CBH Delivery and Warehousing Terms

Current from: 9 October 2026

1 DEFINITIONS

"**Acquirer**" means the person nominated as the buyer of the Grain being delivered to a Site, provided that the person nominated has executed a Grain Services Agreement for the current Season.

"**Agent**" means a carrier, Transport Operator, person in possession of **Your** CDF or authorised to deliver or collect Grain on **Your** behalf or other person engaged by **You** to seek Services under these Terms.

"**AGC**" means the Australian Grains Centre.

"**Allocated Port Facility**" means, in relation to each Site, the Port Facility nominated as the usual export port for that Site allowing for the most efficient movement and Outturning of Grain.

"**BAMA Contributions**" means contributions that CBH deducts and remits to the Director General of the Department of Primary Industries and Regional Development on a per tonne basis pursuant to the *Biosecurity and Agriculture Management Act 2007* (WA).

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

"**CBH**" means Co-operative Bulk Handling Limited ABN 29 256 604 947.

"**CBH Grain**" means CBH Grain Pty Ltd ACN 089 394 883.

"**CBH Group Debt**" means any amount owing by **You** to a CBH Group Entity.

"**CBH Group Entity**" means, as the case requires, CBH or any one or more of CBH's Related Bodies Corporate.

"**CBH Integrated**" means the fully integrated grain supply chain service provided by CBH from the Receival Site through to Outturning at the export or domestic market, under which an Acquirer obtains Integrated Entitlement.

"**CBH Privacy Policy**" means the policy available at https://www.cbh.com.au/privacy-policy.aspx as amended from time to time.

"**CBH Site Select**" means the service provided by CBH under which an Acquirer acquires and holds Site Entitlement at a particular Site and operates outside of the integrated supply chain. For the avoidance of doubt, this does not create any category of Grain Entitlement separate from Site Entitlement.

"**CDF**" means the Carter's Delivery Form whether in hardcopy form as that document stands from time to time or submitted electronically via the CDF App.

"**CDF App**" means CBH's Carter's Delivery Form software application.

"**Chain of Responsibility Laws**" means the requirements known as the "Chain of Responsibility" provisions under the *Road Traffic (Administration) Act 2008* (WA), the *Road Traffic (Vehicles) Act 2012* (WA), the *Road Traffic (Administration) Regulations 2014* (WA), the *Road Traffic (Vehicles) Regulations 2014* (WA) and the *Road Traffic (Authorisation to Drive) Regulations 2014* (WA).

"**Charges**" means the charges specified by CBH on www.cbh.com.au or in a quotation (as the case requires) as applicable to the performance of each relevant Service or defined part of a Service or otherwise payable under these Terms.

"**Common Stack Segregation**" means the CBH system of grain storage whereby Grain belonging to different customers is stored in the same grain stack on the basis that the quality of Grain in that stack conforms to the same Receival Standard.

"**Container Terminal**" means either the Fremantle container terminal or Kewdale container terminal or any other container terminal nominated by CBH.

"**Contaminant**" means a Level 1 Contaminant, a Level 2 Contaminant or a Level 3 Contaminant as the case requires.

"**Contamination Charge**" means the relevant CBH charge for costs and losses associated with removing Grain with a Contaminant from a Site which represents a genuine pre-estimate of the loss and damage suffered by CBH set out in the Harvest Handbook.

"**Contaminant List**" means the list of contaminants published by CBH on www.cbh.com.au for the current Season as amended from time to time.

"**Corynetoxins Contamination**" means contamination by low molecular weight chemicals that cause annual ryegrass toxicity.

"**Delivery**" means delivery of the Grain into CBH's possession.

"**Direct to Vessel Target Date**" has the meaning given to it in the CBH Port Terminal Services Agreement as published on the CBH website at www.cbh.com.au.

"**Dispute Notice**" has the meaning set out in clause 13.3.1(b).

"**Domestic Outturn Booking System**" means the schedule of that name in the current CBH Grain Services Agreement.

"**Estimated Fees**" means an estimate made by CBH of the fees and charges that **You** would be reasonably likely to incur pursuant to these Terms during the current Season based on **Your** current Grain Entitlement at the time the estimate is made.

"**Fair Market Price**" means the lesser of:

(a) the weighted average price that Grain of the relevant Grade was acquired by **You** over the Harvest Period;

(b) the average value at the relevant time and place (of the requirement to determine the Fair Market Price) to be derived from the average of three independent broker valuations. The brokers are to be appointed by the Grain Trade Australia. The valuations are to take into account the Grade and variety and any transfer to the Site costs, taking into account the cost of insurance, levies, taxes, charges, freight and associated costs.

"**Final Freight Charge**" has the meaning given in clause 6.5.2(b).

"**Financier**" means a person chosen by **You** to provide financial services and whom **You** notify CBH to provide details of Deliveries.

"**Force Majeure**" has the meaning given in clause 21.1 ("Force Majeure Event").

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

"**Grade**" means, in relation to Grain, a quality grade specified in the Receival Standards.

"**Grain**" means all grains, pulses and oil seeds received into Sites and held by CBH pursuant to these Terms on behalf of **You** or an Acquirer.

"**Grain Dust Deduction**" has the meaning set out in clause 6.6.2.

"**Grain Entitlement**" has the meaning set out in clause 6.4.

"**Grain Receival Fee**" means the fee to cover the cost of providing sampling, weighing and fumigation services for grain deliveries to a Site.

"**Grain Services Agreement**" means an agreement between CBH and an Acquirer for the provision of storage and handling and other services entitling the Acquirer to hold Grain in CBH Sites.

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

"**Grower Freight**" means the freight charge determined by CBH and posted on LoadNet® or on www.cbh.com.au which allows the movement of Grain from the Receival Site to a Port Facility or an Integrated Site.

"**Grower Freight Differential**" means, in relation to two Sites in the same CBH port zone, the absolute value of the difference between the Grower Freight of each of those two Sites as finalised no later than the last day of February following the Harvest Period.

"**Grower Outturn Request Form**" means the form described in clause 6.2 in the format prescribed by CBH from time to time.

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

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

"**Harvest Direct to Vessel**" means the product offered by CBH and Acquirers which enables **You** to deliver grain direct to Port during the Harvest Period where it is linked to an Acquirer's export nomination.

"**Harvest Handbook**" means the harvest handbook produced by CBH for the current Season.

"**Harvest Period**" means the period during which harvesting activities take place and where CBH has advertised that Sites will be generally open to receive grain and ending on the date nominated by CBH as the end of harvest.

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

"**HMMS**" means the Harvest Mass Management Scheme and includes the rules approved by the Minister for Transport and the Commissioner for Main Roads, set out in the "Harvest Mass Management Scheme Business Rules".

"**Indirect or Consequential Loss**" means indirect, consequential or remote loss or any loss in the nature of compensation for loss of production, loss of profit, loss of opportunity, loss of markets, loss of use of money, goods or other property or loss of goodwill or business reputation including any losses that **You** or the Acquirer may suffer in the event that the ability to resell any grain is adversely affected.

"**Integrated Entitlement**" means the Grain Entitlement recorded in CBH's systems (in tonnes) to which an Acquirer is entitled in a particular CBH port zone, excluding any Site Entitlement in that same port zone.

"**Integrated Site**" means every Site in the CBH Network whereby title in Grain can be transferred from **You** to Acquirers on a delivered to port basis for which an Acquirer will obtain Integrated Entitlement.

"**Integrated Only Site**" means those sites designated by CBH as Integrated Only Sites on the CBH website from time to time.

"**Level 1 Contaminant**" means a contaminant identified as Level 1 in the Contaminant List, being contaminants that in CBH's opinion cannot be removed and constitute a significant food safety or quality risk.

"**Level 2 Contaminant**" means a contaminant identified as Level 2 in the Contaminant List, being contaminants that in CBH's opinion pose a food safety or processing hazard and can have a significant impact on the integrity of the supply chain.

"**Level 3 Contaminant**" means a contaminant identified as Level 3 in the Contaminant List, being contaminants that in CBH's opinion present a food safety or processing risk and can be managed on-farm.

"**Load Correction Policy**" means the CBH policy on the amendment of details of grower Deliveries to CBH as amended by CBH from time to time, on not less than 5 Business Days prior notice. The current Load Correction Policy is available online at www.cbh.com.au.

"**LoadNet®**" means CBH's online grain management interface available to registered users at www.cbh.com.au

"**LoadNet® Optimiser**" means CBH's online wheat optimisation management interface available to registered users at www.cbh.com.au

"**Lot**" means a collection of loads of wheat which have been Optimised.

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

"**MGC**" means CBH's Metro Grain Centre Facility at Forrestfield.

"**Microbial Contamination**" means contamination by pathogenic (disease-causing) micro-organisms including *E. coli, Cryptosporidium, Giardia,* and *Salmonella*.

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

"**NCV**" means no commercial value.

"**New Business Registration Form**" means the form of the same name produced by CBH as amended from time to time.

"**Nominated Vessel**" means the vessel nominated by **You** and notified to CBH in accordance with the terms of the Port Terminal Services Agreement and the Port Terminal Rules as published on the CBH website at www.cbh.com.au and amended by CBH from time to time.

"**Nomination**" means **Your** selection of an Acquirer whether on LoadNet®, or via the CBH Grower Service Centre.

"**Nomination and Storage Services**" has the same meaning as "Warehousing" in this clause 1.

"**Nomination Time**" means the time recorded by CBH in its computer systems as being the time that a Nomination was successfully processed and title to Grain was transferred.

"**Optimisation Closure Date**" means the time and date specified on LoadNet® on which Optimisations are to cease for each particular CBH shipping port zone. CBH may amend this time and date in its absolute discretion and will provide **You** with reasonable notice of such change on LoadNet®.

"**Optimisation Rules**" means the guidelines, rules or terms of Optimisation made available to **You** on LoadNet® which may be amended by CBH from time to time to cater for changes in the regulatory environment and harvest quality. Any amendments will be made available to **You** through LoadNet®.

"**Optimisation Services**" means the services provided pursuant to clause 7 ("Quality and Optimisation Services").

"**Optimise**" or "**Optimisation**" means the blending of **Your** loads of wheat of various varietal segregations in accordance with instructions received by CBH from **You** through the LoadNet® Optimiser.

"**Outturn**" means to cause Grain to exit the delivery spout into a Grain transportation vehicle at which point physical possession of the Grain passes from CBH to **You**, a third party authorised by **You** or a third party authorised by CBH (as the case requires).

"**Payment Method**" means the payment method chosen by **You** at the time of Nomination.

"**Pesticide Residue Contamination**" means contamination by any substance in grain resulting from the use of a pesticide and includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of potential toxicological significance.

"**Port Facility**" means a port facility owned, operated or managed by CBH including the terminals at Kwinana, Geraldton, Albany and Esperance ports.

"**Port Terminal Rules**" means the port terminal rules published by CBH on www.cbh.com.au and amended by CBH from time to time.

"**Port Terminal Services Agreement**" means the agreement between CBH and the customer for the provision of services at Port Facilities.

"**Port Zone Entitlement Stock**" means the quantity of Grain recorded in CBH's systems (in tonnes) to which **You** are entitled in a particular CBH shipping port zone.

"**Post-Harvest Direct to Vessel**" means the product offered by CBH and Acquirers which enables **You** to deliver grain direct to Port outside of the Harvest Period where it is linked to an Acquirer's export nomination.

"**PPSA**" means *Personal Property Securities Act 2009* (Cth).

"**Rapid Quality Analyser**" or "**RQA**" means the visual analysis machine used to sample the grain.

"**Receival Services**" means the services provided pursuant to clause 5 ("Receival Services") including:

(a) allowing **You** to deliver Grain, or to tender Grain to CBH with the intent that CBH receive it, including provision of access to the Site, sampling, testing, classification, weighing, unloading, storage, tagging and tarping (as the case requires);

(b) the presentation to **You** of purchase and warehouse Nomination or Outturn options available at that Site; or

(c) the recording and exchange with Acquirers and Financiers of information in electronic format relating to any Delivery made by **You**.

"**Receival Site**" means the Site at which **You** have delivered Grain to CBH.

"**Receival Standards**" means the quality specifications to be applied to Grain on delivery as specified by CBH following consultation with the major stakeholders prior to the Harvest Period and which are available upon request.

"**Related Bodies Corporate**" has the meaning given to the term in section 50 of the *Corporations Act 2001* (Cth).

"**Season**" means the period between 1 October of one year and the next 30 September.

"**Services**" means any one or more of Receival Services, Warehousing, Nomination, and Optimisation Services.

"**Shrinkage**" means the allowance for loss in weight of Grain that occurs during the storage and handling and transport process as specified in clause 6.6.

"**Site**" means those sites owned, operated or managed by CBH for the purpose of receiving or storing grain throughout Western Australia or as designated by CBH from time to time and for the avoidance of doubt includes a Port Facility and MGC.

"**Site Entitlement**" means the quantity of Grain recorded in CBH's systems (in tonnes) to which an Acquirer is entitled at a particular Site.

"**Site Entitlement Site**" means a Site (not including Integrated Only Sites) where title in Grain may be transferred from **You** to Acquirers (or between Acquirers) on the basis of Site Entitlement.

"**Site Stock**" means the estimated tonnes of Grain at a Site calculated by reducing received tonnages by Shrinkage and then deducting Outturns and any other required adjustments.

"**Terms**" means the terms and conditions set out in this document as amended from time to time.

"**Transport Operator**" means the person owning or operating a vehicle that has been engaged by **You** to transport Grain to or from a CBH Site and who uses a vehicle that is registered with CBH including to participate under HMMS.

"**Varietal Purity**" refers to the consistency in the genetic make-up of seed grains and is determined by measuring the percentage of seed in the sample that is of the declared variety.

"**Warehoused Grain**" means Grain that has been delivered to and stored by CBH at a Site which has not been nominated to an Acquirer and accordingly is being held in **Your** name.

"**Warehousing**" means the provision by CBH of Grain storage services in accordance with the terms set out in clause 6 ("Nomination and Storage Services").

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

"**You**" means **You** and includes **Your** Agent.

2 APPLICATION OF TERMS

2.1 Subject to clause 2.2, these Terms apply where **You** are provided with Services at a Site during a Season and apply to cover all deliveries as a single contract for the duration of the Season.

2.2 If these Terms are amended during a Season, as contemplated by clause 2.3.1(a) the amended Terms shall apply and be binding on and from:

2.2.1 in relation to Receival Services, **Your** first use of those Services following the amendment; and

2.2.2 in relation to any Warehoused Grain that is received after the date of amendment, from the date that Warehoused Grain is received.

2.3 Amendment

2.3.1 CBH may amend these Terms:

(a) immediately if CBH, acting reasonably, determines that the change is likely to benefit **You** or have a neutral impact on **You**; or

(b) otherwise, any amendments will take effect at the beginning of a Season, provided that notice is given in accordance with clause 2.3.2 at least 30 days prior to the commencement of the Season.

2.3.2 If CBH amends these Terms, CBH will be deemed to notify **You** of the relevant amendment by:

(a) indicating the amendment that has been made or providing the amended Terms (at CBH's discretion) on www.cbh.com.au; or

(b) notifying **You** of the amendment or providing **You** with the amended Terms by facsimile, email or post (at CBH's discretion).

2.3.3 For the avoidance of doubt, CBH may, but it is not obliged to, resend the entirety of the Terms to **You** following any amendment but **You** may at any time request a copy of these Terms from CBH by facsimile, email or post and a copy of the current Terms will be available for viewing at each Site.

2.4 If there is any inconsistency between these Terms and the LoadNet® terms and conditions, then **You** agree that these Terms shall prevail.

3 REGISTRATION

3.1 It is a condition precedent to the performance of any Services by CBH that **You** have registered with CBH and completed a New Business Registration Grower/Supplier Form.

3.2 Registration can be effected by completing the New Business Registration Grower/Supplier Form available from CBH from time to time.

3.3 **You** agree that:

3.3.1 CBH may provide **Your** contact details, banking, ABN and GST details and details of relevant Deliveries to Acquirers in order to identify deliveries made by **You** to the relevant Acquirer;

3.3.2 **You** will keep any details provided to CBH current and correct;

3.3.3 CBH may share information provided by **You** with its Related Bodies Corporate in order to better provide services to **You**, save that CBH will not share details of **Your** deliveries to Acquirers who are not CBH Group Entities without **Your** consent; and

3.3.4 subject to clause 3.3.1, CBH will not provide **Your** banking, ABN, GST or details of Deliveries to third parties without Your express written consent.

3.4 Where:

3.4.1 a CDF is not signed by all of the parties comprising **Your** delivery title or is signed by **Your** Agent or a third party on behalf of **You**; or

3.4.2 **Your** Agent submits **Your** CDF electronically via the CDF App,

You agree the party signing the CDF or submitting the CDF via the CDF App shall be deemed to be **Your** Agent and the CDF and any instructions or directions therein shall bind **You** as if **You** had personally signed or submitted the CDF.

4 WARRANTIES

4.1 **You** represent and warrant that:

4.1.1 **You** own any Grain tendered for delivery by or on behalf of **You**;

4.1.2 the full particulars of the variety, commodity, treatments and handling of the Grain disclosed on any CDF is true and correct;

4.1.3 **You** have not manipulated or loaded any vehicle or Delivery in any way to prevent the making of an accurate assessment by CBH of the weight or quality of the Grain using CBH's standard weighing and sampling procedures;

4.1.4 Grain being tendered for Delivery will not:

(a) include any Contaminant; or

(b) be in breach of the *Bulk Handling Act 1967* (WA) or the *Bulk Handling Act Regulations 1967* (WA);

4.1.5 all of the Grain was grown between the May and September immediately prior to the current Season;

4.1.6 all of the Grain in a Delivery has been or is only contained in equipment, bags, farm implements, farm storages and bulk grain motor bodies that have:

(a) not contained any Grain product prior to containing grain of this current Season and are free from insects and vermin; or

(b) previously contained a Grain product, but have been freed of all grain product and is free from insects and vermin;

4.1.7 any vehicle that has previously transported non-grain or contaminated grain products:

(a) is clean, dry and free of any remaining materials and odours from previous loads;

(b) has been washed under high pressure prior to delivering any grain; and

(c) has the details of previous loads disclosed on the relevant form;

4.1.8 if any of the Grain has been treated with substances for the control of insects, pests, weeds or moisture, details of the substances and the application of those substances has been provided in writing or via the CDF App to CBH on the relevant CDF and the use of any other chemical in the process of planting, growing and storage of Grain has been in accordance with the levels prescribed in any relevant legislation and also in accordance with the usage instructions;

4.1.9 none of the Grain in a Delivery will have any inherent vice or feature that would affect the ability of CBH to Outturn the Grain at the grade in respect of which the Grain is received by CBH;

4.1.10 Genetically Modified Organism

(a) Subject to clause 4.1.10(b), **You** represent and warrant that, unless declared in writing to, and approved in writing by, CBH before the Delivery enters the Site, the grain delivered does not contain Genetically Modified Organism.

(b) Where a Receival Standard permits a specified low-level presence of Genetically Modified Organism, the representation and warranty under clause 4.1.10(a) is taken to be a representation and warranty that the grain delivered does not contain Genetically Modified Organism in excess of the level specified in the Receival Standard;

4.1.11 any information **You** or, where applicable, **Your** Agent provides to CBH in relation to:

(a) a New Business Registration Grower/Supplier Form;

(b) a Change of Details Form;

(c) a Grower Estimate Form;

(d) **Your** property identification;

(e) a CDF;

(f) a Work Instruction Form;

(g) a Load Correction Request Form;

(h) an Application for a Property ID; or

(i) any other form or method of data submission provided to CBH in relation to any Service provided under these Terms,

is true and correct and not misleading or deceptive or likely to mislead or deceive.

4.2 **You** acknowledge and agree that CBH, in providing the Services to **You**, and equivalent services to other persons, is relying on the accuracy of the representations and warranties given by **You** in clause 4.1. If any representation and warranty is not correct at the time it is made or when it is deemed to be repeated, by reference to the facts and circumstances then subsisting, CBH may not be able to provide some part or all of the Services, or equivalent services, and may otherwise suffer Loss or Damage.

5 RECEIVAL SERVICES

5.1 Offered at CBH's discretion

You agree that CBH may at its discretion choose at which Sites it makes Receival Services available to **You** and that some or all Receival Services may not be available at all Sites.

5.2 Harvest Period and post-Harvest Period

CBH will offer Receival Services as broadly as CBH, in its absolute discretion, considers reasonable during the Harvest Period and **You** agree that outside of the Harvest Period, CBH will only make Receival Services available by prior agreement.

5.3 Receival Procedures

Where CBH receives a load of Grain, CBH will at the time CBH receives the Grain:

5.3.1 sample the load in accordance with CBH's current Grain sample collection and preparation methods;

5.3.2 assess the quality of the Grain in accordance with Receival Standards;

5.3.3 determine the Grade of the Grain;

5.3.4 determine the Common Stack Segregation into which the Grain will be placed at that Site and record the Grade of that segregation as the Grade of the Grain;

5.3.5 weigh the Grain delivered;

5.3.6 store the Grain in accordance with the Nomination and Storage Services set out in clause 6 and any specific additional storage and handling requirements as agreed to in writing between **You** and CBH;

5.3.7 furnish to the person who tendered the load a weighbridge statement that specifies grain type, Grade, variety, weight and any other relevant details or specifications; and

5.3.8 at manned weighbridges, furnish to the person who tendered the load CBH's standard test results in addition to the matters listed in clause 5.3.7.

5.4 Sampling

CBH will sample Grain offered for Delivery in accordance with its standard sampling procedures from time to time and, subject to clause 13.1 ("Receival Quality Disputes"), **You** agree to be bound by the results of those sampling procedures. **You** agree that CBH may retain a sample for testing to ensure that the Grain is free from Contaminants and to verify compliance with **Your** declarations on the CDF, and subject to clause 13.2, **You** agree to be bound by the results of those sampling procedures.

5.5 Weighing

5.5.1 CBH will weigh any Grain offered up for Delivery on certified weighbridges.

5.5.2 CBH will provide **You** with a weighbridge ticket when **Your** vehicle is weighed following completion of the Delivery and **You** agree that:

(a) **You** or **Your** Agent will check and confirm that the information recorded on a weighbridge ticket is an accurate statement of the amount and grade of Grain Delivered to CBH; and

(b) If **You** or **Your** Agent leaves the weighbridge without disputing the correctness of the weighbridge ticket **You** will be deemed to have accepted that it is correct.

5.5.3 **You** agree to:

(a) be bound by the provisions of the HMMS, Performance Based Standards Scheme, Accredited Mass Management Scheme or any other heavy vehicle regulatory scheme introduced (as they may exist from time to time) (each a "**Scheme**"); and

(b) abide by the relevant Scheme governing loading on **Your** or **Your** Agent's vehicle and release CBH from liability for any actions, claims and damage suffered as a result of compliance with representations made by **You** or **Your** Agent and warranties in relation to **Your** or **Your** Agent's entitlement to operate within that Scheme.

5.5.4 **You** hereby declare, represent and warrant that:

(a) the information **You** or **Your** Agent have input into the CDF App or approved within the CDF App including but not limited to:

(i) all truck registration information, including axle groups and applicable scheme permits;

(ii) confirming the commodity, including any variety information, being carried;

(iii) last three loads carried in any part of the vehicle combination;

(iv) the cleanliness of the vehicle; and

(v) that the vehicle combination has been acceptably loaded in accordance with relevant Chain of Responsibility Law requirements,

is true and correct;

(b) **You** or **Your** Agent have authority to provide this information and to make this declaration;

(c) **You** or **Your** Agent has undertaken or will undertake any necessary site inductions;

(d) **You** or **Your** Agent are authorised by the relevant primary contractor and have been requested to load and transport grain on their behalf under a contract between CBH and the primary contractor;

(e) **You** or **Your** Agent will ensure that the weighbridge is reading zero before proceeding onto the weighbridge and that **Your,** or **Your** Agent's, vehicle is correctly positioned prior to capturing any weights;

(f) **You** or **Your** Agent will not discharge anything other than Grain in between the tare and gross weight measurements; and

(g) **You** or **Your** Agent will follow instructions to ensure **You** or **Your** Agent discharge or load at the correct locations.

5.6 Delivery

Subject to these Terms, Delivery shall be deemed to take place when the vehicle has been weighed out and the quantity of Grain delivered is ascertained by CBH and the weighbridge ticket has been finalised and printed or otherwise made available electronically to you.

5.7 CDF

You agree that **Your** signature or the signature of **Your** carrier or Agent on the CDF or submission of a CDF via the CDF App by **You** or **Your** carrier or Agent confirms **Your** acknowledgement and acceptance that:

5.7.1 Receival Services and Nomination and Storage Services (as the case requires) are provided on these Terms;

5.7.2 **You** have fully read and understood these Terms; and

5.7.3 the matters set out on the CDF are true and correct.

5.8 Common Stack / Commingling

All Grain will be stored by CBH in Common Stack Segregations and may be commingled with the Grain of others.

5.9 Direct to Vessel – Grain Receival service

5.9.1 CBH offers a Harvest Direct to Vessel and Post-Harvest Direct to Vessel service for Acquirers which is for the purpose of export accumulation only and will involve the Acquirer co-ordinating the delivery of Grain to a Port by **You**.

5.9.2 If **You** contract with an Acquirer to deliver Grain to a Port Facility under a Harvest Direct to Vessel service or a Post-Harvest Direct to Vessel service, **You** may be entitled to receive a rebate on the Grain Receival Fee as published on the CBH website at www.cbh.com.au, provided:

(a) **You** physically deliver the contracted Grain to Port within 14 days' of the Nominated Vessel's Direct to Vessel Target Date;

(b) **You** nominate to the relevant Acquirer with respect to the Grain delivered under clause 5.9.2(a) within 14 days' of the Nominated Vessel's Direct to Vessel Target Date; and

(c) the Acquirer complies with its obligations in respect to the Harvest Direct to Vessel and Post-Harvest Direct to Vessel services under the Port Terminal Rules and Port Terminal Services Agreement.

6 NOMINATION AND STORAGE SERVICES

6.1 Outturn at Receival Site at CBH's discretion

You agree that CBH may at its discretion choose at which Sites it offers to Outturn Grain and that Outturning may not be available at all Sites. If **You** wish to obtain more certainty, please discuss the matter with the CBH Domestic Specialist.

6.2 Grower Outturns

6.2.1 **You** acknowledge that Warehousing is intended to be used only for Growers who have suffered production issues in areas of drought.

6.2.2 Subject to clause 6.2.5, **You** are entitled to Outturn Warehoused Grain upon provision of a Grower Outturn Request Form to CBH at least 10 Business Days prior to the expected date of Outturn. CBH will notify **You** of the location, date and time that the Warehoused Grain will be available for Outturn and CBH may, at its discretion, offer **You** one or more Site options for Outturn. Each request for Outturn will be provided with an expiry date based on the Outturn Site activities after which the associated contract/release number will be invalid. CBH may, at its discretion, Outturn Grain in less time or at alternative locations if operationally practicable. Nothing in this clause requires CBH to Outturn Grain from the same Site that it was received. The Charges set out in the Grain Services Agreement Fee Schedule on www.cbh.com.au are applicable if this service is performed.

6.2.3 If **You** expect the Outturn volume to exceed an average of 500 tonnes per day or 2,500 tonnes per week, **You** must provide CBH with a rolling six (6) week forecast of **Your** anticipated Outturning requirements (**Forecast**).

6.2.4 Such Forecasts must be:

(a) provided by email to CBH.domestics@cbh.com.au on a weekly basis; and

(b) updated to reflect any material changes to **Your** expected Outturn volumes.

6.2.5 CBH may not be able to Outturn Grain to **You** if **You** do not provide a Forecast or if **You** request Outturning manifestly in excess of, or below, those set out in a Forecast.

6.2.6 In relation to Outturns performed under this clause 6.2, **You** agree:

(a) to pay CBH the relevant Grower Freight Differential between the Receival Site and the Site of Outturn, if that Site is nearer to the Allocated Port Facility; or

(b) to accept from CBH the relevant Grower Freight Differential between the Receival Site and the Site of Outturn if that is further away from the Allocated Port Facility.

6.2.7 Grain Outturned in accordance with this clause 6.2 shall be in accordance with the Receival Standard of the applicable Grain Entitlement being Outturned pursuant to the relevant Grower Outturn Request Form. CBH shall not be liable for a breach if the aggregate of the tonnes Outturned each day for **You** meet the Receival Standards.

6.2.8 CBH will outturn field peas to no less than the export standard farmer dressed as set by the current Australian Pulse Standards as published by Pulse Australia or the CBH Receival Standards as applicable below:

(a) PKA1/PEA1: CSP 10.1.2 as set out in the Australian Pulse Standards;

(b) PEA2: CSP 10.2.2 as set out in the Australian Pulse Standards; and

(c) PEAMIL/PFED1: as per CBH Receival Standards,

unless **You** agree to pay the fees advised by CBH that relate to or are in any way connected with the cleaning of the field peas.

6.3 Nomination

6.3.1 Subject to clauses 8 ("Acquirer"), 9 ("Lien and Charge") and 15 ("Set Off") and the payment of CBH's required Charges, **You** are entitled to Nominate an Acquirer to CBH. **Your** Nomination must be either on LoadNet® or on the relevant form.

6.3.2 Where an Acquirer operates on a CBH Site Select basis, **You** may nominate to an Acquirer wishing to obtain Site Entitlement at any time after Delivery and before 1 February of the Season. Where an Acquirer operates on a CBH Integrated basis, **You** may nominate to an Acquirer wishing to obtain Integrated Entitlement at any time after Delivery.

6.3.3 CBH will use its best endeavours to ensure that any Nomination under clause 6.3.1 will be processed:

(a) in the case of a LoadNet® request – immediately following placement of the request provided that the relevant Acquirer can provide confirmation of acceptance or rejection; or

(b) in the case of a written request submitted by post or facsimile – within 1 Business Day of CBH's receipt of the request provided that the relevant Acquirer can provide confirmation of acceptance or rejection,

and CBH will be deemed to provide **You** with notice of the outcome of the request by altering the relevant details on LoadNet® to show that the relevant Nomination has completed.

6.4 Grain Entitlement

6.4.1 CBH will maintain a register of **Your** entitlement to Grain stored in CBH Sites (the "**Grain Entitlement**"). Subject to these Terms, a certificate by an officer of CBH or LoadNet® as to the Grain Entitlement shall be prima facie evidence of quantity, type, receival location and Grade of grain which **You** may Outturn or Nominate to an Acquirer.

6.4.2 Upon request, CBH will provide **You** with information regarding the quantity and Grade of Grain held by CBH for

You in its Sites.

6.4.3 **Your** Grain Entitlement in respect of a particular Grade and Season is calculated at any particular point in time by aggregating the weight of the Grain received from **You** and deducting:

(a) Shrinkage;

(b) the weight of any Grain that is damaged or destroyed as a result of a riot, industrial dispute, civil commotion, war, act of God or any unforeseen cause not attributable to the negligence of CBH;

(c) the weight of any NCV Grain or damaged Grain in respect of which an insurance claim has been made and paid to **You** in accordance with clauses 18.1 ("Liability for Shortfall") and 19.1 ("Insurance");

(d) the weight of any Outturned Grain;

(e) the weight of any Grain nominated to be transferred to Acquirers or third parties; and

(f) the weight of any Grain transferred in accordance with clauses 11.2, 11.4 ("HMMS") and 15.3 ("Grain Set-Offs").

6.4.4 CBH warrants the accuracy of **Your** Grain Entitlement in respect of Site Stock and Port Zone Entitlement Stock only and does not warrant the correctness of location or quantity in any Site Stock data which may be supplied to **You**.

6.4.5 CBH may reclassify the Grade of any malting barley held under these Terms to that of feed barley standard where the germinative quality is less than 95% or the relevant Grain is more than one Season old and **Your** Grain Entitlement will be adjusted accordingly.

6.4.6 The Grade of carryover pulse crops (not including Lupins) may be reclassified to feed standard at any time after the beginning of the Season following the Season in which those crops were delivered by **You** and **Your** Grain Entitlement will be adjusted accordingly.

6.4.7 CBH may reclassify the Grade of carryover oats Entitlement as per below at any time after the beginning of the Season following the Season in which those crops were delivered by **You** and Your Grain Entitlement will be adjusted accordingly:

(a) Oat1 to Oat2;

(b) OWAN1 to Oat2; and

(c) Oat2 to Feed Oats.

6.5 Movement of Grain

6.5.1 General

(a) It is a condition of CBH offering the Services under these Terms, that CBH may require Grain to be moved to another Site or repositioned within a Site to maintain the operational efficiency of the CBH storage system or ensure that a Site can continue to receive Grain.

(b) CBH is not obliged to notify **You** prior to the movement of any Grain.

(c) CBH will use reasonable endeavours to ensure Grain movements are towards the Allocated Port Facility.

6.5.2 Freight

(a) Where **You** make a nomination under clause 8.1.1(a), CBH accepts responsibility to move Grain between the Receival Site and its Allocated Port Facility Integrated Site Nominated by **You**. CBH will be entitled to charge **You** for the Freight whether or not the Grain has actually moved.

(b) The estimated freight charge payable for the movement of Grain between the Receival Site and Integrated Site Nominated by You, or between Integrated Sites if requested by **You** and accepted by CBH, for a particular Season will be listed for each relevant Site on www.cbh.com.au or on LoadNet® in October of that Season. In or about February of that Season the estimated freight charges will be finalised for each Site (the "**Final Freight Charge**") and will be published on www.cbh.com.au or on LoadNet®.

(c) **You** are liable to pay the relevant Final Freight Charge for each tonne Nominated at the time when **You** make the relevant Nomination.

6.6 Shrinkage

6.6.1 CBH will apply a Shrinkage factor to all Grain received to determine the quantity of Grain that CBH is obliged to Outturn on **Your** behalf. The Shrinkage factor will not be applied prior to **You** Nominating an Acquirer. The Shrinkage factors for Grain by type are listed below:

CBH Shrinkage Rates					
Wheat	0.50%	Barley	0.50%	Oats	1.00%
Triticale	0.50%	Canola	0.50%	Lupins	0.50%
Albus	0.50%	Millet	0.50%	Lentils	0.75%
Field Peas	1.00%	Chick Peas	0.75%	Faba Beans	0.75%

6.6.2 Grain Dust

Dust, chaff or fines removed at any stage of the handling process is considered to be NCV dust and CBH is entitled to dispose of NCV dust as it sees fit and retain any proceeds. CBH will apply a Grain Dust Deduction as set out below from **Your** Grain Entitlement when the relevant Grain type is Outturned from a Port Facility into a vessel.

CBH Dust Deduction					
Wheat	0.25%	Barley	0.25%	Oats	0.00%
Triticale	0.25%	Canola	0.25%	Lupins	0.25%
Albus	0.25%	Millet	0.25%	Lentils	0.25%
Field Peas	0.00%	Chick Peas	0.25%	Faba Beans	0.25%

6.6.3 Title to surplus Grain

Title in any Grain remaining in the CBH system which is surplus to **Your** Grain Entitlement shall transfer to CBH and CBH shall be entitled to sell or dispose of any surplus grain as it sees fit and retain any proceeds.

6.7 Grain Fumigation

6.7.1 Fumigation services will be carried out by CBH on all Grain where possible in its Sites to protect the quality of Grain. The application of fumigation services will limit availability of the Grain in accordance with standard CBH Grain protection practices.

6.7.2 At the completion of the first fumigation and prior to a second fumigation being carried out, there is normally a 6-8 week period where Grain is available to be Outturned or moved.

6.7.3 To ensure Grain is free from insect contamination, fumigation of Grain will occur at such intervals as deemed necessary by CBH without further notice to **You**.

6.7.4 CBH may provide a fumigation certificate indicating any Grain treatment information following a written request from **You**. Fumigation certificates shall be in the form adopted by CBH from time to time.

6.8 Service Charges

6.8.1 CBH may charge for storage services on a time basis. This time based storage Charge commences running from the date of Delivery and continues until the Grain is Outturned or Nominated to an Acquirer or third party.

6.8.2 **You** agree to pay CBH the time based storage Charge for storage of **Your** Grain Entitlement. The Charge is based on **Your** Grain Entitlement at the start of each month.

6.9 Possession Risk and Title

6.9.1 Subject always to these Terms, CBH is a bailee for reward of any Grain received from **You**, on behalf of **You**, or for the account of **You,** that is within CBH's power, possession, custody or control.

6.9.2 Subject to these Terms, CBH does not acquire any title to **Your** Grain solely by virtue of its storage of **Your** Grain in a commingled state with the Grain of others and the inability of CBH to return to **You** the exact same Grain **You** delivered to CBH.

6.9.3 **You** agree that the proprietary interest in Grain is vested in the person who, for the time being, is entitled to obtain it from the bulk stocks held by CBH or under CBH's control.

6.10 Outturn or Revert by Date

6.10.1 All Warehoused Grain held by CBH for **You** must be Outturned or Nominated to an Acquirer by 30 September following Delivery unless otherwise agreed with CBH.

6.10.2 If **You** fail to comply with clause 6.10.1, **You** agree that CBH is entitled, in its absolute discretion, to:

(a) continue storing the Warehoused Grain and charging **You** in accordance with these Terms; or

(b) sell the Warehoused Grain.

6.10.3 Election to Sell Warehoused Grain

The election contained in clause 6.10.2(b) to sell Warehoused Grain may be made in relation to any or all Warehoused Grain held by CBH at such time after 30 September as is acceptable to CBH.

6.10.4 Application of Sale Proceeds

If CBH decides pursuant to clause 6.10.3 to sell all or part of **Your** Warehoused Grain, **You** expressly and irrevocably authorise CBH to:

(a) sell at the price at which CBH Grain (or another CBH Group Entity as nominated by CBH) is purchasing grain of the same type and quality on that day or, if no such grain is purchased on that day, the price at which CBH Grain determines that it could purchase such grain on that day and otherwise on the terms including Acquirer and Site as determined by CBH;

(b) create a Tax Invoice on behalf of **You** and **You** warrant that **You** are, and at all times will be, registered for GST to comply with the provisions of the GST Legislation;

(c) retain that portion of the sale proceeds which covers all CBH charges still outstanding, any relevant Grower Freight and CBH's costs involved in arranging for the sale of the Grain; and

(d) pay the balance (if any) of the sale proceeds to **You** or

provide a credit for future Services (by agreement between the parties).

6.10.5 Future Sales and Remnant Grain

(a) If CBH has elected to continue storing **Your** Grain Entitlement under clause 6.10.2(a), CBH remains entitled in the future to make an election in accordance with clause 6.10.2(b) (unless CBH has explicitly agreed otherwise with **You** in writing) to sell **Your** remaining Grain Entitlement that is not of the current Season.

(b) If **Your** Grain Entitlement for any particular Season is less than 0.5 tonnes ("**Remnant Grain**") and has been stored with CBH for more than 12 months following the end of the Season of Delivery, CBH may (at its absolute discretion) deem that Remnant Grain to be NCV Grain and remove it from CBH's stock information systems and neither party will have any further liability to the other for that amount of Grain.

7 QUALITY OPTIMISATION SERVICES

7.1 Movement of Optimised Grain

7.1.1 **You** acknowledge that the viability and supply of the Optimisation Services is dependent on CBH being able to manage, coordinate and organise the physical blending and transportation of all Optimised grain. Optimisation Services are not available in relation to Grain that **You** intend to nominate to give an Acquirer Site Entitlement at the Receival Site.

7.1.2 **You** acknowledge and agree that if **You** choose to use the Optimisation Services, **You** are:

(a) expressly and irrevocably authorising and consenting to CBH moving **Your** Optimised grain using transport and supply chain services acquired by CBH at its discretion;

(b) waiving any right to transport or move **Your** Optimised grain by any other means; and

(c) waiving the right to nominate any Grain **You** Optimise to an Acquirer on a Site Entitlement basis.

7.2 Optimisation

7.2.1 Requests for Optimisation can only be made by **You** through the LoadNet® Optimiser after Delivery.

7.2.2 **You** acknowledge and agree that **You** have satisfied, and comply with, the Optimisation Rules.

7.2.3 Subject to the satisfaction of the conditions set out in clauses 7.1, 7.2.1 and 7.2.2, upon receipt of a request for an Optimisation through the LoadNet® Optimiser, CBH will accept the request and use its best endeavours to ensure that the Optimisation request is processed.

7.2.4 **Your** request for an Optimisation may be undone or reversed at **Your** election as long as:

(a) no load of wheat (including a split load) of a Lot has been Nominated or Outturned; and

(b) **Your** request for reversal is made prior to the relevant Optimisation Closure Date.

7.2.5 If any Optimisation proposed by **You** through the LoadNet® Optimiser is corrupted or cannot be validated by CBH when CBH attempts to perform an Optimisation, then CBH shall not perform the Optimisation and **Your** wheat loads will not be Optimised.

7.2.6 For deliveries linked to the Harvest Direct to Vessel service, **You** will need to Deliver and Optimise prior to Nominating to an Acquirer within a 14 day timeframe from the relevant Direct to Vessel Target Date of the Acquirer's vessel.

7.3 Optimisation Acknowledgements, Representations and Warranties

7.3.1 **You** acknowledge and agree that:

(a) **You** will exercise **Your** own skill, care and judgement with respect to the use of the LoadNet® Optimiser and that **You** are responsible for the accuracy, currency, suitability or correctness of any price or other information used in the LoadNet® Optimiser and the way **You** store, process or deal with the information derived from the LoadNet® Optimiser;

(b) any price used by **You** in the LoadNet® Optimiser is subject to fluctuation and change and may be different from the price **You** actually receive for **Your** wheat (whether or not it is Optimised);

(c) CBH will not provide **You** with any legal, tax, financial or accounting advice or advice regarding the suitability or profitability of any Optimisation, and to the extent permitted by law, CBH will have no liability with respect to **Your** use or reliance on the LoadNet® Optimiser and **Your** Optimisation decisions (including any diminution in value resulting from an Optimisation);

(d) CBH's officers, directors, employees, contractors and agents are not authorised to give any advice or recommendation with respect to **Your** Optimisation decisions and **You** warrant that **You** will not solicit or rely upon any advice or recommendation from CBH or any of its officers, directors, employees, contractors or agents; and

(e) to the extent permitted by law, until an optimisation is confirmed by CBH as having been completed, if for any reason any notice, instruction, request or other electronic communication in connection with an Optimisation using the LoadNet® Optimiser fails or is delayed, CBH is not responsible or liable, and does not accept responsibility or liability for that failure or delay.

7.4 Grain Entitlement

7.4.1 As a result of an Optimisation, some or all of **Your** loads within a Lot may be adjusted to reflect the change in Grade from the Grade **Your** loads in the Lot received at Delivery pursuant to clause 5.3 ("Receival Procedures").

7.4.2 **You** acknowledge and accept any consequent change in **Your** Grain Entitlement resulting from an Optimisation and agree that **You** will not be entitled to Outturn all loads which have been Optimised at the Grade assessed and determined at Delivery.

7.4.3 LoadNet® shall be updated to reflect any change in the quantity, type, location and Grade of **Your** Grain Entitlement resulting from an Optimisation.

7.5 Use of information

7.5.1 **You** authorise and consent to CBH using, recording (in electronic form or otherwise) and disclosing information submitted by **You** via the LoadNet® Optimiser for the sole purpose of ascertaining, measuring, evaluating and reporting on the effectiveness, usefulness and efficiency of the Optimisation Services and the LoadNet® Optimiser.

7.5.2 **You** authorise CBH to maintain a transaction log consisting of a copy of all instructions received from **You** via the LoadNet® Optimiser. Except in the case of manifest error, the log will be conclusive evidence of the details of **Your** instructions.

7.6 Liability and Exclusions

7.6.1 CBH is not liable for any loss, damage, cost or expense arising from or in relation to CBH performing any Optimisation or any delay in performing or inability to perform any Optimisation requested, nor for any loss, damage, cost or expense suffered by **You** as a result of **Your** inability to carry out an Optimisation at a particular point in time. This does not apply to Loss or Damage caused by CBH's Gross Negligence, Wilful Misconduct or fraud.

7.6.2 CBH is not liable for any loss, damage, cost or expense arising from or connected with the way **You** store, process or deal with the information derived from the LoadNet® Optimiser.

7.6.3 Nothing in these Terms or the LoadNet® Optimiser should be interpreted as advice by or a representation by CBH as to the accuracy, currency, suitability or correctness of the prices used by **You** in Optimising **Your** wheat.

8 ACQUIRER

8.1 **You** agree that Nominating an Acquirer (whether the instruction is made on-line through LoadNet® or via the CBH Grower Service Centre) is:

8.1.1 an irrevocable direction to transfer title in the relevant parcel of Grain to the relevant Acquirer and provide the Acquirer with:

(a) Integrated Entitlement; or

(b) subject to clause 6.3.2, Site Entitlement at the relevant Site;

8.1.2 an agreement to pay the relevant Grower Freight to the extent that **You** have provided an Acquirer with Integrated Entitlement; and

8.1.3 an agreement to accept the form of Payment Method Nominated and to be bound by the Acquirer's terms and conditions applicable to that Payment Method at the time that CBH records **Your** Nomination as being notified to the Acquirer.

8.2 If the Payment Method chosen:

8.2.1 requires **You** to enter information that is not capable of automatic checking and **You** have submitted incorrect information then CBH will advise **You** through LoadNet® as soon as is practicable that the Nomination has not succeeded;

8.2.2 is "Pool" **You** agree to accept the pool terms offered by the relevant Acquirer and entry into the relevant pool that the Acquirer has open at the time;

8.2.3 is "Contract" **You** agree that **You** have a valid contract with the Acquirer in accordance with the reference specified and that **You** have agreed to be bound by the Acquirer's terms and conditions of the relevant contract;

8.2.4 is invalid and CBH could not comply with it, the Nomination will not proceed, and **You** will continue to be subject to Charges for Nomination and Storage Services, including, fees and charges as outlined in the Grain Services Fee Schedule, as published on the CBH website at www.cbh.com.au and amended by CBH from time to time.

8.3 Title Transfer

8.3.1 Subject to these Terms, the proprietary interest in Grain delivered shall transfer to the relevant Acquirer nominated by **You** at the Nomination Time.

8.3.2 **You** agree that any error by **You** or the Grower Service Centre (acting in accordance with **Your** instructions) in the Nomination of an Acquirer shall not invalidate any title transfer or representation that a title transfer has been performed by CBH. CBH will act in accordance with its Load Correction Policy if **You** request the reversal of any Nomination but nothing in this Load Correction Policy guarantees or warrants that a reversal is possible or will be consented to by an Acquirer. **You** must submit a fully signed Load Correction Request Form to the CBH Grower Service Centre.

9 LIEN AND CHARGE

9.1 Statutory Lien

You acknowledge that pursuant to section 35 of the *Bulk Handling Act 1967* (WA), CBH has a lien, in priority to all other claims, liens or security (including security interests under the PPSA), over any of **Your** Grain in respect of any Charges payable to CBH in respect of that Grain.

9.2 Right to withhold Grain

Notwithstanding any other condition of these Terms, CBH may, at its sole discretion, refuse to Outturn **Your** Grain if **You** have not paid any amounts owing to CBH pursuant to clause 16 ("Invoicing and Payment").

9.3 PPSA

9.3.1 CBH acknowledges and agrees that **You** have a purchase money security interest (PMSI) over **Your** Grain and any proceeds of sale thereof for the purposes of the PPSA and that **You** may register the PMSI on the Personal Property Security Register.

9.3.2 On delivery of Grain to CBH, **You** acknowledge and agree that CBH has control of the Grain for the purposes of the PPSA and for the exercise of CBH's rights under clause 9.1.

9.3.3 The parties agree, at their cost in all things, to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the other party, acting reasonably, asks and considers is required for the purposes of:

(a) ensuring that any security interest the other party has under these Terms is enforceable, perfected and otherwise effective;

(b) enabling the other party to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the other party has the priority it requires; or

(c) enabling the other party to exercise rights in connection with its security interest and lien under these Terms.

9.3.4 The parties agree to pay or reimburse the reasonable costs of the other party in connection with anything done in connection with the enforcement of a security interest or of a lien over Grain.

9.3.5 The parties acknowledge and agree that they are not entitled to receive a notice from the other party under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and the requirement to give it cannot be excluded.

9.3.6 The parties agree that they must not disclose any information of the kind referred to in section 275(1) of the PPSA.

9.3.7 If there is any inconsistency between CBH and **Your** rights under this section and rights under Chapter 4 of the PPSA, this section prevails.

9.3.8 The parties acknowledge and agree that unless otherwise defined in these Terms, terms and expressions used in this clause 9.3 have the same meaning as given to them under the PPSA.

10 QUALITY CONTAMINATION

10.1 **You** agree that **You** will not effect or attempt to effect a Delivery that contains a Contaminant.

10.2 **You** agree that if a Contaminant is discovered in Grain Delivered, or tendered for delivery by **You** (whether discovered during sampling, unloading or in storage):

10.2.1 **You** are liable to pay:

(a) the relevant Contamination Charge; or

(b) any loss, costs or damage resulting from the presence of a Contaminant, its removal and/or the downgrading of Grain resulting from a Contaminant making it through into the stack,

as elected by CBH (in its sole discretion); and

10.2.2 if the Contaminant is a Level 1 Contaminant, **You** will not be permitted to make any further deliveries to CBH until an on-farm visit and investigation has been made by the relevant CBH Zone Quality Manager and **You** are cleared to re-commence deliveries.

10.3 **You** undertake not to re-deliver, attempt to re-deliver or permit any other person or subsequent owner to re-deliver or attempt to re-deliver, any Grain that was discovered to contain a Contaminant without CBH's prior consent.

11 HMMS AND ROAD VEHICLE LEGISLATION

11.1 The HMMS is incorporated as part of these Terms. All loads moved under these Terms must comply with the HMMS.

11.2 In accordance with HMMS and applicable CBH policies and procedures, CBH will accept forfeited Grain from a Transport Operator if the Transport Operator arrives at Site with a load that exceeds the HMMS or legal mass limit for the vehicle and the Transport Operator elects to forfeit the amount of Grain in excess of the HMMS or legal mass limit for the vehicle.

11.3 **You** acknowledge that, in accordance with the HMMS and CBH policies and procedures, CBH will follow the Transport Operator's instructions regarding forfeiture of Grain.

11.4 If as part of HMMS or CBH policies and procedures, Grain in excess of the Acceptable Vehicle Mass (as that term is defined in the HMMS) is forfeited, CBH is entitled to deduct the relevant tonnage from the delivered Grain when calculating **Your** Grain Entitlement in accordance with clauses 5.5 ("Weighing") and 6.4 ("Grain Entitlement"). Title to any Grain deducted under this clause vests in CBH and CBH may donate the Grain or proceeds from its sale to a charity or local government at CBH's discretion.

11.5 **You** acknowledge **Your** responsibilities and liabilities under HMMS and other road transport legislation in relation to loads that exceed the HMMS or legal mass limit.

11.6 Notwithstanding anything in the HMMS, **You** agree:

11.6.1 that **You** are solely responsible for ensuring that **You** or **Your** carrier, Agent or Transport Operator complies with all relevant mass limits prescribed by HMMS, legislation or regulation for the vehicle used and **You** will take all necessary steps (including unloading of any mass in excess of those prescribed limits) to ensure compliance; and

11.6.2 to indemnify and keep CBH indemnified against all expenses, Loss or Damage incurred by CBH and all actions, claims and demands which may be made against CBH, that arise in relation to **Your** non-compliance with any maximum mass limits prescribed by HMMS, legislation or regulation for the vehicles used by **You** or **Your** carrier, Agent or Transport Operator to deliver Grain to or from a CBH Site. This does not apply to Loss or Damage caused by CBH's Gross Negligence, Wilful Misconduct or fraud.

12 RECORDS

12.1 Subject to these Terms, CBH records shall be prima facie correct.

13 DISPUTES

13.1 Receival Quality Disputes

13.1.1 **You** agree:

(a) to comply with the dispute resolution processes in relation to the assessment of Grain tendered for delivery at a CBH Site as are specified in clause 13.1.2;

(b) that if there is any disagreement over the assessment of Grain tendered for delivery that **You** will select one of the methods specified in clause 13.1.2 (a) - (d) (if relevant); and

(c) to be bound by both the process and the end result of the process.

13.1.2 Assessment Verification Methods

(a) Infratec Re-assessment – this method involves re-performing the Infratec assessment and is only available if **You** dispute the initial result produced by the use of an Infratec machine at the Site. The Infratec re-assessment must be performed using grain from the initial sample bucket and, subject to the method in clause 13.1.2(d), will be final for all parameters assessed by the Infratec (ie any previous Infratec parameter measurement will be discarded). The Delivery will then be graded in accordance with the re-assessed results.

(b) Average System – this method involves a dispute over a defect identified by a sampler and is not available for results provided by the Infratec, RQA, electronic balance, Agtator, Aerovac, Falling Numbers machine or any other objective assessment. The undisputed results from the first assessment are kept and the sampler will draw 2 new half litre samples from the initial sample bucket. These two new samples will be checked for the defect in dispute and the results for that defect in each of the three samples will be added together and divided by 3 to give a final result, subject to the method in clause 13.1.2(d).

(c) Unofficial Dispute Method (Manual Sampling and/or RQA sampling)

<u>Method 1 – Manual Sampling</u>

(i) This method is available if there is a dispute over one or more of the following:

A The sampler's subjective analysis at the time of Delivery (e.g. skinned barley, stained wheat, shrivelled/distorted wheat, lupins in a cereal grains sample);

B The sampling process at the time of Delivery (e.g. how a chondrometer is filled, agtator performance, sampling procedure compliance); or

C An electronic balance result when the captured weight is below 0.5 grams.

(ii) This method is not available for results provided by the Infratec, RQA, electronic balance (unless the captured weight is under 0.5 grams), Agtator, Aerovac, Falling Numbers or any other objective assessment;

(iii) This method involves:

A sending the defect under dispute to either the CBH district office or **AGC** for a final assessment;

B the sampler placing the defect under dispute into a sealed bag which is then placed with the remainder of the half litre sample into a second bag, making sure all other defects removed are returned into the half litre sample contained in the second bag;

C CBH storing the Delivery as assessed by the CBH sampler and **You** being paid in accordance with the assessment by CBH's relevant district Office or AGC (as the case requires) which result shall be final.

Method 2 - only available for RQA sampling

(iv) This method is available if there is a dispute over the RQA's results;

(v) This method is not available for results provided by the Infratec, electronic balance (unless the captured weight is under 0.5 grams), Agtator, Aerovac, Falling Numbers or any other objective assessment.

(vi) This method involves:

A providing **AGC** with the digital defect image from the RQA machine, for a final assessment;

B CBH storing the Delivery as assessed by the CBH sampler and **You** being paid in accordance with the assessment by CBH's relevant district Office or AGC (as the case requires) which result shall be final.

(d) Official Dispute –

(i) this method is available if there is any dispute over an assessment that affects payment provided that You have not previously selected the method in clause 13.1.2(c) or 13.1.2(d) and involves:

(ii) A new representative sample being drawn from the truck in **Your** presence and the sample being divided into 3 equal sub-samples;

(iii) **You** sending one sub-sample to the WA Department of Primary Industries and Regional Development together with payment for the relevant charge;

(iv) CBH storing the Delivery as assessed by CBH's sampler and **You** being paid as assessed by the WA Department of Primary Industries and Regional Development which result shall be final.

13.2 Post Harvest Dispute

13.2.1 This method is available if there is any dispute over an assessment that is performed post Delivery on samples of **Your** Grain retained by CBH.

13.2.2 If CBH performs a post harvest assessment of the quality of Grain delivered on **Your** behalf, and that assessment would expose **You** to pay additional Charges, CBH will inform **You** of the results of that testing and the potential additional Charges.

13.2.3 If **You** disagree with an assessment as to Grain quality performed post harvest, **You** must advise CBH in writing in accordance with clauses 13.3.1(a) and 13.3.1(c).

13.2.4 Upon receiving **Your** Dispute Notice, CBH will, if it has not already done so, send off any remaining sample of **Your** Grain to be re-tested, and inform **You** of the results of that testing.

13.2.5 If the results of retesting performed on the sample of **Your** Grain do not support the imposition of the relevant Charge in respect of the load being disputed, then CBH will waive the Charge.

13.3 Disputes over these Terms / Charges / etc

13.3.1 If **You** have any dispute over the performance of any of CBH's obligations under these Terms, **You** agree that:

(a) **You** will not commence any litigation against CBH without first complying with this clause 13.3 and providing CBH with not less than 30 Business Days' notice from the date that CBH receives the Dispute Notice to resolve the matter;

(b) **You** will provide CBH with written notice of the dispute (a "**Dispute Notice**"), within 10 Business Days of the facts giving rise to the dispute or in the case of invoiced services, before the due date of the invoice;

(c) **Your** Dispute Notice must set out sufficient details, including **Your** grower number, the date, time, location and nature of the disputed conduct, that are reasonably necessary to allow CBH to investigate **Your** allegations;

(d) If **You** fail to provide a Dispute Notice within the time limits set out in clause 13.3.1(b) CBH will be deemed to have performed the relevant obligation in accordance with these Terms.

13.3.2 All Dispute Notices shall be sent to the CBH Grower Service Centre:

(a) **By post** – Level 6, 240 St Georges Terrace, Perth, Western Australia 6000 and shall be deemed to be received on the day which is 10 Business Days after posting; or

(b) **By email:** growerservicecentre@cbh.com.au and shall be deemed to be received following **Your** receipt of the automated delivery confirmation.

14 SITE ACCESS AND SAFETY

14.1 Whilst on a Site, **You** agree to:

14.1.1 follow all reasonably necessary directions of CBH personnel, including departure from the Site;

14.1.2 not create any hazard, or cause any contamination, on the Site; and

14.1.3 procure that Your employees, Agents or contractors comply with this clause 14.1.

14.2 CBH reserves the right to deny access where **You**, or **Your** employees, Agents or contractors, have failed to comply with **Your** obligations under clause 14.1.

15 SET OFF

15.1 Cash Set-offs

Subject to these Terms, **You** agree that any amount owing by CBH or its Related Bodies Corporate to **You**, may, at the election of CBH, be set off against any CBH Group Debt provided that CBH will give **You** prior written notice of its intention to effect any set-off together with sufficient details to allow **You** to identify the amounts to be set off.

15.2 Suspension of Grain Entitlement

15.2.1 If **You** have an outstanding CBH Group Debt, CBH may in its sole discretion, and in addition to any other rights it may have under these Terms or at law, and without prior notice to **You**, elect to suspend an amount of **Your** Grain Entitlement it deems sufficient to pay:

(a) **Your** outstanding CBH Group Debt; and

(b) **Your** Estimated Fees for the current Season.

15.2.2 CBH will notify **You** in writing within seven (7) Business Days after it elects to suspend **Your** Grain Entitlement.

15.2.3 If **Your** Grain Entitlement increases after CBH has elected to make a suspension pursuant to this clause 15.2, CBH may suspend additional amounts of **Your** Grain Entitlement pursuant to this clause 15.2 to cover the amounts listed in clause 15.2.1(a) and 15.2.1(b).

15.3 Grain Set-offs

In addition to any other provisions contained in these Terms relating to the recovery of a CBH Group Debt, **You** agree that CBH, at its election, may for the purposes of satisfying a CBH Group Debt give **You** notice ("**Group Debt Recovery Notice**") that it intends to set off the CBH Group Debt by selling an amount of **Your** Grain to CBH Grain sufficient to satisfy **Your** CBH Group Debt, provided that CBH will give **You** prior written notice of its intention to effect any set-off together with sufficient details to allow **You** to identify the amounts to be set off. If CBH issues a Group Debt Recovery Notice to **You**:

15.3.1 CBH will suspend part or all of **Your** Grain Entitlement pursuant to clause 15.2;

15.3.2 **You** must promptly pay the CBH Group Debt in full or make alternative arrangements within five (5) Business Days ("**Debt Recovery Period**") of the date of the Group Debt Recovery Notice;

15.3.3 If **You** fail to pay the CBH Group Debt in full or make alternative arrangements within the Debt Recovery Period, then **You** agree that without further notice **You** hereby irrevocably appoint CBH as **You**r agent and attorney to sell a

sufficient quantity of **Your** Grain ("**Set-off Grain**") on **Your** behalf to satisfy **Your** CBH Group Debt;

15.3.4 CBH will sell the Set-off Grain to CBH Grain on the next Business Day following the expiration of the Debt Recovery Period at the price at which CBH Grain (or another CBH Group Entity as nominated by CBH) is purchasing grain of the same type and quality on that day or, if no such grain is purchased on that day, the price at which CBH Grain determines that it could purchase such grain on that day;

15.3.5 The value of the Set-off Grain sold by CBH will be applied by way of set-off against **Your** CBH Group Debt;

15.3.6 It is acknowledged that the procedure set out in this clause 15.3 may occur through one or a series of transactions;

15.3.7 CBH will notify **You** whenever a set-off has been made; and

15.3.8 If any sale of Set-off Grain and set-off effected under the provisions of this clause 15.3 is subsequently avoided or conceded to be void or voidable under any laws relating to insolvency or the protection of creditors for any other reason, that payment shall be deemed not to have discharged **Your** liability to the relevant CBH Group Entity in respect of the CBH Group Debt (notwithstanding any release or discharge given by that CBH Group Entity or deemed under this clause 15.3) and the parties shall be restored to the position in which they respectively would have been put but for the Grain acquisition and set-off and shall be entitled to exercise all such rights and be subject to the liabilities which they respectively would have had if the payment had not been made.

15.4 Removal of suspension

CBH will remove any suspension(s) made pursuant to clause 15.2 as soon as **Your** outstanding CBH Group Debt and/or **Your** Estimated Fees have been paid in full.

15.5 No set off of amounts owing to CBH Group Entities

You are not entitled to set off amounts owing to CBH or any of its Related Bodies Corporate. If **You** have a claim against CBH Grain, **You** can pursue it separately.

16 INVOICING AND PAYMENT

16.1 In consideration for any Service provided by CBH to **You** under these Terms, **You** agree to pay CBH the relevant Charge for each Service rendered as and when the account falls due for payment, as specified on the relevant invoice.

16.2 Where **You** make a Delivery in the name of a partnership or venture comprised of more than one person:

16.2.1 CBH will invoice the amount due and payable by splitting the amount amongst those persons registered with CBH in the proportions notified to CBH; or

16.2.2 CBH will, for **Your** convenience, split the invoice amongst such other persons in such other proportions as **You** request in writing to CBH; but

16.2.3 notwithstanding anything in clauses 16.2.1 and 16.2.2, the liability to pay the relevant Charges will remain with **You**.

16.3 Credit

16.3.1 **You** agree that any credit provided by CBH is for business or investment purposes only and not for personal, domestic or household purposes.

16.4 Credit terms

16.4.1 If CBH provides credit terms to **You**, then CBH reserves the right, in its absolute discretion, to:

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

(b) except for invoices already issued by CBH, vary the credit terms by providing not less than 60 days' written notice of the new or varied credit terms;

(c) refuse to extend further credit terms to **You**; or

(d) withdraw **Your** credit terms.

16.4.2 Any refusal, withdrawal or exceeding of credit terms will result in the Services being provided on a prepaid basis.

16.4.3 If CBH has agreed to provide credit terms prior to the issuance of an invoice and has not withdrawn or varied them, then those credit terms will be deemed to continue on the terms and conditions set out in this clause 16.

16.5 Credit information

You authorise CBH to provide information acquired as a result of **Your** compliance with these Terms to any bank, credit reporting agency as outlined in the CBH Privacy Policy, debt collection agency, trade reference and any other person, business or company.

16.6 Invoicing

16.6.1 CBH will invoice **You** for all Charges payable in providing Services under these Terms.

16.6.2 If GST is payable by CBH in respect of any Taxable Supply (as defined in the GST Legislation) to **You** under these Terms, **You** must pay any such GST (in addition to any other amounts payable under these Terms).

16.6.3 CBH will provide **You** with a tax invoice that complies with the GST Legislation.

16.6.4 All charges in these Terms are expressed exclusive of GST.

16.7 Payment terms

16.7.1 If credit terms are made available by CBH at its discretion, then **You** must pay the amount set out in any invoice provided by CBH in accordance with the credit terms, without set-off or counterclaim.

16.7.2 CBH may, in its absolute discretion, suspend the provision of the Services (including credit) if **You** fail to pay an invoice in accordance with clauses 16.6 and 16.7. The suspension of the Services is not a breach by CBH of its obligations under these Terms and CBH may continue to suspend the Services until such time as the invoice has been paid.

16.8 Certificates

Subject to these Terms, a certificate signed by an authorised representative of CBH stating the amount owing to CBH by **You** on any account whatsoever and all interest in respect thereof shall be a prima facie evidence of the amount owed to CBH by **You** at the date of the certificate and shall be deemed correct unless **You** prove otherwise.

16.9 Interest on late payments

16.9.1 **You** must pay interest on all amounts owing to CBH on any invoice that remains outstanding upon expiration of the due date expressed in the invoice at a rate 5% above the rate published on the Australian Financial Markets Association webpage BBSW as at 11 am on 31st October each year.

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

16.9.3 Payments by **You** marked specifically for a particular invoice will be applied by CBH firstly in reduction of the interest outstanding and accruing on the invoice and then on any amount outstanding on the invoice.

16.10 Cost recoverable

Any Loss or Damage incurred by CBH in recovering any outstanding monies shall be paid in full by **You**.

16.11 BAMA Contributions

Notwithstanding any provision in these Terms to the contrary and without limiting the charges that may be levied under these Terms, **You** agree to pay the BAMA Contributions.

16.12 Direct to Vessel rebate

If **You** and the relevant Acquirer satisfy the conditions in clause 5.9.2 and **You** are eligible for the rebate on the relevant Grain Receival Fee as set out on www.cbh.com.au, CBH will pay the rebate to **You** no later than the date which is 30 days after Delivery of the Grain to a Port Facility, or such longer period as agreed between **You** and CBH.

17 GST

17.1 Definitions and interpretation

17.1.1 In this clause 17:

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

Tax Invoice or **Recipient Created Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises.

17.1.2 Terms defined in the GST Legislation have the same meaning in this clause 17 unless provided otherwise.

17.2 GST pass on

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

17.2.1 increase the consideration otherwise provided for that supply under these Terms by the amount of that GST; or

17.2.2 otherwise recover from the recipient the amount of that GST.

17.3 Tax Invoices/Adjustment Notes

The right of the supplier to recover any amount in respect of GST under these Terms on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of this these Terms, the recipient must pay any amount in respect of GST within 14 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

17.4 Recipient Created Tax Invoice

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

17.4.1 If **You** have provided a valid ABN and are registered for GST: a valid RCTI that states the amount of GST **You** are liable to pay, at the same time that CBH is obliged to pay **You**;

17.4.2 If **You** have provided a valid ABN but are not registered for GST: a payment advice setting out the amount paid to **You** excluding GST; or

17.4.3 If **You** have not provided a valid ABN: a payment advice setting out the amount paid to **You** excluding GST and subject to any withholding tax in accordance with clause 17.7.

17.5 Later adjustment to price or GST

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

17.5.1 may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; or

17.5.2 must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.

17.6 Reimbursements

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

17.7 Withholding Tax

If **You:**

17.7.1 do not have an ABN or do not provide a valid ABN to CBH; and

17.7.2 do not provide an executed Statement by a supplier form to CBH,

CBH may be required to withhold 46.5% (or such rate as is prevailing at the time) of the gross supply value by the Australian Taxation Office.

18 LIABILITY

18.1 Liability for Shortfall

18.1.1 Subject always to clauses 18.1, 18.1.2 and 18.8, CBH will be responsible and liable for any shortfall if it cannot Outturn **Your** Grain Entitlement for the relevant Grade and Season of grain.

18.1.2 CBH's liability for a shortfall in Grain Entitlement pursuant to clause 18.1.1 will only extend:

(a) (in the case of a shortfall in quantity), at the election of CBH, to either the:

(i) provision of sufficient grain of the same type, variety and Grade from any Site to ensure **Your** Grain Entitlement is not diminished; or

(ii) provision of financial compensation for the value of the Grain shortfall to be determined at the Fair Market Price for such Grain;

(b) (in the case of a shortfall in Grade):

(i) if the Grain has not been Outturned, at the election of CBH, to either:

A offer **You** lower Grade grain together with the provision of financial compensation for the difference in Fair Market Price between the relevant lower Grade grain and the equivalent Grade grain to which **You** were entitled; or

B the provision of financial compensation for the value of the Grain shortfall to be determined at the Fair Market Price for such Grain;

(ii) subject to clause 18.1.3, if the Grain has been Outturned, at the election of CBH, to either the:

A replacement of the relevant Outturned grain with grain of the same type, variety and Grade to **Your** Grain Entitlement; or

B provision of financial compensation for the difference in Fair Market Price between the relevant Outturned grain and the equivalent Grade grain to which **You** were entitled.

(c) For the avoidance of doubt, there is no shortfall in **Your** Grain Entitlement if CBH is able to provide sufficient grain of the same type, variety and Grade from any Site to ensure **Your** Grain Entitlement is not diminished.

18.1.3 Unless **You** notify CBH within 72 hours of Outturn of Grain of any shortfall in quality or Contamination CBH shall be deemed to have complied with its Outturn obligation.

18.1.4 **You** or the Acquirer will not be entitled to any Loss or Damage or to enforce any remedy in the event of a shortfall in **Your** Grain Entitlement caused by an event of Force Majeure.

18.2 Damage for Gross Negligence or Wilful Misconduct

Other than as set out in clause 18.1 and in clause 18.7 and subject always to clauses 18.3, 18.4 and 18.8, CBH will only be liable for any Loss or Damage in relation to a shortfall in **Your** Grain Entitlement or any defects, including a variation in quality or Contamination, in **Your** Grain Entitlement or otherwise in relation to the provision of the Services, which is caused by the Gross Negligence or Wilful Misconduct of CBH, its officers, employees or contractors.

18.3 Liability Cap

Except as provided by law and other than as set out in clauses 18.1 and 18.7, CBH's maximum liability to **You** howsoever arising shall be limited to $100,000 for any single event and limited to a maximum in aggregate of $250,000 for a Season however caused including Loss or Damage resulting from:

18.3.1 Gross Negligence of CBH, its officers, employees, contractors, servants or agents; or

18.3.2 Wilful Misconduct of CBH, its officers, employees, contractors, servants or agents.

18.4 Limitation of Grain Loss and Damage

Except as provided for in clauses 18.1, 18.2 and 18.7, CBH will not be liable or responsible for any Loss or Damage (including Indirect or Consequential Loss) to the Grain resulting from:

18.4.1 any variation in the quality of the Grain resulting from:

(a) the natural deterioration of Grain over time;

(b) the effects of the normal handling process on the Grain held at, or transported within or between Sites; or

(c) variations within the generally accepted standard deviation error of Grain sampling equipment, between the time of sampling under clause 5.4 ("Sampling") and Outturning taking into account the accuracy of the equipment or method.

18.4.2 the presence of grain defects and contaminants listed with a nil tolerance in the Receival Standards where:

(a) the detection of defects and Contaminants is at levels of 0.05% or less by weight;

(b) the detection of defects and Contaminants would not be capable of being detected through a reasonably diligent application of the Receival Standard and CBH's standard sampling procedures; or

(c) any non-conformance to the specification for Outturn where the attribute does not form part of the sampling and testing procedure at the time of Delivery.

18.4.3 delays, or a complete or partial inability, in CBH being able to receive grain at **Your** nearest Site, or at any Site unless caused by CBH's Gross Negligence or Wilful Misconduct.

18.5 Limitation of Loss or Damage for delay

In the event of:

18.5.1 delays incurred in CBH Outturning and/or transporting the Grain by way of road, rail or sea that is not caused by the Gross Negligence or Wilful Misconduct of CBH, its officers, employees or contractors;

18.5.2 delays due to the actions of third parties which are beyond the reasonable control of CBH; or

18.5.3 delays in respect of the provision of information by CBH to **You** pursuant to clause 6.4.2 ("Grain Entitlement"),

and such delay causes any shortfall in **Your** Grain Entitlement, then CBH's liability will only extend to the remedies provided in clause 18.1.2. CBH will not be liable for any other Loss or Damage caused by such delays.

18.6 Contribution to loss

Where any express or implied term of these Terms places on any Party (in this clause 18.6 "**Party A**") any duty of care the breach of which would, if the duty of care were imposed by the general law rather than by such express or implied term, constitute an actionable tort against any other Party (in this clause "**Party B**"):

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

18.6.2 the liability of Party A for any such breach is limited to the direct and proximate Loss or Damage of Party B arising out of such breach, less the proportion of such Loss or Damage attributable to any breach by Party B of its obligations under clause 18.6.1.

The obligations imposed on a Party in this clause 18.6 in relation to any breach by Party A of the kind the subject to this clause are additional to, and not in derogation of, any obligation of Party B to mitigate its Loss or Damage in relation to such breach.

18.7 Conditional exclusion of Statutory Liability

These Terms exclude to the maximum extent permitted by law any warranty or condition implied by common law, practice or statute. However in the case of those warranties under statute which may not be excluded, including the *Competition and Consumer Act 2010* (Cth):

18.7.1 CBH makes no additional warranties, either express or implied, as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to the goods or Services supplied under these Terms other than the warranties that may not be excluded under statute; and

18.7.2 CBH's liability for breach of such conditions or warranties shall, to the maximum extent permitted by law, be limited, in the sole discretion of CBH, to the lesser of:

(a) in the case of Services:

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

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

18.7.3 in the case of goods (including grain provided under clause 18.1):

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

(b) the repair of the goods;

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

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

For the purposes of this clause 18.7, "relevant Service" shall mean the Service in relation to the quantity of affected Grain only and does not mean the aggregate value of every relevant Service provided to **You**.

18.8 No Indirect or Consequential Loss

Notwithstanding anything else in these Terms, CBH will not be liable to **You** for any Indirect or Consequential Loss arising out of or in relation to the provision of Services by CBH pursuant to these Terms. Subject to clauses 10.2 and 11.6, **You** will not be liable to CBH for any Indirect or Consequential Loss arising out of or in relation to the Services provided by CBH to **You** pursuant to these Terms.

18.9 Indemnity and Release

You hereby release and indemnify CBH in respect of all actions, claims and demands which may be instituted by **You** against CBH in respect of the matters dealt with under clauses 18.4 and 18.8. This does not apply to Loss or Damage caused by CBH's Gross Negligence, Wilful Misconduct or fraud.

18.10 Exclusion of warranties

CBH does not represent, warrant or guarantee that any Grain received, acquired or Outturned for **You**:

18.10.1 conforms to any specification as to Varietal Purity;

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

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

18.11 Exclusion Clauses

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

18.11.1 any variance in any specification as to Varietal Purity from the actual Varietal Purity of Grain received or Outturned for **You**;

18.11.2 the presence, in any Grain received or Outturned for **You**, at any level or concentration, of any Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination, or Natural Toxicant Contamination; or

18.11.3 the presence, in any Grain received or Outturned for **You**, at any level or concentration of any Genetically Modified Organisms.

18.12 Indemnity

Notwithstanding anything expressed in or implied by these Terms, to the extent permitted by law **You** shall, to the extent CBH is not indemnified in respect of such Loss or Damage in accordance with clause 20.1.1, indemnify, keep indemnified and hold harmless CBH from any and all Loss or Damage suffered by or claimed from CBH, whether caused by the negligence, breach of contract, breach of statutory duty or any other legal or equitable obligation of CBH, or otherwise howsoever arising in connection with these Terms (other than Loss or Damage caused by CBH's Gross Negligence, Wilful Misconduct or fraud) from:

18.12.1 any variance in any specification as to Varietal Purity from the actual Varietal Purity of Grain received from **You** or Outturned for **You**;

18.12.2 the presence, in any Grain received from **You** or Outturned for **You**, at any level or concentration, of any Pesticide Residue Contamination, Corynetoxins Contamination, Microbial Contamination, Heavy Metal Contamination or Natural Toxicant Contamination; or

18.12.3 the presence, in any Grain received from **You** or Outturned for **You**, at any level or concentration of any Genetically Modified Organisms.

19 INSURANCE AND RISK

19.1 Insurance

19.1.1 CBH will take out and keep in force an insurance policy in respect to the risk of loss or damage to Grain, held in **Your** name only, whilst:

(a) it is held in the Sites; and

(b) during transit organised by CBH from the Receival Site to another Site requested by **You** (as the case requires).

19.1.2 If CBH makes a claim under the insurance policy then in relation to determining the Fair Market Price for the purposes of any shortfall liability under clause 18.1 ("Liability for Shortfall") **You** agree that:

(a) CBH is authorised to:

(i) receive and give a good discharge for all monies payable under the insurance policy;

(ii) settle, adjust and compromise all claims under the insurance policy; and

(iii) determine, by agreement with the insurer, the time of loss; and

(b) **You** will not make any claim against CBH, nor contest or dispute any CBH decision, in relation to any action by CBH in accordance with this clause 19.1.2 unless CBH acts fraudulently or in bad faith.

19.2 Transfer of risk

19.2.1 Subject to clause 18 ("Liability"), the risk of loss or damage to Grain is transferred to **You** at the point in time when the Grain exits the Outturning spout of a Site into a form of a Grain transportation vehicle.

20 INDEMNITY

20.1 **You**, being the owner of the Grain, agree:

20.1.1 having regard to clause 4.2, to indemnify and keep CBH indemnified against:

(a) any Loss or Damage suffered by CBH;

(b) all actions, claims and demands which may be made or instituted against CBH,

arising howsoever out of or as a consequence of any of the representations or warranties contained in clause 4 ("Warranties") (which are deemed to be repeated on each Delivery and each time the CDF is signed or submitted via the CDF App) being false, misleading or deceptive or likely to mislead or deceive;

20.1.2 without limiting clause 20.1.1 and having regard to clause 4.2, to indemnify and keep indemnified the Acquirer against:

(a) any claim made against CBH by the Acquirer in relation to any Loss or Damage suffered by the Acquirer;

(b) all actions, claims and demands which may be made or instituted against CBH by the Acquirer,

arising howsoever out of or as a consequence of any of the representations or warranties contained in clause 4.1.8 (which are deemed to be repeated on each Delivery and each time the CDF is signed or submitted via the CDF App) being false, misleading or deceptive or likely to mislead or deceive; and

20.1.3 that if any Grain has been tendered in derogation of the right, title or interest of another person (the "**True Owner**") that:

(a) **You** will be liable to the True Owner for any Loss or Damage that they may suffer; and

(b) upon presentation of satisfactory evidence of the True Owner's right title or interest, CBH will be entitled to permit the True Owner to control the out-turn of the True Owner's Grain.

20.2 The indemnities set out in clause 20.1.1 and clause 20.1.2 do not apply to Loss or Damage caused by CBH's Gross Negligence, Wilful Misconduct or fraud.

21 FORCE MAJEURE EVENT

21.1 Definition

An event of "**Force Majeure**" is any event or circumstance not within CBH's reasonable control, including:

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

21.1.2 strikes, stoppages, restraints of labour, or other industrial disturbances;

21.1.3 acts of the public enemy, terrorism, including wars which are declared or undeclared, blockades and insurrections;

21.1.4 riots, malicious damage, sabotage and civil disturbance;

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

21.1.6 the adverse application of any Australian laws or enforcement actions of any Commonwealth or State court or governmental agency not resulting from any wrongful act or omission of CBH;

21.1.7 the refusal of or delay in obtaining any necessary consents from any government agency, provided that CBH has acted in a timely manner in endeavouring to secure them;

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

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

21.1.10 any production shutdown or interruption which is validly required or directed by the Commonwealth or State government or any governmental agency which is not due to the act or default of the CBH,

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

21.2 Exemption from Force Majeure

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

21.3 Relief from performance and liability

Subject to clause 21.5, CBH will be excused from performance of and will not be liable to **You** for any failure in carrying out any of its obligations under these Terms if and only to the extent and for the time that it is prevented in whole or in part from doing so by Force Majeure.

21.4 Actions during Force Majeure Events

If CBH claims the benefit or protection of Force Majeure, it will:

21.4.1 promptly give such notice to **You** of the occurrence and circumstances in respect of which the claim of Force Majeure arises as is reasonable in all the circumstances;

21.4.2 take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay;

21.4.3 maintain regular communication with **You** to describe what is being done to remedy the Force Majeure; and

21.4.4 resume performance in full of its obligations under these Terms as soon as reasonably practicable,

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

21.5 Payments by **You**

Despite any other provision of these Terms, the occurrence of Force Majeure affecting CBH will not relieve **You** of the obligation to pay any amounts owing under these Terms in relation to Services performed by CBH prior to notice being given in accordance with clause 21.4.1, including but not limited to the payment of the relevant Charges as modified from time to time by CBH.

21.6 Termination rights

If CBH is prevented from performing its obligations under these Terms for 90 days or such other period agreed with **You**, **You** may terminate these Terms by notice to CBH. Except in relation to any accrued liability (including under clause 21.5), neither party will have any further liability to the other under these Terms following such termination.

22 GENERAL

22.1 Entire Agreement

22.1.1 These Terms constitute the entire agreement between CBH and **You**. Each party warrants and covenants to the other that there are no written or oral statements, representations, undertakings, covenants or agreements between the parties, express or implied, except as provided for in these Terms.

22.2 Amendment

22.2.1 These Terms may only be amended or varied by agreement in writing signed by both parties expressly amending these Terms and unless the context otherwise requires, a reference to these Terms shall include a reference to these Terms as amended or varied from time to time.

22.3 Operational guidelines

22.3.1 Notwithstanding that CBH from time to time produces operational guidelines to assist **You**, nothing in those guidelines shall be deemed to impliedly or expressly amend anything in these Terms and if there is any inconsistency between any guidelines and a provision of these Terms, the provision in these Terms shall prevail.

22.4 Governing Law and Jurisdiction

22.4.1 These Terms shall be governed by and construed in accordance with the laws of the State of Western Australia.

22.4.2 Each Party irrevocably submits to and accepts generally and unconditionally the non-exclusive jurisdiction of the courts and appellate courts of Western Australia with respect to any legal action or proceedings which may be brought at any time relating in any way to these Terms.

22.5 Assignment

22.5.1 **You** shall not assign, transfer or otherwise dispose of all or any part of **Your** rights or obligations under these Terms without the prior written consent of CBH.

22.5.2 CBH shall not assign, transfer or otherwise dispose of all or any part of its rights or obligations under these Terms without **Your** prior written consent unless the assignment, transfer or disposal is to any of CBH's Related Bodies Corporate.

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

22.6 Sub-contracting

CBH may in its sole and absolute discretion:

22.6.1 sub-contract the whole or any part of the Services; or

22.6.2 otherwise engage any person to undertake any part of the Services on CBH's behalf,

without notice to **You**.

22.7 Severance

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

22.8 No Partnership

22.8.1 Nothing contained in these Terms will be deemed or construed by **You** or CBH or by any third party as creating the relationship of partnership, principal and agent, or joint venture.

22.8.2 No relationship between **You** and CBH other than that of bailor and bailee upon the conditions and provisions in these Terms will be created by the payment of any money under the Terms, any other conditions or provision in the Terms or any act of **You** or CBH.

22.9 Tape Recording of Conversations

You agree that:

22.9.1 telephone conversations between **You** and CBH may be recorded by CBH with or without any automatic tone warning device or prior warning; and

22.9.2 the recordings referred to in clause 22.9.1 or transcripts of the recordings may be used by CBH for any purpose that CBH (in its sole discretion) determine to be appropriate, including as evidence in any dispute between **You** and CBH.

22.10 Waiver

22.10.1 No right under these Terms shall be deemed to be waived except by notice in writing signed by each party.

22.10.2 No default or delay on the part of any party exercising any of its rights or obligations under the Terms shall operate as a waiver of any such right or obligation under these Terms.

23 INTERPRETATION

In these Terms:

23.1 Words and Phrases

23.1.1 headings, sub-headings, captions and service descriptions do not affect the construction or interpretation of these Terms;

23.1.2 a word in the singular includes the plural of that word and vice versa;

23.1.3 a word of any gender includes the corresponding words of each other gender and a reference to one sex includes a reference to all sexes;

23.1.4 "including" means "including, but not limited to";

23.1.5 where any word or phrase is given a defined meaning in these Terms, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;

23.1.6 a reference in these Terms to a thing (including an amount) is a reference to the whole and each part of it (but nothing in this clause 23.1.6 implies that performance of part of an obligation is the performance of the whole) and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

23.2 Documents and Parts of Documents

23.2.1 a reference to any law, document, instrument or agreement, including these Terms, includes a reference to that law, document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time; and

23.2.2 a reference to a clause or annexure or attachment is (unless the context requires otherwise) a reference to a clause or annexure or attachment to these Terms.

23.3 Persons and Corporations

23.3.1 a reference to a person includes a body politic, corporation, partnership, limited partnership, association or joint venture (whether incorporated or not) whatsoever and wheresoever formed and howsoever described and also a government, governmental or semi-governmental agency or local authority;

23.3.2 a reference to a person includes that person's successors and permitted assigns and, in the case of a natural person, that person's legal personal representatives;

23.3.3 a reference to "**You**" includes a reference to any one or more of the parties named in the delivery title and "**Your**" shall have a corresponding meaning;

23.3.4 where 2 or more parties to these Terms make a joint covenant, undertaking, representation or warranty, the same shall be construed to refer to and bind each of such parties jointly and severally;

23.3.5 if **You** utilise any Services or perform any act in **Your** capacity as a trustee of a trust, **You** acknowledge and agree that **You** are liable both personally and in **Your** capacity as trustee and **You** declare that:

(a) accepting these Terms is for the benefit of the trust;

(b) **You** have authority to accept these Terms and comply with them;

(c) **You** have not, and have never been, in default under the trust deed;

(d) **You** have the right to be fully indemnified out of the assets of the trust for obligations incurred under these Terms;

(e) no action has been taken or proposed to terminate the trust nor has any event for the vesting of the trust property occurred.

23.3.6 if **You** utilise any Services or perform any act in **Your** capacity as a trustee of a trust, **You** acknowledge and agree that:

(a) **You** will notify CBH as soon as reasonably possible if anything happens that would mean any of the above declarations in clauses 23.3.5 can no longer be truthfully made; and

(b) **You** will comply with **Your** obligations as trustee of the trust.

23.4 Time, Money and Measurement

23.4.1 a reference to an amount of money is a reference to the amount in the lawful currency of Australia;

23.4.2 a reference to time is a reference to the local time in Perth, Western Australia (unless otherwise stated);

23.4.3 a "Business Day" is a day which is not a Saturday, Sunday or gazetted public Holiday in Western Australia;

23.4.4 where any matter or thing is required to be attended to or done on a day which is not a Business Day, and that thing cannot reasonably be done without access to services which are only available on Business Days (including banking, legal and accounting services and the services of government departments and agencies), it will be attended to or done on the first day thereafter which is a Business Day; and

23.4.5 measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth).

23.5 Discretions and Approvals

Whenever a Party is required to form an opinion, give approval, exercise a discretion or perform any act under these Terms, it must be done reasonably in the circumstances, and based on reasonable grounds, and not capriciously, or arbitrarily refused or unduly delayed.