of, or arising out of or in connection with, any act or omission (including any negligent or unlawful act or omission or any failure to comply with clause 8.1 or any Applicable Laws) of any Transport Service Provider engaged by the Client to deliver or collect Commodities from any Storage Facility;
- 8.3.4 bear all costs or fees applied by any rail network owners or operators.
- 8.4 The Client agrees and acknowledges that GrainFlow will rely on the advice of the Transport Service Provider as to its road or rail transport configuration and applicable codes and any other advice it may provide with respect to loading in seeking to prevent any vehicle being loaded beyond the legal mass limits prescribed for that road transport configuration. In such circumstances, the Client acknowledges and agrees that GrainFlow will not be liable for any claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by the Client or any third party and the Client will indemnify and keep indemnified GrainFlow for any and all claims, damages, losses, costs, expenses and liabilities associated with the actions.

9. CARRY-OVER OF COMMODITY

- 9.1 In the event that the Client has any Carry-Over Commodities, GrainFlow will, subject to the following provisions of this clause 9, continue to supply the Services to the Client in relation to the Carry-Over Commodities on these terms and conditions (including subject to the payment of Fees in accordance with clause 13) until completion of Outturn of all such Carry-Over Commodities.
- 9.2 The Client agrees to pay GrainFlow the applicable Carry-Over Fee in relation to all Carry-Over Commodities within 30 days after receipt of invoice from GrainFlow.
- 9.3 Subject to clause 9.6, GrainFlow may require the Client to accept Outturn of the Carry-Over Commodities by giving the Client not less than 14 days' notice in writing (**Carry-Over Outturn Notice**). The Carry-Over Outturn Notice will specify the date by which the Carry-Over Commodities must be Outturned. In these circumstances, the Client must cooperate with GrainFlow in every reasonable way to facilitate Outturn of the Carry-Over Commodities by the date specified in the Carry-Over Outturn Notice (including arranging a Transport Service Provider to transport the Carry-Over Commodities from the Storage Facilities). If the Client does not accept Outturn of the Carry-Over Commodities by the date specified in the Carry-Over Outturn Notice, or if the Client otherwise fails to cooperate with GrainFlow as required by this clause, GrainFlow may at any time after the Outturn date specified in the Carry-Over Outturn Notice:
- 9.3.1 sell the Carry-Over Commodities to a third party at a price which may be less than the market value of the

Carry-Over Commodities and remit the proceeds of sale to the Client less any unpaid fees or other monies due from the Client to GrainFlow; or

- 9.3.2 transfer the Carry-Over Commodities to an Alternative Storage Facility in its discretion whereupon the relevant Carry Over Commodities shall be made available for Outturn from that Alternative Storage Facility. In this circumstance, the Client shall be responsible for and shall pay to GrainFlow on invoice from GrainFlow all costs of Outturn from the Original Storage Facility, all costs of transport to the Alternative Storage Facility and all costs of Receival at the Alternative Storage Facility, at GrainFlow's then current rates. In addition, the Client shall remain liable to pay all Fees for the supply of Services in relation to the Carry-Over Commodities from the Alternative Storage Facility.
- 9.4 Unless otherwise agreed in writing by GrainFlow, GrainFlow will not receive any Commodities under these terms and conditions after the Carry-Over Date.
- 9.5 Any Carry-Over Commodity shall be subject to the terms and conditions of the corresponding agreement in respect of the Season in which the Carry-Over Commodity was received by GrainFlow and subject also to such other terms and conditions or stipulations as GrainFlow notifies to the Client in writing including without limitation the re-grading of the Carry-Over Commodity.
- 9.6 Unless GrainFlow advises otherwise;
- 9.6.1 commodities comprising chickpea and canola stored at any Storage Facility (other than Narrabri) must be Outturned no later than 15 September 2022; and
- 9.6.2 commodities comprising any chickpea or faba bean stored at the Narrabri Storage Facility must be Outturned no later than 30 April 2022.
- If the Client otherwise fails to comply with this clause 9.6 or otherwise fails to cooperate with GrainFlow as required by this clause, GrainFlow may at any time after the dates specified in clauses 9.6.1 and 9.6.2 above undertake the procedures set out in clauses 9.3.1 and/or 9.3.2.
- 9.7. GrainFlow may, due to reasons of operational efficiency, reclassify malt barley to 'feed' barley after the Carry-Over Date at its absolute discretion unless otherwise agreed in writing. For the avoidance of doubt, GrainFlow's outturn obligation will be that of feed barley standard (and the Client agrees that GrainFlow's outturn obligations including the Receival Standards will be satisfied upon the outturn of feed barley and the act of doing so will not be considered to be an Outturn Defect) even though the Client's Outturn Entitlement may state ownership of malt barley.
- 9.8 In consideration of GrainFlow agreeing to provide the Services to the Client, the Client unconditionally and irrevocably appoints GrainFlow and each officer of GrainFlow to be the attorney of the Client in the name of, and on behalf of, and as the act and deed of, the Client to execute, perform and complete any act in connection with your Outturn Entitlement including to sell your Outturn Entitlement and otherwise perform your obligations under this Agreement in circumstances where you fail to perform your obligations in full or on time under the Agreement or

you request GrainFlow to undertake activities on your behalf.

- 9.9 The Client indemnifies GrainFlow and each of its officers against all claims arising under, or in connection with, the exercise of the rights conferred by clause 9.8.

10. SHRINKAGE

- 10.1 Subject to these terms and conditions it shall not be a breach of GrainFlow's obligations under this Agreement if the weight of the relevant Commodities at the Time of Discharge is less than the weight of the relevant Commodities at the Time of Receipt, whereby such difference reflects items (a) to (f) in the definition of Outturn Entitlement at the relevant time.

- 10.2 For the purposes of clause 10.1 only and without limiting clauses 7.20 to 7.30, the weight of the relevant Commodities at the:

10.2.1 Time of Receipt, will be the net weight of the Commodities recorded in the Grain Receiving Ticket; and

10.2.2 Time of Discharge, will be the net weight of the Commodities recorded in the Outloading Weight Ticket.

11. ADJUSTMENTS

- 11.1 After the complete Outturn of each individual grade for each Season at each Storage Facility covered by the Agreement, an adjustment will be made between GrainFlow and the Client in respect of any variation between the Outturned Amount and the Outturn Entitlement.

- 11.2 Where the Outturned Amount is less than the Outturn Entitlement, GrainFlow will, at its option and in full and final settlement:

- 11.2.1 pay to the Client an amount (**GrainFlow Adjustment**) calculated as follows:

GrainFlow Adjustment = (Outturn Entitlement - Outturned Amount) x Market Price on the date that GrainFlow notifies the Client in writing of the shortfall,

or,

- 11.2.2 within a reasonable period after completion of Outturn, provide the Client with commodities of the same type, amount and grade from any of the Storage Facilities so that the Outturn Amount equals the Outturn Entitlement with appropriate adjustments made for the difference in Market Price of the commodities at the original and alternative Storage Facility on the date that GrainFlow notifies the Client in writing of the shortfall.

or,

- 11.2.3 provide the Client with commodities of the same type and amount but of a higher or lower grade with appropriate adjustments made for the difference in Market Price of the grades on the date that GrainFlow notifies the Client in writing of the shortfall.

For the avoidance of doubt, where the adjustment is positive amount, the Client agrees to pay GrainFlow and where the adjustment is a negative amount, GrainFlow is to pay the

Client. When the Client has been advised that the Outturned Amount is less than the Outturn Entitlement, notwithstanding clause 12, the Client agrees not to transfer this entitlement to a third party.

- 11.3 Where the Outturned Amount is greater than the Outturn Entitlement, the Client will pay to GrainFlow an amount (**Client Adjustment**) calculated as follows:

Client Adjustment = (Outturned Amount - Outturn Entitlement) x Market Price on the date of final Outturn to the Client.

- 11.4 Any adjustment under this clause 11 shall be paid within 30 days of receipt of invoice in full and final settlement.

- 11.5 For the removal of doubt, any adjustment pursuant to the preceding provisions of this clause 11 will be made having regard to the aggregate weight of Commodities Outturned as recorded in each Outloading Weight Ticket, notwithstanding any claim by the Client pursuant to clause 7.21.

- 11.6 Title in any grain remaining at any Storage Facility covered by these terms and conditions that is surplus to the Client's Outturn Entitlement will transfer to GrainFlow and GrainFlow is entitled to sell or dispose of any such surplus grain as it sees fit and to retain for itself any proceeds.

12. TITLE TRANSFER

- 12.1 The Client may, in accordance with the applicable procedures of GrainFlow in force from time to time (and which shall be provided upon request), transfer its title to all or part of the Commodities to a third party (**Transferee**) provided that:

12.1.1 the sum total of the amount or amounts transferred shall be no more than the applicable Outturn Entitlement;

12.1.2 the Client has performed all its obligations under these terms and conditions and has made all payments for Services supplied in respect of the relevant Commodities, up to the date of transfer; and

12.1.3 the Transferee agrees, in writing, to be bound by these terms and conditions.

- 12.2 The Client must produce all relevant documents required by GrainFlow to effect transfer of its title to the Commodities pursuant to the preceding provisions of this clause 12.

13. GrainFlow FEES

- 13.1 In consideration of the supply by GrainFlow of the Services, the Client must pay to GrainFlow the Fees.

- 13.2 GrainFlow will invoice the Client on a calendar monthly basis. GrainFlow's invoices must provide the information specified in the Schedule.

- 13.3 The Client must pay the Fees within 30 days after receipt of invoice from GrainFlow.

- 13.4 Despite clause 13.3, unless otherwise agreed by GrainFlow, all Fees in respect of Commodities to be Outturned or title transferred must be paid in full up to the date of Outturn or transfer. GrainFlow is entitled to refuse Outturn or transfer of Commodities if:

13.4.1 the Client fails to comply with this clause 13.4; or

- 13.4.2 there are monies due and payable to any Related Body Corporate of Grainflow that the Client has not paid.
- 13.5 If the duration of the Term is greater than 12 months, or if the Term is extended beyond 12 months by agreement between GrainFlow and the Client then, subject to clause 13.6, GrainFlow may amend the Fees on each anniversary of the commencement of the Term by written notice to the Client. If GrainFlow proposes to amend the Fees, GrainFlow must provide a revised version of the Schedule, setting out the new Fees. In this circumstance, the Schedule will be deemed deleted and replaced with the revised Schedule provided by GrainFlow under this clause 13.5 with effect from the date 30 days after the date of GrainFlow's notice of the amendment of the Fees or, if the notice is provided more than 30 days prior to the nearest anniversary of the commencement of the Term, on that anniversary of the commencement of the Term.
- 13.6 In the absence of any agreement to the contrary between GrainFlow and the Client, the amended Fees set out in a notice provided by GrainFlow under clause 13.5 must be substantially the same as the standard fees published by GrainFlow and charged by GrainFlow for similar services to its other customers.
- 13.7 If the Client purchases Commodities which are already warehoused or is or have been stored, handled or treated by GrainFlow and there are unbilled and unpaid and/or unpaid fees and charges in respect of the Commodities for any period or for anything done prior to the purchase, then the Client agrees to deduct those fees and charges from any amounts due to the Grower and must pay them to GrainFlow, provided that GrainFlow notifies the Client of the outstanding fees and charges and the Client has not yet paid the Grower for that Commodity.
- 13.8 In addition to GrainFlow's rights at law, if the Client fails to make payment of an invoice in accordance with the terms of this Agreement then:
- 13.8.1 all existing invoices will become immediately due and payable; and
- 13.8.2 GrainFlow may, in its absolute discretion, suspend the provision of any or all of the Services until all outstanding invoices have been paid.
- 14. GST**
- 14.1 Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 14.
- 14.2 Unless otherwise expressly stated, any amounts payable for a supply made under this document are exclusive of GST (**GST exclusive amount**).
- 14.3 Where under the Agreement a taxable supply is made, an amount equal to the GST payable on the taxable supply (**GST amount**) must be paid in addition to, at the same time and in the same manner as the GST exclusive amount otherwise payable for the supply. The party, who receives consideration, whether monetary or otherwise, must issue a weekly tax invoice to the other party in a form which complies with the GST Law in a timely manner. The payer is not obliged to pay any amount until it has received a valid tax invoice in relation to the relevant supply.
- 14.4 If an adjustment event arises in relation to any taxable supply made under the Agreement that gives rise to an increasing adjustment or decreasing adjustment the GST amount must be adjusted accordingly and where necessary a payment must be made to reflect that increasing adjustment or decreasing adjustment. Immediately after the adjustment event arises the supplier must provide a valid adjustment note to the recipient.
- 14.5 If a party (the **first party**) is required under the Agreement, to pay for or reimburse a cost, expense or outgoing of the other party, the amount to be paid by the first party is the sum of:
- 14.5.1 the amount of the cost, expense or outgoing less any input tax credits in respect of the cost, expense or outgoing that the other party (or the representative member of a GST group of which it is a member) is entitled; and
- 14.5.2 if the payment by the first party is consideration for a taxable supply, an amount equal to the GST amount payable by the other party in respect of the taxable supply.
- 15. TITLE & LIEN**
- 15.1 Subject to clause 15.2:
- 15.1.1 The Client warrants and represents that it is, or will be for the entire time that GrainFlow supplies Services to it in respect of particular Commodities, the sole legal and beneficial owner of all Commodities with full right, title and interest, free from any mortgage, charge, lien, option, encumbrance or other adverse claim or interest.
- 15.1.2 Without limiting any right conferred upon GrainFlow by law, in relation to all moneys payable by the Client to GrainFlow on any account whatsoever other than amounts in respect of which GrainFlow has a lien pursuant to a law of the Commonwealth, a State or Territory (**Other Moneys**), GrainFlow shall have a lien over Commodities as from the Time of Receipt of the Commodities for such Other Moneys.
- 15.1.3 Without limiting clause 13.4, GrainFlow will be entitled, upon default by the Client in making any payments due to GrainFlow and in enforcing any lien, to sell all or any of the Commodities in such manner as it thinks fit and use the proceeds of such sale in or towards satisfaction of the relevant moneys due, together with GrainFlow's costs of effecting the sale. Subject to the terms of this Agreement, the balance of the proceeds of such sale will be paid by GrainFlow to the Client.
- 15.2 The warranty in clause 15.1 shall not apply in relation to any particular Commodities to the extent that the Client:
- 15.2.1 notifies GrainFlow of the existence of any encumbrance or other security interest affecting those Commodities; and
- 15.2.2 obtains the written consent of the holder of that encumbrance or security interest over the relevant Commodities that any lien and security interest held by GrainFlow will be paid in advance of any such

encumbrance or security interest, prior to Receival of those Commodities by GrainFlow.

- 15.3 Where the Client's Commodities form part of the common commodities stored in bulk at the Storage Facilities, GrainFlow may nominate and identify any particular quantity of Commodities as being the Client's Commodities for the purposes of this Agreement, including for the purpose of Outturn or transfer at the direction of the Client, sale by GrainFlow in exercise of its lien over the Commodities and for the allocation of loss or damage between the Client and Other Clients/Transferees.

16. RECORDS

- 16.1 Each party must keep at its principal place of business proper, complete and current records, books of account and documents relating to the supply of the Services by GrainFlow under or in connection with these terms and conditions (**Records**) and will make the Records available for inspection by officers of the other party upon the giving of reasonable notice.
- 16.2 The Client must, and must procure that its officers comply with all directions or conditions reasonably given by GrainFlow in connection with any inspection of the Records.

17. CONTAMINANTS

- 17.1 Despite anything to the contrary contained or implied in these terms and conditions, the obligations in this clause 17 requiring the Client to ensure that the Commodities containing any Genetically Modified Materials will not be delivered to the Storage Facility only apply to Commodities that have been declared to be non-Genetically Modified by the Client at delivery in the manner and form required by GrainFlow. The Client indemnifies and holds harmless GrainFlow, its officers, employees, agents and contractors against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred as a result of, or in connection with any false, misleading, incomplete or inaccurate declaration.
- 17.2 The Client must take all reasonable measures to ensure that Commodities containing any Genetically Modified Materials, or any pest or insect infestation or any other toxic or other chemical treatments or contamination will not be delivered to the Storage Facility. This includes but is not limited to the Client ensuring that all of its suppliers are advised that Commodities known or suspected to contain chemical contaminants or residues or both must not be delivered to any GrainFlow Storage Facility.
- 17.3 Without in any way limiting clause 17.1, the Client acknowledges that GrainFlow is unable to test Commodities on receival for varietal purity, toxic or other chemical treatments, residues, contaminants or Genetically Modified Materials and, without limiting any other provision of these terms and conditions and having regard to GrainFlow's entitlement under clause 4.6, GrainFlow is not liable for any damage to or contamination of any Commodities caused, whether directly or indirectly and howsoever arising, by the storage, handling or Outturn of any Commodities, whether of the Client or any third party, which, on receival, contained any toxic or other chemical treatments, contaminants or Genetically Modified Materials. The Client indemnifies and holds harmless GrainFlow, its officers, employees, agents and contractors against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred as a

result of, or in connection with, the delivery of Commodities by or for the Client that contain any Genetically Modified Materials, or any pest or insect infestation or any other toxic or other chemical treatments, residues or contamination.

17.A PEST CONTROL

- 17.1A The Client acknowledges and agrees that GrainFlow may treat all Commodities with fumigation treatment in accordance with applicable laws, codes and regulations. A list of treatments will be provided to the Client on written request. Where fumigation or other certificates are required or requested by the Client, GrainFlow will charge a fee for the administration of these certificates.

18. WARRANTIES AND INDEMNITY

- 18.1 The Client warrants that:
- 18.1.1 it is fully entitled without the consent of any third person to exercise all of the rights under and do all of the things contemplated by these terms and conditions;
- 18.1.2 it acquires the Services for the purposes of a business carried on or engaged in by the Client;
- 18.1.3 it will not divulge any information in any way relating to Growers provided to it by GrainFlow in connection with Commodities other than for the purposes of its own grain marketing and in doing so shall comply with the Privacy Laws in protecting such information;
- 18.1.4 it will comply with all applicable laws, including any Privacy Laws, in exercising its rights and performing its obligations under these terms and conditions; and
- 18.1.5 all information provided by it is complete, truthful and accurate
- 18.2 Except to the extent caused by GrainFlow's fraud, criminal conduct or wilful misconduct, the Client indemnifies, releases and holds harmless GrainFlow and its employees, officers agents and contractors from and against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by GrainFlow howsoever arising directly or indirectly in relation to:
- 18.2.1 the Client's use of the Service;
- 18.2.2 any Third Party Claim in relation to any Commodities or otherwise affecting the Client;
- 18.2.3 any breach (including of breach of warranty), non-observance or non-performance by the Client of any of its obligations under this Agreement; or
- 18.2.4 Any claims relating to the administrative services provided by GrainFlow as described in clause 4 including any claims related to Cash Prices (including incorrect Cash Prices).
- 18.3 GrainFlow's employees, agents and contractors have the benefit of this indemnity and release and to that extent GrainFlow enters into this Agreement as agent and trustee on their behalf.
- ## 19. EXCLUSIONS AND LIMITATIONS
- 19.1 The parties agree that the only warranties provided by GrainFlow under or in connection with this agreement are those expressly set out in these terms and conditions. For the removal of doubt and to the maximum extent permitted

by law, GrainFlow excludes all conditions and warranties implied by law or statute.

- 19.2 Subject to clauses 7.19 and 11, GrainFlow excludes all liability for any Consequential, Incidental or Indirect Loss and Damage howsoever caused or arising and whether or not foreseeable at the date of this Agreement. GrainFlow acknowledges that nothing in this clause 19.2 limits its obligation under clause 7.10 to Outturn, subject to clauses 7.11 to 7.19 (inclusive), Commodities which, as a minimum, meet the Receival Standards that apply in relation to the Commodities to be Outturned.
- 19.3 If pursuant to any law or statute GrainFlow is not permitted, or is held not to be permitted, to exclude any implied condition or implied warranty, notwithstanding clauses 19.4 and 19.5, in the event of any breach of any such implied condition or implied warranty in the provision of Services to the Client and despite anything to the contrary contained or implied in these terms and conditions, GrainFlow's liability shall be limited, at its option, to the re-supply of the Services that are the subject of the relevant breach to the Client or the payment to the Client of the cost of re-supply of such Services.
- 19.4 Subject to clauses 7.19 and 11 and other than where clause 19.3 applies and even if the limitation in clause 19.5 applies to any part of a claim which relates to Throughput Services only, where permissible by law GrainFlow's total liability to the Client howsoever arising is capped at a total all inclusive amount of \$100,000 for any single incident or event or series of related events.
- 19.5 Other than where clause 19.3 applies, where permissible by law, Grainflow's total liability to a Client with respect to Throughput Services (including from any breach of these terms and conditions or the negligent act or omission of GrainFlow) is capped at a total amount of \$5,000 for any single incident or event or series of related events.

20. CONFIDENTIALITY

- 20.1 Each party agrees that it will not, and will procure that its personnel do not, make any use of any Confidential Information of the other party for any purpose other than in connection with the performance of its obligations in accordance with these terms and conditions and agrees that it will, and will procure that its personnel will, keep such Confidential Information secret.
- 20.2 Each party shall positively guard against, and shall ensure that its personnel positively guard against, the direct or indirect disclosure of the Confidential Information of the other party to any third person.
- 20.3 The obligations of confidence contained in clauses 20.1 and 20.2 shall not be taken to have been breached where the Confidential Information is required to be disclosed by law.
- 20.4 The obligations of confidence contained in clauses 20.1 and 20.2 survive the expiry or termination of these terms and conditions.

21. TERMINATION

- 21.1 Either party (**Terminating Party**) may terminate the Agreement with immediate effect at any time by notice to the other party (**Breaching Party**) and without prejudice to its rights at law or otherwise if the Breaching Party:
- 21.1.1 breaches a term of the Agreement which is capable of remedy and fails to remedy that breach within

fourteen (14) days after being given written notice to do so;

- 21.1.2 breaches a term of the Agreement which is incapable of remedy; or
- 21.1.3 is placed under some form of official management or insolvency administration or is unable to pay its debts as and when they fall due
- 21.2 Notwithstanding clause 21.1, GrainFlow is entitled to terminate this Agreement immediately upon notice in writing and without prejudice to its rights at law or otherwise where the Client:
- 21.2.1 fails to pay a Fee due and payable under this Agreement;
- 21.2.2 fails to follow a reasonable and lawful direction of GrainFlow given in connection with this Agreement; or
- 21.2.3 commits and act or omission which comprises the safety of a person performing Services under this Agreement.
- 21.3 Upon termination, the Client agrees to make all necessary arrangements for the immediate Outturn or transfer of the Client's Outturn Entitlement. Until such time as the Outturn or transfer occurs, the Client will continue to be liable to pay all Fees for Services performed.
- 21.4 Termination of this Agreement is without prejudice to the rights of either party that have accrued prior to the date of termination.

22. NOTICES

- 22.1 Notice to be given by a party under these terms and conditions must be:
- 22.1.1 in writing;
- 22.1.2 directed to the recipient's physical address or email address as set out in the Commercial Details or as varied by written notice;
- 22.1.3 left or sent by pre-paid registered post, hand delivered, or facsimile to that address;
- and will be deemed to be duly given:
- 22.1.4 in the case of hand delivery, on the day of delivery;
- 22.1.5 three (3) days after the date of posting by pre-paid registered post; or
- 22.1.6 if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight business hours after that transmission, the recipient informs the sender that it has not received the entire notice; as the case may be; or
- 22.1.7 if sent by email:
- (A) when the sender receives an automated message confirming delivery; or
- (B) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first.

If an individual associated with an email address ceases to work in the role specified or ceases to work for the addressee and the addressee fails to notify the other part[y/ies] of an alternative email address, notices sent by email to a manager or equivalent level personnel at the addressee are deemed compliant with the notice obligations under this clause 22.1. For the purposes of clause 22.1, the parties' respective addresses and facsimile numbers are as set out in the Commercial Details (unless otherwise notified in writing by one party to the other).

23. INTEREST

23.1 All overdue payments under these terms and conditions will bear simple interest at the rate of interest being two percent (2%) higher than the 90 day Bank Bill Rate offered by the Commonwealth Bank of Australia as at the due date, calculated from the due date to the date of actual payment in full.

24. EVENTS OUTSIDE CONTROL

24.1 Neither party is liable for not performing an obligation in whole or in part, or for not performing it on time (except an obligation to pay money) because of an event beyond that party's reasonable control.

24.2 If an event beyond a party's reasonable control occurs, that party must:

24.2.1 give the other notice of the event promptly together with an outline of the facts and circumstances that are relied upon to assert the event is beyond its reasonable control and an estimate of the extent of the non-performance and delay;

24.2.2 take all steps to mitigate and end the event as quickly as possible (but this does not require the settlement of industrial disputes or other claims or unreasonable terms); and

24.2.3 resume compliance as soon as the event no longer affects the party.

24.3 Without limitation, strikes, stop works, lock-outs, boycotts or any other form of labour dispute or industrial action, social unrest or dispute, acts of god, rain, winds, fire, storm, lightning, floods, or other form of severe weather, disruptions caused by health concerns, malicious damage, cyber attacks, disruption to infrastructure, national emergencies, government directives or restrictions, epidemics, pandemics (including but not limited to COVID 19) shall be deemed to be events beyond the reasonable control of a party.

24.4 Notwithstanding anything to the contrary contained in these terms and conditions, GrainFlow is not liable to compensate the Client or any third party for any losses sustained or damages suffered by the Client and arising from an event beyond the reasonable control of GrainFlow.

25. RISK AND INSURANCE

25.1 Subject to clauses 25.2 and 25.3 during the Term GrainFlow may obtain and keep, to the extent reasonably practicable, current insurance in respect of physical loss or damage to commodities stored across all of the Storage Facilities during such time as those Commodities are in the possession, custody and control of GrainFlow.

25.2 Insurance under clause 25.1 will not be provided for any Commodities that are for the time being wholly or partly in the possession custody or control of any other person,

including without limitation any subcontractor or third party freight provider of the Client.

25.3 The insurance under clause 25.1 may be by way of a policy or policies covering one or more members of the corporate group of which GrainFlow forms part and may be subject to such deductibles and excesses as GrainFlow and that corporate group determines.

26. DISPUTES

26.1 Subject to clause 26.6, the parties must attempt to settle any dispute under or relating to the Agreement (**Dispute**) in accordance with this clause 26 before resorting to external dispute resolution mechanisms.

26.2 A party claiming that a Dispute has arisen must notify the other party, at which time the parties must exchange all documents and other relevant information relevant to the dispute and refer the matter for discussion to representatives appointed and authorised to settle the dispute on their behalf.

26.3 If a dispute is not resolved within seven (7) days after notice is given under clause 26.2, the parties must meet within a further seven (7) days (or such other time period agreed between the parties) and negotiate in good faith to agree upon:

26.3.1 a process to resolve the Dispute through means other than litigation, such as further negotiation, mediation or independent expert determination;

26.3.2 the procedure and timetable for any exchange of documents and other information in relation to the Dispute;

26.3.3 procedural rules and timetable for the conduct of the selected mode of proceedings;

26.3.4 a procedure for selection and compensation of any neutral person; and

26.3.5 whether the parties should seek the assistance of a dispute resolution organisation such as the Australian Commercial Disputes Centre.

26.4 If the parties cannot agree within the further seven (7) day period (or such other period agreed between the parties) referred to in clause 26.3 on a process for resolving the Dispute, or the Dispute has not been resolved within fourteen (14) days of the parties agreeing the matters set out in clause 26.3, then either party may by notice terminate the Dispute resolution process and may then commence court proceedings relating to the Dispute.

26.5 The exchange of information or documents or the making of any offer of settlement under this clause is for the purpose of attempting to settle the Dispute and is provided or made on a without prejudice basis.

26.6 A party may commence court proceedings relating to any Dispute at any time if that party is seeking urgent interlocutory relief or if the other party has failed to comply with the requirements of this clause 26.

26.7 The parties acknowledge and agree that no other dispute procedure (including GTA dispute resolution and/or arbitration processes and other similar procedures) other than those set out in this clause 26 apply to disputes arising out of or in connection with this Agreement.

27. GENERAL

27.1 Entire agreement

The Agreement constitutes the entire agreement between the parties in relation to its subject matter. No understanding, arrangement or provision not expressly set out in the Agreement in relation to the subject matter of the Agreement binds the parties. Accordingly, all correspondence, negotiations and other communications between the parties in relation to the subject matter of the Agreement which preceded the Agreement are superseded by and merged in it.

27.2 Amendment

The Client acknowledges and agrees that this Agreement may only be amended by written agreement signed by both parties.

27.3 Waiver and exercise of power

27.3.1 The failure by any party at any time to enforce any of its powers, remedies or rights under the Agreement will not constitute a waiver of those powers, remedies or rights or affect the party's rights to enforce those powers, remedies or rights at any time.

27.3.2 A party may exercise a right, power or remedy at its discretion, separately or concurrently with another right, power or remedy. Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise of it or the exercise of any other power, remedy or right under the Agreement. The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

27.4 Severance

If any provision or part of a provision of the Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision or part of a provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining part(s) of the prohibited, invalid or unenforceable provision or any other provisions of the Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

27.5 Governing Law

The Agreement is governed by the law in force in the State of Victoria and the parties submit to the nonexclusive jurisdiction of the courts of that State.

27.6 Assignment and Novation

27.6.1 The Client must not assign or transfer any of its rights or novate any of its obligations under the Agreement without the prior written consent of GrainFlow and no assignment of any obligation will be effective until the Client has covenanted in favour of, and in form satisfactory to, GrainFlow, to assume and to be bound by the obligations assigned.

27.6.2 GrainFlow may assign or transfer any of its rights or novate any of its obligations under the Agreement to any person without the consent of the Client.

27.7 Set Off

27.7.1 GrainFlow may set off against any monies that it owes to the Client or its Related Bodies under or in connection with the Agreement, any monies

including interest that are owed by the Client or its Related Bodies to GrainFlow or its Related Bodies.

27.7.2 The Client is not entitled to withhold payment of any disputed amount the subject of an invoice issued by GrainFlow or its Related Bodies or to set off against the amount of an invoice any other claim that it has against GrainFlow or its Related Bodies.

27.8 Advertising

GrainFlow shall be entitled to advertise the fact, at all relevant Storage Facilities, that the Client is a buyer of commodities from those facilities and shall further be entitled to advertise appropriate Client contact details for the purchase of commodities from those facilities.

27.9 **Trustees** If the Client is a trustee, the Client agrees that this Agreement is binding upon the trustee personally and in its capacity as trustee of the trust and nothing contained or implied in this agreement or in any notification given or deemed to be given to GrainFlow will prejudice, affect or in any way limit the personal liability of the trustee on its own account as a party under this Agreement.

27.10 **Partnerships** If the Client is a partner in a partnership the Client agrees that the Client and each of the Client's partners are bound jointly and severally with respect to all obligations contained in this Agreement.

27.11 No Endorsement

27.11.1 The Client must not, without GrainFlow's prior written consent:

(A) make any reference, comment or statement either written or oral, that could be construed as an endorsement by GrainFlow of the Client or the Client's products or services;

(B) refer to GrainFlow or the Services provided by GrainFlow to the Client in any publication, promotional or advertising material.

27.12 Relationship of Parties

Nothing in this Agreement is to be construed as constituting an agency, partnership, trust or joint venture between the parties or a right of tenancy, lease or licence of any Storage Facility or any land upon which a Storage Facility is located.

27.13 No Liability

No party to this Agreement is liable for an act or omission of another party to this Agreement except to the extent set out in this Agreement.

27.14 Sub-Contracting

GrainFlow may in its sole and absolute discretion subcontract the provision of the whole or any part of the Services or otherwise engage any person to under the provision of any part of the Services on behalf of GrainFlow without notice to the Client.

27.15 Information

GrainFlow does not represent, warrant or guarantee, neither expressly or impliedly, that the information provided by third parties under or on connection with this Agreement and the Services is complete, sufficient or accurate. To the fullest extent permitted by law, GrainFlow accepts no responsibilities for any inaccuracies, errors, false or misleading context in or omissions contained in any such information, or any other information or matter arising or

coming to its notice which may affect this information or any other party's reliance on it.

27.16 Change in Law

Notwithstanding any other provision in this Agreement, if there is a Change in Law after commencement of the Term which results in a direct or indirect increase in GrainFlow's costs or adversely impacts the provision of the Services, GrainFlow may vary this Agreement providing You with 3 months' notice.

27.17 Compliance with Law

Notwithstanding anything to the contrary in this Agreement, if, in GrainFlow's opinion, it would contravene any law or regulation, including any condition or accreditation, then GrainFlow is not required to perform any obligation under this Agreement.

28. PRIVACY

28.1 Subject to any law to the contrary, the Client agrees that any information related to the performance of this Agreement (which includes but is not limited to Client's personal information) may be collected, held and used by GrainFlow:

- 28.1.1 to maintain the Client's relationship with GrainFlow including in order to maintain stock records and administer payments;
- 28.1.2 to provide products or services which the Client has agreed to obtain from GrainFlow;
- 28.1.3 to collect outstanding monies;
- 28.1.4 to assist any third party with enforcement of any rights that party may have in connection with their commodities;
- 28.1.5 for the provision or acquisition of services for the purposes of GrainFlow's business;
- 28.1.6 to comply with requests from regulatory authorities or with court issued documents;
- 28.1.7 in connection with a proposed sale of acquisition of an interest in a business;
- 28.1.8 for any purpose required or permitted by any law, regulatory and/or arbitration proceeding relating to this Agreement or a contract between a grower and GrainFlow.

28.2 Client agrees and acknowledges that:

- 28.2.1 Client has read and agreed to GrainFlow's Summary of Cargill's Global Privacy Policy, located at www.awb.com.au/privacy/ or obtained from GrainFlow.
- 28.2.2 In dealing with personal information GrainFlow shall comply with the standards set out in the *Privacy Act 1988* (Cth) and the Australian Privacy Principles, as they apply to personal information.
- 28.2.3 Client can withdraw its consent at any time by calling the AWB Grower Service Centre on 1800 447 246. Client warrants that it has obtained and read A Summary of Cargill's Global Privacy Policy, located at www.awb.com.au/privacy/ or from GrainFlow, which policy contains information about how personal information held by GrainFlow and its Related Bodies

Corporate may be accessed and corrected and how complaints can be made and are managed. The Summary of Cargill's Global Privacy Policy also contains further information regarding the handling of transfer and storage of personal information overseas, including the countries that Your information may be transferred to or stored in.

28.2.4 If Client wishes to give GrainFlow any information about an individual, then Client agrees to ensure that the individual to whom that information relates agrees that GrainFlow may use and disclose information about him or her in accordance with this clause 28.

29. SITE ACCESS

29.1 The Client may request to inspect a Storage Facility by providing Grainflow with reasonable notice, in writing, including the date persons attending, the Storage Facility to be inspected and the purpose of the visit. GrainFlow reserves the right, acting reasonably to refuse such request/s. In that event, GrainFlow may, where practicable, advise of the reasons for the refusal and may, at its discretion, provide an alternative date for inspection of the Storage Facility.

29.2 The Client must, and must ensure that its employees, officers, agents, contractors and invitees comply with all signage, access requirements, procedures, policies and instructions of GrainFlow representatives prior to entering, while visiting and when leaving a Storage Facility and avoid or minimise unreasonable interference with the passage of people, vehicles and the operations and activities carried out at the Storage Facility.

29.3 The Client is responsible for ensuring that it and the Client's employees, officers, agents, contractors and invitees comply with this clause, any laws and regulations and all GrainFlow requirements and do not cause any risk of harm, damage, injury, hazard or contamination of any commodities on or about any Storage Facility.

30. PERSONAL PROPERTY SECURITIES ACT (2009) CTH (PPS ACT)

30.1 The Client agrees and acknowledges that:

30.1.1 GrainFlow has a Security Interest, for the purpose of the PPS Act, in the Client's Commodities and the Client's Outturn Entitlement including proceeds from the sale of the Client's Outturn Entitlement (collectively, goods) in respect of the Other Moneys (see clause 15);

30.1.2 GrainFlow has given value for the Security Interest, including by its promises under this Agreement; and

30.1.3 GrainFlow's Security Interest in the goods is effective and attaches to the goods immediately upon GrainFlow taking delivery of the goods.

30.2 GrainFlow may, at the Client's expense, take all reasonable steps as GrainFlow considers advisable (in GrainFlow's reasonable opinion) to:

30.2.1 perfect, protect, record, register, or amend, remove or end the registration of, GrainFlow's Security Interest in the goods; or

30.2.2 better secure GrainFlow's position in respect of this Agreement under the PPS Act.

- 30.2.3 The Client must procure the removal or cessation of any registration in relation to any Security Interest that affects the priority of GrainFlow's interest in the goods.
- 30.3 The Client must immediately notify GrainFlow if the Client becomes aware of any person taking steps to register, or registering, a financing statement in relation to the goods.
- 30.4 If GrainFlow requests, the Client must, at its own cost, immediately do anything (including providing information, obtaining consents or waivers, or executing new documents, amendments to this Agreement or consents) which GrainFlow considers necessary (in GrainFlow's reasonable opinion) to:
- 30.4.1 ensure that GrainFlow's Security Interest provided for by this Agreement attaches to the goods, is enforceable, perfected and otherwise effective and has the priority required by GrainFlow;
- 30.4.2 enable GrainFlow to prepare and register (including renewal of registration) a financing statement or financing change statement, this Agreement or any notice of this Agreement, on any register of securities or any other register relevant to the goods;
- 30.4.3 enable GrainFlow to exercise any of its rights or powers in connection with its Security Interest in the goods, and the proceeds of the goods, or to perform any of its obligations under the PPS Act;
- 30.4.4 ensure that this Agreement is not void, voidable or otherwise unenforceable;
- 30.4.5 protect, perfect, record or better secure the position of GrainFlow under this Agreement and its interest in the goods and proceeds of the goods in any relevant jurisdiction; or
- 30.4.6 overcome any defect or adverse effect arising from the PPS Act.
- 30.5 Words and expressions used in this clause which are not otherwise defined in this Agreement but are defined in the PPS Act have that same meaning.
- 30.6 Client waives its right to receive any notice under the PPS Act (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPS Act.

31. Electronic Communications

- 31.1 By entering into this agreement with GrainFlow the Client agrees and consents that the *Electronic Transactions (Vic) Act 2000* applies to this Agreement and the Client consents that any notices and communications between the Client and GrainFlow relating to or connected with this Agreement or arising as a result of the relationship between the Client and GrainFlow under this Agreement can be conducted using Electronic Communications and that the Client agrees to enter into contracts and agreements with GrainFlow and otherwise interact with GrainFlow using Electronic Communications.
- 31.2 GrainFlow (including its Related Bodies) may from time to time offer Electronic Communication subscription services for dissemination of notices, information and research.
- 31.3 There are risks associated with utilising Electronic Communications and short messaging system (SMS) based

notices, information and research dissemination services. If the Client has subscribed to such services offered by GrainFlow or its Related Bodies the Client agrees and acknowledges that the Client understands that the services can fail due to failure of hardware, software, communication devices and connections. Whilst GrainFlow and its Related Bodies (as applicable) shall endeavour to ensure that the messages are delivered in time to the Client's mobile network, the delivery of these messages to the Client's mobile phone/messaging and receiveal device/handset is the responsibility of the Client's network operator. Electronic Communications may be delayed and/or not delivered to the Client's mobile phone/messaging and receiveal device/handset on certain days, owing to technical reasons and GrainFlow and its Related Bodies cannot be held responsible for the same.

- 31.4 To the extent permissible by law, GrainFlow (including its Related Bodies) and its officers and employees shall not be liable for any errors, omissions, defects or misrepresentations in the information or for any loss or damage suffered by persons who use or rely on such information (including by reasons of negligence, negligent misstatement or otherwise) including without limitation any errors or omissions arising from using Electronic Communications. If any law prohibits the exclusion of such liability, GrainFlow limits its liability to the re-supply of the information, provided that such limitation is permitted by law and is fair and reasonable.
- 31.5 You agree that use of the website and mobile apps operated by GrainFlow or Cargill Australia Limited is governed by our Terms of Use located at <https://www.awb.com.au/terms-of-use>.

SCHEDULE

FEES & INVOICING