



T-Ports Pty Ltd

**STORAGE AND HANDLING AGREEMENT
2020/21 SEASON**

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STORAGE AND HANDLING AGREEMENT

THIS AGREEMENT is dated

BETWEEN: T-Ports Pty Ltd (ABN: 60 620 129 544) ("**T-Ports**")

and

[insert customer name] (ABN [insert ABN]) ("**Customer**")

collectively "**the Parties**" and each a "**Party**".

"Nominated representatives"

T-Ports	Customer
General Manager T-Ports Pty Ltd Level 10, 50 Pirie Street Adelaide SA 5000 e-mail: tports@tports.com	INSERT <i>[insert address]</i> Email: insert

Executed as an agreement.

SIGNED on behalf of the Customer in the presence of:

Signature

Witness

Name of signatory (block letters)

Name of witness (block letters)

Date

SIGNED on behalf of T-Ports Pty Ltd in the presence of:

Signature

Witness

Name of signatory (block letters)

Name of witness (block letters)

Date

RECITALS

- A. T-Ports owns grain storage and handling facilities in Lock and Lucky Bay South Australia.
- B. The Customer wishes to store its grain and/or use ship loading services at T-Ports' storage and handling facilities.
- C. T-Ports agrees to store the Customer's grain at its storage and handling facilities pursuant to the terms and conditions of this Agreement.
- D. The Customer agrees to the terms and conditions of this Agreement and will remunerate T-Ports in accordance with the terms of this Agreement.

THE PARTIES AGREE:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Accounting Stock Tonnage means the quantity of each type and grade of Stored Grain shown in T-Ports' accounting records, being determined by the Receival Tonnage less the Shrinkage Allowance.

Agreement means this Storage and Handling Agreement and includes the Schedules and Price Book.

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

Booking Fee means the booking fee payable under the terms of this Agreement.

T-Ports Facility means any facility owned or operated by T-Ports for the receival, storage and/or Outturning of Grain under the terms of this Agreement.

Business Day means each day excluding Saturdays, Sundays and public holidays in South Australia.

Business Hours means 07:30am to 3:30pm on each Business Day (South Australian time).

Carryover Date means the date from which the Carryover Fees will apply for a specific T-Ports Facility as set out in this Agreement, being 1 October of the following Season.

Carryover Fees means those carryover fees as are payable under the terms of this Agreement.

Commencement Date means either the date on which this Agreement is executed by both Parties or T-Ports provides Services to the Customer, whichever is the earlier.

Commingled Grain has the meaning given to it in Clause 8.

Corporations Act means the *Corporations Act 2001* (Cth).

End Date means 30 September of the Season.

Fair Market Price means a price for a specific location, grade and quantity of Grain equal to an average bid price to growers for the season produced by an independent and reputable grain broker nominated by T-Ports.

Fee means the Storage and Handling Fee, the Booking Fee and any other fee payable by the Customer to T-Ports under this Agreement.

Force Majeure Event has the meaning given to it in Clause 35.

Grain means wheat, barley, oats, triticale, canola and legumes and any other type of grain which is received, stored and/or handled by T-Ports under this Agreement and, after receival of a quantity of such grain means the same quantity of grain of the same type and grade.

GST has the meaning given to it in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist for any reason, any Act imposing or relating to the imposition or administration of a goods and services tax in Australia, and any regulation made under that Act.

GTA means Grain Trade Australia Ltd.

Insolvency Event means the occurrence of any one or more of the following events:

- a) a resolution is passed for the winding up of a Party (other than for the purposes of reconstruction or amalgamation on terms which have been previously approved in writing by the other Party);
- b) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of Customer arrangement is appointed to all or any part of the property of a Party;
- c) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of Customer arrangement, is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of a Party;
- d) a Party makes any composition or arrangement or assignment with or for the benefit of its creditors;
- e) a Party or any creditor appoints a voluntary administrator, or a resolution is passed for that Party to execute a deed of Customer arrangement;
- f) a Party ceases, or threatens to cease to carry on its business; or
- g) a Party becomes insolvent within the meaning of section 95A of the Corporations Act.

Invoice means an invoice issued by T-Ports to the Customer in respect of Storage and Handling Fees, and any other amount payable, for the relevant invoice period.

Law means any statute, ordinance, code, clause, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment or order and includes the terms and conditions of any licence, permit, consent, certificate, authority or approval or any assurance or bond or similar requirements including all applicable standards and obligations under the common law.

NGR means National Grower Register, who operate a register of growers, their contact information and payment details.

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

Outturn or Outturning or Outturned means the removal of Stored Grain from T-Ports' Facility in accordance with an Outturn Order.

Outturn Defect means any alleged failure to comply with the applicable Receival Standards.

Outturn Order means the standard T-Ports form to be completed by the Customer on each occasion the Customer requires T-Ports to Outturn or any corresponding customer order form which includes the information set out in clause 11.2.

Outturn Tonnage means the tonnage of the Customer's Grain removed from T-Ports' Facility.

Payment Due Date means, for a given Invoice, unless payable in advance of Outturn (eg. Shipping fees), all other fees are payable 7 days from date the Invoice was issued.

Permissible Tolerance means each of those things listed as a Permitted Tolerance in clause 11.12.

Port Terminal means Lucky Bay, South Australia.

Port Loading Protocols means the document describing the requirements of the Customer and any other third parties wishing to load Grain onboard shipping vessels at the Port Terminal.

PPSA means the Personal Property Securities Act 2009 (Cth) and any regulations made under that Act.

Price Book means T-Ports' price book for the applicable season that outlines the fees and charges for the items of service provided by T-Ports under this Agreement.

Receival Standards means T-Ports' standards for the receival and classification of Grain delivered to the T-Ports Facility as notified by T-Ports to the Customer from time to time.

Receival Tonnage means the tonnage of Grain delivered by the Customer to T-Ports at T-Ports' Facility.

Season means the period between 1st October of one year and the following 30th September.

Security Interest has the meaning given in the PPSA.

Services has the meaning given to it in clause 3.

Shrinkage Allowance means the allowance for loss in weight of Stored Grain that occurs during the storage, handling and transport process.

Storage and Handling Fees means those storage and handling fees as are set out in the terms of this Agreement.

Stored Grain means Grain that is received from, on behalf of, or for the account of the Customer under the terms of this Agreement and is within T-Ports' power, possession, custody or control.

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

1.2 In this Agreement, unless the context otherwise requires:

- (a) a reference to an agreement (including, without limitation, this Agreement) is a reference to that agreement as amended, varied, novated, supplemented or replaced from time to time;
- (b) words or expressions:
 - (i) importing the singular include the plural and vice versa;
 - (ii) importing a gender include the other gender; and
 - (iii) denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities;
- (c) a reference to a Party to this Agreement or any other instrument includes that Party's executors, administrators, successors and permitted assigns;
- (d) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;
- (e) a reference to a clause number, appendix, annexure or exhibit is a reference to a clause, Schedule, Annexure or Exhibit of this Agreement;
- (f) headings are for convenience only and do not affect interpretation;
- (g) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (h) a reference to any legislation or statutory instrument or regulation is construed in accordance with South Australian Law;
- (i) a rule of construction does not apply to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it;
- (j) a "**day**" means a calendar day;

- (k) a "**month**" means a calendar month;
- (l) a "**year**" means a calendar year;
- (m) all monetary amounts are expressed in the currency of Australia; and
- (n) in the event of a conflict between any provision of this Agreement (excluding the Schedules) and the Schedules, the provision of this Agreement shall prevail to the extent of the conflict

2. **Term**

- 2.1 Subject to earlier termination, this Agreement commences on the Commencement Date and ends on End Date ("**the Term**").
- 2.2 On and from the Commencement Date, this Agreement supersedes any prior agreement between the Parties in respect of the Services.
- 2.3 If T-Ports continues to provide the Services to the Customer after the end of the Term then the terms and conditions of this Agreement will continue to apply until a new agreement is executed or this Agreement is terminated in accordance with Clause 20.

3. **T-Ports' Services**

- 3.1 Subject to the terms of this Agreement, T-Ports shall:
 - (a) subject to clause 5 , receive the Customer's Grain into the T-Ports Facility in accordance with the Customer's request;
 - (b) sample, provide quality testing services for, classify into available grades and weigh the Customer's Grain in accordance with GTA approved methods and standards;
 - (c) furnish to the Customer or their nominated representative a statement that specifies the relevant details of the Customer's Grain;
 - (d) store the Customer's Grain in clean and dry and in all circumstances appropriate storage facilities including, without limitation, storage bins and/or covered bunkers;
 - (e) Outturn the Customer's Grain to the Customer or the Customer's nominated representative;
 - (f) keep at T-Ports' principal place of business proper, complete and up-to-date records, books of account and documents relating to transactions in the Customer's Stored Grain and such books of account, records and documents will be available for inspection by the Customer at any reasonable time upon request; and
 - (g) within 7 Business Days after the end of each month, make available to the Customer via the web portal transactions comprising the Customer's Grain movements and closing Grain balances for the month,

(together, the "**Services**").

4. **Customer's obligations and warranties**

- 4.1 The Customer shall:
 - (a) pay to T-Ports the Storage and Handling Fees, and any other amounts payable under this Agreement, by the Payment Due Date;

- (b) For movements between T-Ports facilities, subject to T-Ports providing the most competitive freight rate(s) and having sufficient capacity for the movement, the Customer shall engage T-Ports as its freight provider;
- (c) provide T-Ports with all written information T-Ports reasonably requires for T-Ports to properly record the receipt of Grain from, or to the account of, the Customer, including information relating to:
 - (i) origin, quality, quantity, weight, type and variety; and
 - (ii) anticipated time of delivery; and
- (d) ensure that where Grain is tendered for delivery by a grower or agent on behalf of the Customer:
 - (i) the grower or agent will clearly state in writing the Customer's name at the time of delivery ("**Nomination**");
 - (ii) all Nominations contain a statement to the effect that the grower or agent transfers all of the right, title and interest to and in the Grain to the Customer; and
 - (iii) all Nominations are final and irrevocable.

4.2 The Customer must not deliver to a T-Ports Facility (either itself or through its suppliers) any Grain that is known or suspected to:

- (a) contain contaminants (chemical, physical or otherwise), residues or a combination of both;
- (b) be in breach of any relevant Laws;
- (c) have not been grown between April and September immediately prior to the current Season.

4.3 The Customer warrants that:

- (a) it owns any Grain tendered for delivery by or on behalf of it;
- (b) it has not manipulated or loaded any delivery in any way to preventing the making of an accurate assessment by T-Ports of the quality of the Grain using T-Ports' standard sampling procedures;
- (c) if any of the Grain has been treated with substances for the control of insects, details of the substances and the application of those substances has been provided in writing to T-Ports before the Grain is delivered to the T-Ports Facility 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 Law, industry standard and usage instructions; and
- (d) any information it provides to T-Ports in relation to this Agreement is complete, true and correct and not misleading or deceptive or likely to mislead or deceive.

5. **T-Ports' Discretion to Receive Grain**

Notwithstanding any other terms in this Agreement, T-Ports may, at its discretion, accept or refuse to receive the Grain for storage and/or warehousing for reasons that include but are not limited to quality, hygiene, safety and its capacity and efficiency.

6. **Pest control**

6.1 T-Ports shall regularly inspect the Stored Grain for the presence of insects and will notify the Customer if any infestation of the Stored Grain is identified.

- 6.2 T-Ports may at its expense and sole discretion treat the Grain with chemicals or fumigants in accordance with industry practice and at all times within applicable safe levels as determined by industry maximum residue limits unless otherwise specified, in order to prevent or cure infestation, disease and/or contamination.
- 6.3 T-Ports will endeavour to provide the Customer with a schedule specifying planned treatment periods in regular intervals to aid Outturn planning.
- 6.4 Where T-Ports applies chemicals or fumigants to the Stored Grain, that Grain will not be accessible for a period of about 4 weeks from the date of fumigation. T-Ports will notify the Customer in writing prior to any Outturning if it is still within the "withholding period" as specified by the chemical or fumigant manufacturer. T-Ports will maintain a diarised log of inspection dates at which treatments occur.
- 7. Documentation and weights**
- 7.1 For road receipt and road Outturn, T-Ports shall weigh all of the Customer's Grain delivered to and Outturned from T-Ports' Facility, using T-Ports' certified weighbridge at the T-Ports Facility, to determine the Receipt Tonnage and Outturn Tonnage. For shipping Outturns, T-Ports shall weigh all the Customer's grain using a certified batch weigher to determine the Outturn Tonnage.
- 7.2 The Customer is bound by T-Ports' determinations of Receipt Tonnage and Outturn Tonnage as per Clause 7.1.
- 8. Commingled Grain**
- 8.1 Unless specifically agreed otherwise, T-Ports may commingle Stored Grain with grain of a like type and specification stored on behalf of other third parties or other users in T-Ports' Facility ("**Commingled Grain**"), in which case all Commingled Grain shall be jointly owned by all parties whose grain has been so commingled to the exclusion of all other persons, including but not limited to T-Ports.
- 8.2 Subject to the Parties agreeing otherwise in writing, where the Stored Grain has been commingled in accordance with Clause 8.1, T-Ports may nominate and identify any particular quantity of Grain within the T-Ports Facility from the Commingled Grain as being the Stored Grain for the purposes of this Agreement, including, for the purposes of Outturning at the direction of the Customer and sale by T-Ports in exercise of its lien over the Grain in accordance with Clause 19.
- 9. Title to Grain**
- 9.1 Subject to the terms of this Agreement, while T-Ports has possession of the Stored Grain, T-Ports is a bailee for reward of the Stored Grain and will continue to be so despite any commingling of the Stored Grain, or despite any inability of T-Ports to redeliver to the Customer Stored Grain the subject of the bailment.
- 9.2 Except as provided in Clauses 9 and 24, T-Ports has no legal or equitable title to the Stored Grain unless it is an owner of the Stored Grain.
- 9.3 Subject to Clauses 9.1 and 24, where the Stored Grain is commingled at a T-Ports Facility, title to the Commingled Grain is held jointly by the Customer and other parties whose Grain forms part of the Commingled Grain at the T-Ports Facility.
- 9.4 For the purposes of Clause 9.3, the Customer's interest in Commingled Grain will be equal to that proportion of which the quantity of the Stored Grain at the time bears to the quantity of the Commingled Grain at that time.

10. Title Transfer

- 10.1 The Customer may, in accordance with the applicable procedures of T-Ports in force from time to time (and which shall be provided upon request), transfer its title to all or part of the Stored Grain to a third party ('**Transferee**') provided that:
- (a) the sum total of the amount or amounts transferred shall be no more than the applicable Accounting Stock Tonnage;
 - (b) the Customer has performed all its obligations under these terms and conditions and has made all payments for Services supplied in respect of the relevant Stored Grain, up to the date of transfer; and
 - (c) the Transferee agrees, in writing, to be bound by these terms and conditions.
- 10.2 The Customer must produce all relevant documents required by T-Ports to effect transfer of its title to the Stored Grain pursuant to the preceding provisions of this clause 10.

11. Outturn of Grain

- 11.1 The Customer shall give T-Ports an Outturn Order by road transport not less than seven (7) Business Days before a requested Outturn of Stored Grain from a T-Ports Facility.
- 11.2 Outturn Orders must include the following details in respect of the Stored Grain requested to be Outturned:
- (a) the site of Outturn;
 - (b) the quantity (tonnes);
 - (c) commodity and grade;
 - (d) the name of the Transport Service Provider;
 - (e) destination of Outturn;
 - (f) the estimated time and commencement date (during any working week) of arrival of the Transport Service Provider at the T-Ports Facility, and
 - (g) the completion date of the Outturn Order.
- 11.3 T-Ports will not allocate Stored Grain for Outturn until it has received an Outturn Order properly completed in accordance with clause 11.2. The Customer must comply with all of T-Ports' ordering procedures from time to time, including any online ordering system.
- For road Outturn the minimum order is 1500mt per day (unless otherwise agreed by the parties in writing). T-Ports is not obliged to accept any orders below this amount.
- For road Outturn orders less than 750mt per half-day T-Ports will endeavour to combine Outturn with other orders of that grade so that the 750mt per half-day minimum is met.
- 11.4 Subject to the notification requirement in Clause 11.1 and this Agreement generally, T-Ports will take all reasonable steps to comply or procure the compliance with the Customer's Outturn request.
- 11.5 The Customer shall comply with T-Ports' Outturn requirements and procedures when the Customer either engages T-Ports as the freight provider, or contracts directly with its own freight provider.

- 11.6 Subject to the terms of this Agreement, T-Ports shall Outturn at least the Accounting Stock Tonnage of each type of Stored Grain delivered to the T-Ports Facility.
- 11.7 After the completion of Outturn of each grade for given Season across the T-Ports Storage network, if the tonnage of the Stored Grain Outturned is less than the Accounting Stock Tonnage, T-Ports must do one of the following, as elected by T-Ports in its sole discretion:
- (a) provide sufficient additional Grain of the same type, and grade to ensure that the net Outturning of Grain is equivalent to the Accounting Stock Tonnage; or
 - (b) provide financial compensation to the Customer for the shortfall in the net Outturning, based on the Fair Market Price for Grain of the relevant type and grade for the applicable Season and as at the date T-Ports exercises its discretion as per this Clause.
- 11.8 After the completion of Outturn of each grade for given Season across the T-Ports Storage network, if the tonnage of a particular type and grade of Stored Grain Outturned is more than the Accounting Stock Tonnage, the Customer shall provide financial compensation to T-Ports for the excess in the net Outturning, based on the Fair Market Price for Grain of the relevant type and grade for the applicable Season..
- 11.9 T-Ports' obligations in respect of Stored Grain cease immediately upon Outturning of the Grain from the T-Ports Facility.
- 11.10 The Customer will immediately remove the Stored Grain from storage at the T-Ports Facility upon receipt of a notice from T-Ports requiring it do so.
- 11.11 Without limiting any other provision of this Agreement, T-Ports will Outturn Grain which, as a minimum, meets the Receival Standards that apply in relation to the Grain to be Outturned. For the avoidance of doubt, T-Ports does not take into account the Permissible Tolerances in assessing whether the Outturn Grain meets the Receival Standards. The Customer acknowledges and agrees that for assessment purposes, it is the truck grade composite sample of the entire truck that is used to classify the Outturned Grain, not individual trailer samples.
- 11.12 Where the protein and moisture parameters of the relevant Grain as tested by the Customer, or on the Customer's behalf, using Approved Equipment are not less than 0.3% of the minimum, and not more than 0.3% of the maximum, percentage protein and moisture parameters specified by the Receival Standards and not less than 1.0% of the minimum, and not more than 1.0% of the maximum, percentage screenings parameters specified by the Receival Standards (each a '**Permitted Tolerance**') (e.g. if the maximum percentage moisture parameter specified by the Receival Standards is 12.5%, the permissible maximum moisture parameter under this clause is 12.8%), this will not constitute an Outturn Defect for the purposes of this Agreement and T-Ports shall have no liability to the Customer for these circumstances.
- 12. Movements for Operational Efficiency**
- 12.1 T-Ports has the right to Outturn the Grain to another T-Ports Facility or relocate the Grain within the Facility if:
- (a) the T-Ports Facility, or storage bunker or stack, reaches capacity (or is expected to reach capacity) during the Season harvest;
 - (b) this Agreement expires or is terminated;
 - (c) consolidation of small quantities of Grain is required (in T-Ports' reasonable opinion) for the efficiency of the T-Ports Facility eg. consolidation of parcels for effective fumigation

- (d) the volume in the cell/bunker/stack in which the Grain is stored is down to sweeping stage and/or less than 10% capacity;
- (e) the quality of the Grain that has been received has potential to contaminate other third parties' grain or the Customer's Grain; or
- (f) T-Ports determines that it is operationally efficient to move the Grain.

12.2 And in each case the Customer will bear any reasonable additional costs or charges that may arise out of the outturn or relocation relative to the site of origin, including, but not limited to, freight differentials.

13. Port Loading Protocols

Where the Grain is to be loaded onboard a shipping vessel, the Customer agrees to comply with the Port Loading Protocols and to pay the respective fees and charges.

14. Transport Service Providers

14.1 The Customer agrees to ensure that, in delivering Grain to or collecting Grain from any T-Ports Facility, all Transport Service Providers will:

- (a) comply with T-Ports' operating procedures, environmental policies and procedures and occupational health and safety guidelines and all requirements and directions given by T-Ports;
- (b) comply with all applicable laws including without limitation those relating to occupational health and safety, driving hours, driver fatigue management, loading, unloading, weight or mass limits, dimension limits, load restraint limits, road and rail safety and regulation, vehicle maintenance and vehicle emissions, vehicle mass limits and similar freight and safety obligations and any act, regulation, code or standards of industry best practice applying to the operation of the Transport Services Provider's business or the engagement or management of its personnel ('**Applicable Laws**') and use vehicles that are entirely fit for purpose;
- (c) provide reasonably detailed evidence of its (and its personnel's) compliance policies and procedures (including its Driver Fatigue Management System) when requested by T-Ports from time to time;
- (d) fully, accurately and properly complete, and provide to T-Ports, all vehicle and container weight declarations and information and any other required documentation relating to loading, weights and freight and safety obligations where required to do so by any Applicable Laws;
- (e) maintain all equipment and materials used in delivering or collecting Grain to a standard that allows compliance with all Applicable Laws;
- (f) keep the Customer and T-Ports and their employees, agents and sub-contractors informed at all relevant times of all up to date information and documentation reasonably required to allow each of the Customer and T-Ports to comply with all Applicable Laws;
- (g) have all approvals, licences and authorisations required to operate the transport services being provided and have adequate systems in place to provide the necessary services to T-Ports in a timely, safe and professional manner;
- (h) minimise and avoid all risk of damage or injury to all persons and the protection of same including the protection of T-Ports employees, agents and contractors;
- (i) participate in safety audits as and when required by T-Ports;

- (j) only present vehicles that are clean and free from contaminants, safe, fit for purpose, registered, insured and or operated by licensed and experienced trained, qualified and physically capable persons;
- (k) upon request by either the Customer or T-Ports promptly provide information and documentation about a vehicle's prior load; and
- (l) comply with all reasonable directions of T-Ports and its employees and representatives and avoid or minimise unreasonable interference with the passage of people, vehicles and the operations and activities carried out at the T-Ports Facility.

14.2 The Customer acknowledges and accepts that T-Ports may at its sole discretion and without any liability whatsoever to the Customer or any third party, refuse to allow any Transport Service Provider to deliver Grain to, or collect Grain from, any T-Ports Facility if T-Ports considers that the transportation vehicle or wagon is not clean or fit for loading or carriage or for any other reason reasonably related to the safety or security of any person or property.

14.3 Where T-Ports refuses to allow the delivery or collection as a result of T-Ports considering that the transportation vehicle is not clean or fit for loading or carriage, T-Ports shall not be liable to the Customer or any third party for the cost, liabilities or expenses incurred by the Customer or any third party and the Customer shall indemnify T-Ports in respect of any such claims or loss.

14.4 The Customer must:

- (a) bear all costs arising from the exercise by T-Ports of its rights under clauses 14.1 and 14.2; and
- (b) indemnify T-Ports against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by T-Ports as a result of, or arising out of or in connection with, any act or omission (including any negligent or unlawful act or omission or any failure to comply with any Applicable Laws) of any third party transport service provider engaged by the Customer to deliver or collect Grain from any T-Ports Facility (**'Transport Service Provider'**).

14.5 The Customer agrees and acknowledges that T-Ports will rely on the advice of the Transport Service Provider as to its road transport configuration and applicable codes and any other advice it may provide with respect to loading in seeking to prevent any vehicle being loaded beyond the legal mass limits prescribed for that road transport configuration. In such circumstances, the Customer acknowledges and agrees that T-Ports will not be liable for any claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by the Customer or any third party and the Customer will indemnify and keep indemnified T-Ports for any and all claims, damages, losses, costs, expenses and liabilities associated with the actions.

15. **Carryover of Grain**

If, with the written permission from T-Ports, any Stored Grain remains in a T-Ports Facility after the Term of this Agreement, the Customer shall pay T-Ports, in addition to the applicable Storage and Handling Fees up to the Carryover Date, the Carryover Fees on the Carryover Date.

16. **Nomination**

16.1 The Customer shall ensure that, whenever Grain is delivered by a third party on behalf of the Customer, the third party nominates the Customer as the owner of the Grain and acknowledges, in writing at the time of delivery, that the third party's right, title and interest to and in the Grain is transferred to the Customer.

16.2 The Customer agrees to include in its grower purchase contract terms and conditions that the growers must be registered with NGR and the grower must quote or provide their NGR number to T-Ports when making delivery to a T-Ports Facility. Without a valid NGR number, T-Ports is not bound to accept a grower delivery.

17. Hours of operation

T-Ports shall only be required to receive and Outturn Grain during the Business Hours, unless otherwise agreed by the Parties.

18. Shrinkage allowance

18.1 T-Ports will deduct a Shrinkage Allowance from each load of Grain delivered into the T-Ports Facility.

18.2 T-Ports shall levy receipt fees against the Receipt Tonnage prior to the deduction of the Shrinkage Allowance. All other charges shall be levied against the Outturn Tonnage.

19. Notices

Unless otherwise stated in this Agreement, notices given by either Party or their agents to the other Party or their agents in accordance with this Agreement, shall be in writing and in the English language. For the purposes of this Agreement, "in writing" means personal service, registered or recorded mail or email to the Nominated Representatives:

19.1 A notice is regarded as given and received:

- (a) If it is sent by mail, on the third Business Day after posting; or
- (b) if it is sent by e-mail, on the day of receipt by the recipient and, if the recipient is absent from his or her usual place of work for more than one day after the date of transmission, the day that the recipient returns to work.

20. Termination

20.1 Either Party may terminate this Agreement immediately by written notice to the other Party if:

- (a) the other Party commits an act of bankruptcy; or
- (b) an Insolvency Event occurs in respect of the other Party.

20.2 Where T-Ports suffers an Insolvency Event, the Customer will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Commingled Grain, to re-take possession of the Stored Grain from the T-Ports Facility at which it is located.

20.3 Notwithstanding Clause 20.1, T-Ports may terminate this Agreement by notice in writing to the Customer (such termination to take effect at any time nominated within the Term of this Agreement) if:

- (a) the Customer is in material breach of this Agreement, unless upon becoming aware of such breach, T-Ports, at its sole discretion, gives written notice to the Customer that it has 10 Business Days to remedy the breach and the Customer does remedy that breach to the sole satisfaction of T-Ports;
- (b) the Customer commits any act or does anything that in T-Ports' sole opinion could bring the reputation of the Customer into disrepute and as a consequence, T-Ports, acting reasonably, believes that its continued association with the Customer could be prejudicial or detrimental to the reputation of T-Ports' business;
- (c) the Customer advises T-Ports or it becomes apparent to T-Ports (acting reasonably) that the Customer will be unable to complete its obligations under this Agreement.

- 20.4 On termination or expiry of this Agreement T-Ports shall be entitled to receive all amounts due to it in respect of the Services that have been provided but not billed as at the date of termination or expiry (provided that such Services have been provided in accordance with the terms of this Agreement).

21. Fees

- 21.1 In consideration of the supply by the Services, the Customer must pay to T-Ports the Fees in accordance with the Price Book for the season.
- 21.2 Subject to clause 21.3, the Customer must pay the Fees within the Payment Due Date. Aside from shipping fees payable in advance of Outturn (unless otherwise approved), all other fees shall have payments terms of seven (7) days..
- 21.3 Unless otherwise agreed by T-Ports, all Fees in respect of Grain to be Outturned or title transferred must be paid in full up to the date of Outturn or transfer. T-Ports is entitled to refuse Outturn or allow transfer of Grain if the Customer fails to comply with this clause 21.3. For the avoidance of doubt, unless otherwise agreed, Fees related to shipping Outturn are payable in advance of Outturn.
- 21.4 If the duration of the Term is greater than 12 months, or if the Term is extended beyond 12 months by agreement between T-Ports and the Customer then, subject to clause 21.5, T-Ports may amend the Fees on each anniversary of the commencement of the Term by written notice to the Customer.
- 21.5 If T-Ports proposes to amend the Fees, T-Ports must provide a revised version of the Price Book, setting out the new Fees. In this circumstance, the Price Book will be deemed deleted and replaced with the revised Price Book provided by T-Ports under this clause 21.4 with effect from the date 30 days after the date of T-Ports' notice of the amendment of the Fees or, if the notice is provided more than 30 days prior to the nearest anniversary of the commencement of the Term, on that anniversary of the commencement of the Term. In the absence of any agreement to the contrary between T-Ports and the Customer, the amended Fees set out in a notice provided by T-Ports under clause 21.4 must be substantially the same as the standard fees published by T-Ports and charged by T-Ports for similar services to its other customers.
- 21.6 If the Customer purchases Grain which is already warehoused or is or have been stored, handled or treated by T-Ports and there are unbilled and unpaid and/or unpaid fees and charges in respect of the Grain for any period or for anything done prior to the purchase, then the Customer agrees to deduct those fees and charges from any amounts due to the Grower and must pay them to T-Ports, provided that T-Ports notifies the Customer of the outstanding fees and charges and the Customer has not yet paid the Grower for that Grain.
- 21.7 If the Customer fails to make payment of an invoice in accordance with the terms of this Agreement, then:
- (a) all existing invoices will become immediately due and payable; and
 - (b) T-Ports may, in its absolute discretion, suspend the provision of any or all of the Services until all outstanding invoices have been paid.

22. Interest on Late Payments

- 22.1 Without limiting any other rights that T-Ports may have under this Agreement, the Customer shall pay interest on all amounts owing to T-Ports on any Invoice that remains outstanding after the Payment Due Date at a rate of 18% per annum.
- 22.2 For the purposes of Clause 22.1, late payment interest shall be calculated from the Payment Due Date for an Invoice until all amounts owing on the Invoice, including interest, have been paid.

23. GST

- 23.1 Unless the contrary intention appears, words and expressions used in this Clause 23 which are defined in the GST Act have the same meaning herein.
- 23.2 All fees and charges in this Agreement unless stated are expressed exclusive of GST.
- 23.3 If T-Ports is liable to remit GST in respect of any taxable supply made to the Customer under this Agreement, T-Ports may, subject to the issue of a valid tax invoice, recover from the Customer any such GST in addition to any other amounts payable, or any other consideration to be provided, under or in connection with this Agreement at the same as the consideration, or the first part of the consideration, as the case may be, for the taxable supply to be provided.

24. Lien, Security Interest and Right to Withhold Stored Grain

- 24.1 T-Ports has:
- (a) possession of the Stored Grain; and
 - (b) a first and paramount lien over the Stored Grain in respect of all moneys payable (on any account whatsoever) by the Customer to T-Ports under this Agreement or otherwise.
- 24.2 The Customer grants a Security Interest to T-Ports over the Customer's Grain and proceeds of sale of that Grain as security for the payment of all monies now or subsequently due and payable (on any account whatsoever) by the Customer to any T-Ports Group Company.
- 24.3 Where the Customer's Grain is Commingled Grain, T-Ports may nominate and identify any particular quantity of Grain comprising the Commingled Grain as being the Stored Grain, for the purposes of enforcing its lien or Security Interest.
- 24.4 Subject to any requirement of law, T-Ports will be entitled, for the purpose of enforcing such lien or Security Interest, to:
- (a) retain possession of the whole or any part of the Customer's Grain until all amounts due and payable are paid; or
 - (b) sell all or any of the Customer's Grain in such manner as it thinks fit (after giving the Customer at least 5 Business Days prior notice). The proceeds of any sale will be applied towards the satisfaction of the moneys due to T-Ports and the costs of effecting the sale, and the balance (if any) will be paid by T-Ports to the Customer.
- 24.5 If T-Ports sells all or any of the Customer's Grain for the purpose of enforcing its lien or Security Interest, the Customer irrevocably appoints T-Ports as its agent and attorney for this purpose.
- 24.6 Notwithstanding any other term of this Agreement, T-Ports may, at its sole discretion, refuse to Outturn the Stored Grain if the Customer has not paid any amounts owing to T-Ports pursuant to Clauses 4.1, 21 or 23.3.

25. Exclusion/Limitation of Liability

- 25.1 Except as otherwise provided in this Agreement, T-Ports shall be in no way liable for damage, destruction, contamination and/or loss (including indirect and/or consequential loss) of Grain unless caused by the negligent default or omission of T-Ports.
- 25.2 Where the grain of any person other than the Customer is affected by a chemical contaminant or residue but is nevertheless delivered to the T-Ports Facility, T-Ports will not be liable to the Customer or to any other person for any loss (including indirect and/or consequential loss), cost, damage or expense suffered or incurred as a direct or indirect result of that delivery.

- 25.3 The Customer acknowledges that T-Ports is unable to test on receipt for germinative quality of barley, toxic or other chemical residues, genetically modified grain or other contamination.
- 25.4 The Customer acknowledges that any transportation of the Grain is at the Customer's risk, including, without limitation, transportation of the Grain arranged by or on behalf of or at the request of either the Customer or T-Ports.
- 25.5 Notwithstanding anything term in this Agreement, T-Ports shall not be liable to the Customer for any indirect or consequential loss arising out of or in relation to the Agreement.
- 25.6 Other than its obligations in Clause 11.6, notwithstanding anything to the contrary in this Agreement, and where permissible by Law, T-Ports' total liability to the Customer, howsoever arising (including from a breach of this Agreement and/or any negligent act(s) and/or omission(s) of T-Ports) is capped at a total all inclusive amount of \$100,000 for the Term of this Agreement.

26. **Insurance**

T-Ports is under no obligation to insure the Stored Grain against loss, damage, destruction or at all. The Customer will at all times during this agreement keep the Stored Grain insured against all risks while it is held at the T-Ports Facility. The Customer will ensure that T-Ports is named in all relevant insurance policies as a joint insured in its capacity as custodian or alternatively a waiver of subrogation rights against T-Ports is to be included in all policies. The Customer shall provide T-Ports with evidence of such policies upon request.

27. **Indemnity**

The Customer will indemnify T-Ports and keep T-Ports indemnified from and against all losses (including consequential and indirect losses), costs, damages, expenses, charges and surcharges suffered or incurred by T-Ports arising directly or indirectly out of or in relation to:

- (a) any breach, non-observance or non-performance by the Customer of any of its obligations and/or warranties under this Agreement; or
- (b) any claim by a third party relating to the Stored Grain,

except to the extent that the negligent default or omission of T-Ports contributed to the losses, costs, damages, expenses, charges or surcharges.

28. **PPSA**

- 28.1 On delivery of Grain to T-Ports, the Customer acknowledges and agrees that T-Ports has control of the Customer's Grain for the purposes of the PPSA and for the exercise of T-Ports' rights under clause 24.
- 28.2 The Customer agrees, at its cost in all things, to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which T-Ports asks and considers required for the purposes of:
- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (b) enabling T-Ports to apply for any registration, complete any financing statement or give any notification, in connection with the Security Interest so that T-Ports has the priority it requires; or
 - (c) enabling T-Ports to exercise rights in connection with the Security Interest.
- 28.3 The Customer agrees to pay or reimburse T-Ports' reasonable costs in connection with anything done by T-Ports in connection with the registration of any Security Interest created under this Agreement and the enforcement of any such Security Interest or of any lien over the Customer's Grain.

- 28.4 T-Ports need not give any notice 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.
- 28.5 T-Ports and the Customer agree that the parties are not required to disclose any information of the kind referred to in section 275(1) of the PPSA.
- 28.6 If there is any inconsistency between T-Ports' rights under this clause and its rights under Chapter 4 of the PPSA, this clause prevails.
- 28.7 Terms used in this clause 28 have the same meaning as in the PPSA.
29. **Set-Off**
- 29.1 The Customer is not entitled to withhold payment of any disputed amount the subject of an Invoice or to set-off against the amount of an Invoice any other claim that it has against T-Ports.
- 29.2 T-Ports may in its absolute discretion deduct from, set-off against and/or otherwise reduce or deem satisfied any obligation T-Ports may have to the Customer to the extent of any obligation that the Customer may have to T-Ports (whether present or future, certain or contingent, ascertained or sounding only in damages) on any account whatsoever.
30. **Assignment**
- T-Ports may assign this Agreement or parts thereof, or otherwise delegate any of its rights and obligations under this agreement upon written consent the Customer (which consent will not be unreasonably withheld or delayed).
- The Customer may assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement only with the prior written consent of T-Ports.
31. **No Partnership**
- This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties.
32. **Waiver**
- 32.1 The failure by any Party at any time to enforce any of its powers, remedies or rights under this Agreement will not constitute a waiver of those powers, remedies or rights or affect the Party's rights to enforce those powers, remedies or rights at any time.
- 32.2 The single or partial exercise of any power, remedy or right does not preclude any other or further exercise or partial exercise of any other power, remedy or right under this Agreement.
33. **Governing law**
- This Agreement is governed by, and shall be construed in accordance with, the laws of the State of South Australia, Australia.
34. **Dispute Resolution**
- 34.1 Any dispute arising out of or relating to this Agreement or the existence, breach, termination or subject matter thereof, shall be submitted to and settled by arbitration in accordance with the GTA Dispute Resolution Rules in force at the Commencement Date, such rules forming an integral part of this Agreement and of which both parties hereto shall be deemed to be cognisant.
- 34.2 Neither Party to a dispute shall bring any action or other legal proceedings against the other in respect to any such dispute until such dispute has first been heard and determined by the arbitration tribunal in accordance the GTA Dispute Resolution Rules referred to at Clause 34.1.

35. **Force Majeure**

- 35.1 For the purposes of this Agreement, a "**Force Majeure Event**" affecting a Party means anything outside that Party's reasonable control, including but not limited to the following events or circumstances (provided they are beyond the Party's reasonable control):
- (a) accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, or like natural disasters, blockages or ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic or declarations of a state of emergency;
 - (b) strikes, stopworks, lockouts, boycotts or any other form of industrial dispute or labour shortage;
 - (c) breakdown, accidental or malicious damage or destruction of any T-Ports' Facility;
 - (d) failure, disruption or delay in transportation;
 - (e) executive or administrative order or act of either general or particular application of any Government or any official purporting to act under the authority of that Government, prohibitions or restrictions by domestic or foreign Laws, regulations or policies, quarantine or custom restrictions or prohibitions on export; and
 - (f) acts or omissions of any third party (including without limitation, Governments, Government agencies, subcontractors or customers).
- 35.2 Subject to Clause 35.4, if a Party (in this Clause, the "**Affected Party**") is wholly or partially precluded from complying with its obligations under this Agreement by a Force Majeure Event, then the Affected Party's obligations to perform in accordance with the terms of this Agreement shall be suspended for the duration of the of the Force Majeure Event.
- 35.3 As soon as reasonably possible after the Force Majeure Event arises, the Affected Party must notify the other Party of:
- (a) the nature of the Force Majeure Event;
 - (b) the cause of the Force Majeure Event;
 - (c) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event (the "**Affected Obligations**");
 - (d) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
 - (e) the expected duration of the delay arising as a result of the Force Majeure Event; and
 - (f) the steps that are being taken by the Affected Party to minimize the Force Majeure Event.
- 35.4 Despite any other provision of this Agreement, the occurrence of a Force Majeure Event will not relieve the Customer of the obligation to pay any amounts owing under this Agreement prior to notice being given in accordance with Clause 35.2 including but not limited to the payment of the Storage and Handling Fees or any other amounts owing under this Agreement.
- 35.5 If the Affected Party is relieved from performing the Agreement under Clause 35 due to Force Majeure for a period exceeding 60 Business Days, either Party may terminate this Agreement with immediate effect by written notice to the other Party.

36. **Confidential**

The Parties agree not to disclose the contents of this Agreement to any other party except for the purposes of professional or financial advice or as required by law.

37. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties relating to the supply of the Products and supersedes and extinguishes all earlier negotiations, understandings and agreements (whether oral or written) between the Parties relating to the subject matter of this Agreement.

38. **Survival of Terms**

Clauses 4.1(a), 21, 23, 24, 18, 25, 26, 27, 32, 33, 34 and 35 shall survive the termination of this Agreement.

39. **Execution and Counterparts**

- (a) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (b) Each individual signing this Agreement on behalf of a Party warrants that they are authorised to execute this Agreement and to bind that Party on whose behalf the individual is signing.