

CONTAINER PACKING AGREEMENT



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Date

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Parties

Queensland Bulk Terminals Pty Ltd (ACN 138 437 260) of 156 Colmslie Road, Murarrie, Queensland (QBT)

and

..... of(the **Client**)

Recitals

- A. QBT is the owner of a container packing facility (the **Facility**) located at 156 Colmslie Road, Murarrie, Queensland, from which QBT carries on the business of receiving, handling, storing and outturning bulk containerised grains and pulses.
- B. The Client has requested that QBT, from time to time, provide certain services to it at the Facility, which QBT has agreed to do on the terms of this Agreement.

It is agreed as follows.

1. Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context otherwise requires:

Agreement means this agreement, including each schedule or annexure, as it may be amended from time to time.

AQIS means Australian Quarantine Inspection Services.

Business Day means a day other than a public holiday, Saturday or Sunday in Brisbane.

Claim means any claim, demand, action, suit, proceeding, judgment, order, decree, damages, cost, loss or expense.

Commencement Date means the date specified in Item 1 of the Reference Table.

Consequential Loss means any indirect, special, incidental or consequential loss, any loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings and any increased operating costs suffered by or incurred by any person, whether arising in contract or tort (including negligence) or under any statute, arising out of or in connection with breach of this Agreement.

Consideration has the meaning given by the GST Law.

Consignment means a specific consignment of Product received and handled at the Facility in accordance with this Agreement. (For clarification, each quantity of Product received from the Client following a request in accordance with clause 4.1 constitutes a separate consignment, of which there may be several.)

Container Packing Application (CPA) means a request received from the Client, in the standard form, to Receive, pack and Outturn a Consignment from the Facility into containers for transport by road to the Port of Brisbane.

Container Packing Fee has the meaning given in Annexure B.

Container Packing Protocol means the protocol developed by QBT specifying the operational requirements of QBT for the provision of container packing services from the Facility, as amended by QBT from time to time.

Dispute means a bona fide dispute between the Client and QBT arising under this Agreement.

Downgraded Product means Product (or a relevant part of it) which no longer materially meets the quality attributes which the Product did meet at the time of receipt at the Facility.

Event of Force Majeure means any event or cause beyond the reasonable control of the party claiming force majeure including:

- (a) an act of God, fire, storm, lightning, flood, earthquake, pandemic or epidemic;
- (b) an act of an enemy, war, rebellion, insurrection, terrorist act, sabotage;
- (c) a shortage of materials, utility failure or adverse effect of weather or weather related events;
- (d) a change in any law, regulation or scheme; and
- (e) blockade, embargo, strike, lockout, labour dispute or disturbance.

Expiry Date means the date specified in Item 2 of the Reference Table, unless this Agreement is terminated earlier pursuant to clauses 19.

Facility Supervisor means the person at the Facility appointed to that position by QBT from time to time.

Feed Grade means product specifically for the purpose of non-human animal stock feed consumption.

Fees means the fees payable by the Client under this Agreement, as set out in Annexure B.

Good Operating Practice means a standard of operating practice generally accepted and followed by competent suppliers of services of the same kind and scope as the Services.

Governmental Authority means:

- (a) a government or government department or other body;
- (f) a governmental, semi-governmental or judicial person;
- (g) a person (whether autonomous or not) who is charged with the administration of a law; or
- (h) any other person having jurisdiction over the provision of Services or anything in relation to the provision of Services.

Grade means a grade of Product of a given Season specified in the Receival Standards for that Season, or any other grade agreed by the parties.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth), or, if that Act does not exist means 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.

Guaranteed Sum means the amount specified in Item 3 of the Reference Table.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Loss means any loss (including Consequential Loss), liability, damage, cost (including full legal costs of recovery), charge, expense, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for.

Normal Business Hours means 7am to 3pm on a Business Day.

Other Client means an entity which is not a party to this Agreement and which has contracted with QBT for the provision of storage and handling services at the Facility in relation to their grain.

Outturn means to cause Product to leave the custody of QBT, and is taken to occur as and when Product is disbursed from the facility and loaded into a Vessel or shipping container as the case may be (at which point physical custody of the Product passes from QBT to the Client (or a third party authorised by the Client or this agreement)).

Outloading means the process by which QBT outloads Product from the Facility on behalf of the Client to road transport organised by the Client (at which point physical custody of the Product passes from QBT to the Client (or a third party authorised by the Client)).

Outloading Fee has the meaning given in Annexure B.

Outturn Services has the meaning given in Annexure A.

Outturn Tonnage means a relevant tonnage of Product Out turned or Outloaded from the Facility.

Port of Brisbane means the Delivered Container Terminal at the Port of Brisbane, or such other delivery area nominated by the Port Authority from time to time.

Product means bulk commodities, including (without limitation) grain, meals, pulses (excluding Fertiliser), owned by the Client and stored and handled at the Facility from time to time.

QBT Acceptance Terms means the terms upon which QBT accepts a CPA under clause 3.2(c).

Receival Tonnage means tonnage of Product delivered from the Client, or third parties for the Client to QBT's Facility

Receival Services has the meaning given in Annexure A.

Receival Standards means, unless otherwise agreed between QBT and the Client, the classification and receival standards issued by the relevant industry body from time to time with respect to the grading and storage of Product.

Reference Table means the reference table contained in Schedule 1.

Product receival plan has the meaning given in clause 3.4.

Season means the period in which Product is harvested and delivered to the Facility, typically commencing in October of each year and ending in September of the following year.

Services means the receiving, handling, packing, storage and outturn services to be provided to the Client by QBT pursuant to this Agreement.

Shrinkage means loss in the normal storage and handling process, including loss of mass through changes in moisture content, loss in handling, and Waste. Shrinkage does not include Product lost as dust.

Shrinkage Allowance has the meaning given in Clause 10.1

Stock Information means the particulars of Product received, held in storage and Outturned on behalf of the Client over a relevant period of time.

Additional Storage Fee has the meaning given in Annexure B.

Storage Services has the meaning given in Annexure A.

Stored Product has the meaning given to that term in clause 9.2 of this Agreement.

Tax Invoice has the meaning given by the GST Law.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the period commencing on and from the Commencement Date and expiring on the Expiry Date.

Third Party Approved Storage Facilities means storage facilities that have been approved by QBT as acceptable

Vessel Cut-off means the date and time by which the Container/s need to be delivered to the loading dock at the Port of Brisbane as stated in the CPA.

Waste means Product that, as a result of the normal handling process, has been downgraded to Product of no commercial value (e.g. mouldy Product)

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- (e) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (f) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (i) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.

2. Term

2.1 Term

This Agreement commences on the Commencement Date and, except as otherwise provided in this Agreement, will terminate on the Expiry Date.

2.2 Deemed commencement

If the Client has been provided with any Services by QBT in respect of a Consignment before having executed this Agreement, the Client will be deemed to have accepted the terms and conditions of this Agreement and all such Services will be deemed to have been provided by QBT pursuant to it.

2.3 Holding Over

If any Product remains in storage with QBT after the Expiry Date, the Client will continue to be bound by the terms and conditions of this Agreement, as varied by QBT in its absolute discretion.

3. Supply of Services

3.1 Services to be provided

- (a) The following Services are to be provided to the Client by or on behalf of QBT in respect of Consignments accepted by it for Outturning:
 - (i) the Receival Services;
 - (ii) the Storage Services; and
 - (iii) the Outturn Services.
- (b) Without limiting paragraph (a), the Services include:
 - (i) the storage and handling of Product physically received into the Facility for or on behalf of the Client; and
 - (ii) the sampling, testing, weighing, storage and packing into shipping containers and transporting of Product by road to the Port of Brisbane.
- (c) If the Client requires any services not specifically required to be provided by QBT to the Client under this Agreement, QBT may agree to provide those services upon such terms and conditions as the Parties agree prior to the provision of those services.

3.2 Requests for Services – Receival and Outturn

- (a) If, during the Term, the Client wishes for QBT to provide any of the Services to it in respect of the Product, the Client must first give to QBT a CPA in accordance with the Container Packing Protocol;
- (b) The Client acknowledges having received a copy of the Container Packing Protocol;
- (c) Within the time stated in the Container Packing Protocol, QBT will indicate in writing to the Client whether the Client's CPA has been accepted and, if accepted, the terms upon which Services are intended to be provided together with the time period (the "Receival Window") during which the Client must deliver the Product to the Facility to enable QBT to execute the order in accordance with the CPA (the "QBT Acceptance Terms"). QBT may decide to accept or decline a CPA in QBT's sole discretion;

- (d) The Client may accept or decline the QBT Acceptance Terms by written notice to QBT. If the Client declines the QBT Acceptance Terms, then QBT is not obliged to provide any Services to the Client and the Client is not liable for any fees. The QBT Acceptance Terms will be taken to be accepted by the Client unless declined in writing within 2 business days;
- (e) QBT will use reasonable endeavours to provide Services to the Client following a CPA being submitted and accepted in accordance with clause 3.2(a), (c) and (d). However, the Client acknowledges that:
 - (i) QBT is not required to accept every request by the Client for the provision of Services under this Agreement if it would be impractical for QBT to do so;
 - (ii) QBT at all times has absolute discretion as to the specification and quantities of Product it will receive into the Facility from the Client; and
 - (iii) The Client must not deliver into QBT any Product that has been treated with any chemical prohibited in relation to the export or domestic delivery of grain.

3.3 Product Receival Plan

- (a) QBT is not obliged to accept Product into the Facility prior to or after expiry of the Receival Window. The Client must contact QBT by 4pm the Business Day prior to delivery to book in and receive allocated delivery times and to provide a Product Receival Plan containing the information required under the Container Packing Protocol;
- (a) QBT will use its reasonable endeavours to receive Product into the Facility to meet the standards as prescribed on the CPA;
- (b) QBT is not required to provide any Receival Services to the Client unless it has accepted the CPA and the Client has accepted the QBT Acceptance Terms;
- (c) If the Client wishes to amend any of the particulars set out in the CPA or QBT Acceptance Terms prior to a Consignment arriving at the Facility, the Client is responsible for updating the CPA and obtaining QBT's approval to the relevant changes;
- (c) QBT is not obliged to receive a Consignment at the Facility which is not delivered in accordance with the QBT Acceptance Terms and is not obliged to Outturn a Consignment from the Facility other than in accordance with the QBT Acceptance Terms.

3.4 Standard of Services

QBT will provide the Services in accordance with:

- (a) all relevant laws;
- (b) Good Operating Practice;
- (c) the Receival Standards; and
- (d) this Agreement.

3.5 Hours of operation

- (a) QBT is not obliged to receive or Outturn Product other than during the Normal Business Hours;
- (b) The Client acknowledges that Services provided by QBT outside of Normal Business Hours may be subject to additional charges, including (without limitation):
 - (i) overtime fees;

- (ii) cancellation and other fees in relation to the late arrival or cancellation of a delivery of Product by the Client,
as set out in Annexure B;
- (c) Notification of any request to receive or Outturn Product outside the Normal Business Hours must be given to QBT at least 7 days prior to the date on which the requested Services are to be provided. Any request received after such time may be refused by QBT in its absolute discretion.

3.6 Equipment

QBT will provide and operate such equipment as it determines to be appropriate to provide the Services.

4. Receival of Consignments

4.1 Standard of Product received

- (a) The Client must ensure that Product delivered to the Facility complies with the Receival Standards set out in the accepted CPA;
- (b) Where the Consignment is tested and results in quality below that set out in the accepted CPA, QBT will request the Client to authorise rejection of the Consignment or authorise QBT to receive it;
- (c) If the client authorises QBT to receive the out of specification Consignment the Client also accepts liability if other Consignments which are comingled with the out of specification Consignment do not meet the Receival Standards as nominated in the accepted CPA;
- (d) Without limiting clause 4.1(a), the Client must ensure that Product known or suspected, or which ought reasonably be known or suspected, to contain contaminants or residues (or both) is not delivered to the Facility.

4.2 Testing of Product

- (a) Upon receipt of a Consignment at the Facility, QBT will test the Product to determine:
 - (i) its type and Grade; and
 - (ii) its Receival Tonnage.
- (b) QBT may undertake any testing, including the following, to determine the type and Grade of a Consignment:
 - (i) protein, moisture and contaminant testing;
 - (ii) falling number testing;
 - (iii) test weight; and
 - (iv) Other items so specified by Client and agreement by QBT
- (c) QBT defines 'nil' as less than 0.01% by weight where a 'nil' tolerance is specified in the approved receivals;
- (d) QBT will undertake all testing in accordance with Good Operating Practice, using instruments which comply with the provisions of the *National Measurement Act 1960* (Cth) and *National Measurement Regulations 1999* (Cth);
- (e) In the absence of manifest error, QBT's testing results will (for the purposes of this Agreement) be taken to be conclusive evidence of the matters to which they relate;

- (f) Within 1 Business Day of receipt, QBT will deliver a statement to the Client specifying the type; grade and weight determinations made by QBT for each Consignment received at the Facility.
- (g) Without being under any obligation to do so, QBT may refuse to accept any Consignment which it considers to be of a different type or Grade to that notified by the Client.

4.3 Weighing

- (a) QBT will use its weigh scales at the Facility to determine the Receival Tonnage;
- (b) In the absence of manifest error, the Receival Tonnage determined by QBT in accordance with this clause 4.3 will (for the purposes of this Agreement) be taken to be conclusive evidence of the matters to which it relates;
- (c) QBT will use the receival weights of site to site movements on all stock records of the Client.

5. Storage of Consignments

5.1 Storage Services

- (a) QBT will provide the Storage Services to the Client in accordance with a request accepted pursuant to clause 3.2(c) and (d).
- (b) Unless agreed otherwise, QBT has the right to:
 - (i) commingle Consignments in accordance with clause 9; and
 - (ii) store Consignments (or parts thereof) within its silos', bulk storage facility or other parts of the Facility and move Consignments (or parts thereof) between them as QBT sees fit.
- (b) In respect of any Product stored beyond the Vessel Cut-off without fault on the part of QBT, QBT may:
 - (i) charge the Additional Storage Fee, unless a further CPA has been received and accepted under clause 3; and/or
 - (ii) give the Client 48 hours notice to collect the Product, failing which QBT may, in its absolute discretion, either transfer the Product to Bulk Storage, Outload the Consignment onto Road Transport for delivery to a Third Party Approved Storage facility or delivery to the Client at the Client's sole cost and risk.
- (c) The Client must pay to QBT on demand (as a liquidated debt) any costs incurred by QBT in exercising its rights to remove, store or deliver the Product not so removed by the Client. QBT may retain so much of the Product as QBT reasonably requires as security for payment of such costs, and if the Client fails to pay such costs on demand, QBT may sell the retained portion of the Consignment under clause 12.5.

5.2 Preservation of Product

- (a) QBT may treat all Consignments received into the Facility with approved chemicals and/or treatments, in accordance with applicable codes and regulations (including, but not limited to, the Australian Pesticides and Veterinary Medicines Authority Code and the Food Safety Australia and New Zealand Code);

- (b) For the purposes of this clause 5.2, QBT will provide to the Client a list of approved chemicals and treatments at or around the date of this Agreement and, thereafter, on an annual basis;
- (c) If the Client requests, QBT may (but is not obliged to) use different chemicals and/or treatment strategies at the Facility for certain Consignments, but the Client must reimburse QBT on demand in respect of any additional cost incurred by QBT;
- (d) If fumigation certificates (or other similar certificates) are requested by the Client in respect of a Consignment, QBT may apply a further charge with respect to the provision of such certificates;
- (e) QBT is not obliged to comply with any certification requests that have not been agreed between the Client and QBT prior to a relevant Consignment having been received;
- (f) The Client must advise QBT if any chemicals are not to be used.

6. Outturn of Consignments

6.1 Outturning of Product

- (a) QBT will provide the Outturn Services to the Client in accordance with a request accepted by QBT pursuant to clause 3.2(c);
- (b) The Container Packing Protocol applies to the Outturning of each Consignment. To the extent of any inconsistency between this Agreement and the Protocol, the Protocol prevails.

6.2 Preconditions for container packing

Without limiting any other provision of this Agreement:

- (a) the Client must complete, execute and deliver to QBT all relevant forms prescribed by the Container Packing Protocol before QBT is obliged to Outturn any Product from the Facility;
- (b) QBT is not required to Outturn any Product until it is satisfied that the procedures set out in the Container Packing Protocol have been followed by the Client;
- (c) QBT will Outturn each Consignment in accordance with:
 - (i) the CPA provided to QBT by the Client and accepted by QBT; and
 - (ii) any other market or blending requirements as agreed in writing by the parties;
- (d) the Client acknowledges that the Outturning of Product at any time is subject to local operating arrangements, legislative and regulatory requirements and compliance, fumigation requirements and periods of unavailability due to prevailing weather or other relevant adverse conditions;
- (e) QBT will only be required to collect empty containers from Port of Brisbane precinct. QBT may, if requested, agree to collect empty containers from outside that area for an additional cost as agreed.

6.3 Accreditation Requirements

- (a) The Client will hold (and warrants that it will hold and maintain at all times during the Term) an appropriate and unconditional Product export licence and any other accreditation or similar authorisations required under any law (**Accreditation Requirements**) to carry on its business (including the Outturning of Product from the Facility and loading into containers for delivery to the Port of Brisbane);
- (b) The Client undertakes not to request any Outturning Services unless and until all relevant Accreditation Requirements have been obtained and are being complied with;

- (c) If QBT reasonably becomes aware of or suspects the Client's non-compliance with an Accreditation Requirement, then QBT may at the Client's sole risk and cost, refuse to provide any Services in connection with this Agreement, until the Client provides sufficient evidence of compliance with such requirements;
- (d) The Client indemnifies QBT from and against any Loss or Claim arising in connection with any failure by the Client to comply, in whole or in part, with any Accreditation Requirements.

6.4 Weighing

- (a) QBT will use its registered weigh scales at the Facility to determine the Outturn Tonnage;
- (b) The Client acknowledges that as a result of variances with and between weighing devices, the Outturn Tonnage may be more or less than the Receival Tonnage, but the Container Packing Fee and the Shrinking Allowance will be calculated with regard to the Outturn Tonnage;
- (c) In the absence of manifest error, the Outturn Tonnage determined by QBT in accordance with this clause 6.4 will (for the purposes of this Agreement) be taken to be conclusive evidence of the matters to which it relates.

6.5 Delay

QBT will use reasonable endeavours to ensure that each Consignment is delivered to the Port of Brisbane before the relevant Vessel Cut-off for container receivals. However, if due to any cause beyond the reasonable control of QBT, QBT accepts no responsibility for any Claim or Loss suffered by the Client.

6.6 Non-shipment

If for any reason (other than default of QBT) a Consignment is not Outturned from the Facility in accordance with an accepted CPA, the Client must pay to QBT:

- (a) additional Storage Fees;
- (b) all costs incurred by QBT to reposition the Consignment within the Facility or remove it from the Facility; and
- (c) all transport variation or cancellation fees, and container repositioning fees and re-booking fees.

7. Outturn of Consignments to Vessels and Domestically

7.1 Outturn of Consignments onto Vessels

- (a) QBT may provide Outturning Services direct to Vessel to the Client in accordance with a request accepted by QBT;
- (b) The Client must complete and forward to QBT a Cargo Booking Application and follow the procedure set out in the instructions on that form and comply with such other conditions as QBT determines (which may include the Client entering into a Bulk Storage and Handling Agreement);
- (c) QBT is not required to Outturn Product until:
 - (i) the Cargo Booking Application has been properly completed and executed by the Client to QBT's satisfaction; and
 - (ii) the procedures set out in the Cargo Booking Application and Facilities Services Protocol have been followed to QBT's satisfaction; and

- (iii) the Client has complied with such other conditions as QBT determines.
- (d) QBT's obligation to provide Outturn Services direct to Vessel are subject to QBT being able to practically perform the Outturn Services.

7.2 Domestic Outloading of Product

- (a) QBT may provide Outloading Services to the Client in accordance with a request accepted by QBT;
- (b) The Client must complete and forward to QBT a Domestic Outloading Form and follow the procedure set out in the instructions on that form and comply with such other conditions as QBT determines;
- (c) QBT is not required to load Product until:
 - (i) the Domestic Outloading Form has been properly completed and executed by the Client to QBT's satisfaction; and
 - (ii) the procedures set out on the Domestic Outloading Form have been followed to QBT's satisfaction; and
 - (iii) the Client has complied with such other conditions as QBT determines.
- (d) QBT's obligation to provide Outloading Services is subject to QBT being able to practically perform the Domestic Outturn;
- (e) The minimum period for notifying QBT for road outloading Services, is prior to 4pm on the business day (in the state of Queensland) before the date that the Client requires the Outloading Services;
- (f) The Client must ensure that its road transport providers advises QBT of vehicle registration details, by 4pm on the business day prior to the date when the Outloading Services are to be performed;
- (g) QBT will confirm to the Client the designated load times;
- (h) The outloading of Product is subject to local operating arrangements, legislative and regulatory requirements and compliance, availability road transport, fumigation requirements and periods of non access and prevailing weather conditions;
- (i) The outloading of Product from the Facility onto road transport, is subject to the protocols and procedures as outlined in the Domestic Outloading Services Protocols;
- (j) The Domestic Outloading Services Protocol (DOS) applies to the domestic outloading of each Consignment. To the extent of any inconsistency between this Agreement and the DOS, the DOS prevails.

7.3 Preconditions for Domestic Outloading

Without limiting any other provision of this Agreement:

- (a) the Client must complete, execute and deliver to QBT all relevant forms prescribed by the Domestic Outloading Services Protocol before QBT is obliged to Outload any Product from the Facility;
- (b) QBT is not required to Outload any Product until it is satisfied that the procedures set out in the Facility Services Protocol have been followed by the Client;

- (c) QBT will Outload each Consignment in accordance with:
 - (i) The Domestic Outloading Request Form;
 - (ii) Any other requirements as agreed in writing by the parties.
- (d) the Client acknowledges that the Out turning of Product at any time is subject to local operating arrangements, legislative and regulatory requirements and compliance, fumigation requirements and periods of unavailability due to prevailing weather or other relevant adverse conditions.

7.4 Accreditation Requirements

- (a) The Client will hold (and warrants that it will hold and maintain at all times during the Term) any accreditation or similar authorisations required under any law (**Accreditation Requirements**) to carry on its business (including the Outloading of Product from the Facility);
- (b) The Client undertakes not to request any Outloading Services unless and until all relevant Accreditation Requirements have been obtained and are being complied with;
- (c) If QBT reasonably becomes aware of or suspects the Client's non-compliance with an Accreditation Requirement, then QBT may at the Client's sole risk and cost, refuse to provide any Services in connection with this Agreement, until the Client provides sufficient evidence of compliance with such requirements;
- (d) The Client indemnifies QBT from and against any Loss or Claim arising in connection with any failure by the Client to comply, in whole or in part, with any Accreditation Requirements.

7.5 Weighing

- (a) QBT will use its weigh scales at the Facility to determine the Outloaded Tonnage;
- (b) In the absence of manifest error, the Outloaded Tonnage determined by QBT in accordance with this clause 7.4 will (for the purposes of this Agreement) be taken to be conclusive evidence of the matters to which it relates;
- (c) QBT will use the Outloaded weights of site to site movements on all stock records of the Client.

7.6 Delay

QBT will use reasonable endeavours to ensure that each Consignment is available to Outloaded when requested. However, if due to any cause beyond the reasonable control of QBT, a Consignment is not available for Outloading, then QBT accepts no responsibility for any Claim or Loss suffered by the Client.

8. Road transport providers

The Client must:

- (a) only engage road transport providers to deliver Product to the Facility that use vehicles and equipment which is registered, insured, operated by licensed and physically capable operators, clean, safe and fit for the purpose;
- (b) procure that its road transport providers only engage employees to deliver Consignments to the Facility who:
 - (i) comply with all laws and regulations, including those in respect of safety, the environment and carriage of goods;
 - (ii) are conversant with Facility safety procedures and have undergone a site induction programme prior to entering the Facility for the first time;

- (iii) comply with the reasonable directions of the Facility Supervisor; and
- (iv) do not themselves and who do not require or request QBT employees to climb on vehicles for any purpose or assist with the securing of loads.

9. Commingling and ownership of Stored Product

9.1 Commingling

- (a) Unless otherwise agreed between the parties, QBT reserves the right to store each Consignment in common with, and commingle the whole or any part of a Consignment with, product of the same type, Grade and Season stored on behalf of any Other Client or user of the Facility;
- (b) Product received and stored by QBT of 'feed grade' may be commingled with Product of the same type and Grade but from a different Season. Product from previous Seasons is subject to a declaration prior to receipt.

9.2 Stored Product

If a Consignment is mixed and stored in bulk with other product belonging to any Other Client or user of the Facility, resulting in any Consignment delivered by the Client ceasing to have a separate physical identity and becoming a quantity commingled within a stockpile of similar, then the Product will become **Stored Product**.

9.3 Client's entitlement to Stored Product

- (a) The Client may deal with a quantity of Stored Product which is equivalent to a relevant quantity of Product received by QBT from the Client (the **Client's Entitlement**), and that Client's Entitlement will be taken to be the relevant Product received;
- (b) For the purposes of this Agreement, the Client's Entitlement will be determined by QBT, according to the following formula:

aggregate Receipt Tonnage – aggregate Shrinkage Allowance of Consignments / tonnage of commingled Product;
- (c) For the avoidance of doubt, the Client's Entitlement represents an ownership right to product of a similar type and grade to the Product delivered by the Client and tested by QBT (i.e. and not necessarily the actual Product delivered by the Client).

9.4 Dealings with Client Entitlement

- (a) The Client may deal with the Client's Entitlement as follows:
 - (i) with the prior written consent of QBT:
 - (A) transfer all or part of the Client's Entitlement to an Other Client or prospective user of the Facility via completing a Stock Transfer Form; or
 - (B) mortgage or assign all or part of the Client's Entitlement by way of security; or
 - (ii) remove the Client's Entitlement from the Stored Product in accordance with clause 6.

10. Conditions of Services

10.1 Shrinkage allowance

- (a) A shrinkage allowance (the ***Shrinkage Allowance***) of 0.5% of the quantity of the original Consignment delivered (or Client's Entitlement, if applicable) will be deducted in respect of all Product that is Outturned from the Facility;

(For clarification, if 100 tonnes of Product is received, after allowing for the Shrinkage Allowance only 99.50 tonnes will be Outturned)
- (b) After the Shrinkage Allowance has been deducted, title in the shrinkage residue (being a volume of Product representing the shrunk tonnage) will be taken to have transferred to QBT;
- (c) Any dust extracted from the Facility during the Outturning of a Consignment is included in the Outturn Tonnage and remains the property of the Client. Unless the Client requests otherwise, QBT will dispose of dust following the Outturning of a Consignment, at QBT's discretion;
- (d) The Client acknowledges and agrees that the Additional Storage Fees and fees for fumigation payable by the Client in accordance with this Agreement will be levied against the Receival Tonnage, and the Container Packing Fee and Outloading Fee will be calculated having regard to the Outturn Tonnage.

10.2 Differences in Outturn Tonnage and Client's Entitlement

- (a) If the Outturn Tonnage (either via vessel or road) for a Consignment (after accounting for the Shrinkage Allowance) is more than the Receival Tonnage, then the Client must (as QBT requires):
 - (i) pay to QBT the fair market price at the time of Out turning for the excess amount of Product Outturned; or
 - (ii) replace the excess Product Outturned with Product of the same type and Grade.
- (b) If the Outturn Tonnage (either via vessel or road) for a Consignment (after accounting for the Shrinkage Allowance) is less than the Receival Tonnage, then QBT will (at its discretion):
 - (i) make available to the Client for Outturning an additional amount of Product equivalent to the shortfall of the same type and Grade; or
 - (ii) pay to the Client the fair market price at the time of Outturning for the Product not received, having regard to its type and Grade.
- (c) If at any time the Client's Entitlement to any Product of a particular type and grade is less than one tonne, the Client's Entitlement to that Product will be deemed to have no value and neither party will have any liability to the other in respect of it.

10.3 Record-keeping

- (a) QBT will keep separate records of the Receival Tonnage and Outturn Tonnage determined pursuant to clauses 4.4, 6.4, and 7.4 for each type and Grade of Product received and Outturned;
- (b) QBT will keep daily records of the total amount of Stored Product in its possession;
- (c) QBT will provide to the Client (via email) daily reporting of all Product received, stored and out turned or any other information requested by the Client that QBT agrees to provide;
- (d) The Client warrants that any information or documentation it provides or arranges to be provided to QBT (including all shipping or other documents) which contain details of type, grade, origin,

location and treatment of Product (**Client Documents**), will contain accurate, complete and truthful statements and descriptions, and the Client indemnifies QBT from and against any Claim or Loss suffered, threatened, commenced or arising in any way out of any misrepresentation or error.

10.4 Stock Information

- (a) QBT will provide the Client with current Stock Information on a daily basis, unless otherwise agreed;
- (b) QBT will use its best endeavours to provide current Stock Information to the Client in a timely and accurate manner. However, QBT is not liable to the Client or any other person for any Claim or Loss arising out of or in connection with the supply of Stock Information. The Client expressly releases QBT from any Loss suffered or incurred by the Client in connection with any Claims relating to any Stock Information;

10.5 Protocols

- (a) The Client acknowledges that QBT may vary the Container Packing Protocol from time to time for the better and more efficient delivery of the Services, to comply with laws and regulation or otherwise as QBT sees fit in its discretion by giving 30 days notice;
- (b) The Client must comply with such Protocols as notified by QBT from time to time.

11. Responsibilities of the Client

11.1 Responsibilities of the Client

The Client will be responsible for:

- (a) transportation of each Consignment to the Facility, including the cleanliness and fitness for carriage of any mode of transportation nominated by the Client (and if AQIS or QBT determine that the Client's selected mode of transportation is not clean or fit for carriage), then QBT may suspend or refuse to provide any of the Services (and the Client agrees that QBT will not be liable for any resulting delay, Loss or Claim);
- (b) supplying the Facility Supervisor with forecast delivery requirements as soon as shipping information becomes available to assist in efficient scheduling of Facility operations, and informing the Facility Supervisor immediately on becoming aware of any significant changes to the forecast previously provided;
- (c) providing all relevant information designated by QBT, both in this Agreement and otherwise, at the relevant respective times required;
- (d) any loss or damage caused to any Product during road transport of the Product from the Client's works or other point of production or collection to the point of delivery at the Facility;
- (e) insuring the Product against loss or damage whilst the Product is in transit and in storage per clause 15;
- (f) providing to QBT all appropriate information regarding the Client's operations necessary for QBT to carry out its functions under this Agreement in a timely manner;
- (g) any damage to any part of the Facility caused by any Truck owned or ordered by the Client, or loss due to any action or mechanical failure by any Truck owned or ordered by the Client;

- (h) obtaining, keeping current and complying with the Accreditation Requirements, in accordance with clause 7.3.

11.2 Continuing ownership of Product by the Client

The Client maintains property in, and title to, the Product (or, where relevant, the Client's Entitlement) throughout the term of this Agreement, and acknowledges and agrees that the Product is handled and stored by QBT at the Client's risk.

11.3 Directions of Facility Supervisor

The Client must ensure that all Trucks contracted by the Client to deliver Product to the Facility follow all of the directions of Facility Supervisor when entering, remaining on and leaving the Facility.

11.4 Maintenance of Facility

From time to time QBT may shut-down all or part of the Facility for maintenance. During such shut-downs, QBT will not be obliged to provide the Services, to the extent QBT determines it is impractical to do so. QBT will use reasonable endeavours to advise the Client in advance of any scheduled maintenance that is, or is likely to, interfere with the provision of Services.

11.5 Safety plan

Prior to the Commencement Date, QBT will give to the Client a copy of QBT's safety plan for the Facility. The Client will ensure that all of its employees, agents and contractors familiarise themselves with the plan and comply with it at all times (as it may be amended, varied or replaced).

12. Charges and payment

12.1 Charges

- (a) The Client will pay to QBT the following charges for the provision of the Services:
 - (i) the Container Packing Fee for the receipt storage and outturn of Product in accordance with clause 4, 5 and 6;
 - (ii) the Additional Storage Fee for the storage of Product after the Vessel Cut-off in accordance with clause 5;
 - (iii) the Outloading Fee for the Domestic Outload of Product in accordance with clause 7; and
 - (iv) any other charges and Fees in accordance with this Agreement or set out in Annexure B;
 - (v) Each of the charges payable by the Client in clause 12.1(a), including their method of calculation, are described in Annexure B.

12.2 Alteration to Charges

- (a) The Client acknowledges that QBT may, following consultation with the Client, vary the charges specified in Annexure B from one Season to the next and which will be contained in a new agreement;
- (b) The Client acknowledges that QBT may, following consultation with the Client, vary the charges specified in Annexure B by providing 60 days notice;

- (c) The Client acknowledges that QBT may, following consultation with the Client, vary the charges specified in Annexure B by providing 30 days notice in writing if QBT's direct or indirect costs are increased because:
 - (i) there is a change to any Commonwealth, State or local laws; or
 - (ii) any new laws which come into effect (including, without limitation, potential carbon tax or similar emissions trading scheme).

12.3 Invoicing

QBT may issue invoices to the Client for the Services provided in the following manner:

- (a) the Container Packing Fee will be invoiced when the Product has been Outloaded or Outturned from the Facility;
- (b) the Additional Storage Fee may be invoiced weekly in arrears; and
- (c) Domestic Outloading Fee (and any other charges payable by the Client in connection with this Agreement) will be invoiced weekly in arrears following the Outloading of a Consignment of the Facility.

QBT reserves the right to invoice and receive payment in full for Outturning and related services prior to commencing the Outturn of any Consignment.

12.4 Terms for payment

- (a) Unless otherwise specified by QBT the Client must pay all Fees, charges and other moneys payable by it under this Agreement within **14 days** of the date of each invoice, unless Client has not been approved for credit per Clause 14;
- (b) QBT may, but is not obliged to, provide Services under this Agreement when amounts are due by the Client but unpaid;
- (c) QBT may amend the terms of payment specified in this clause 12.4 if the Client does not strictly comply with them, and may refuse to receive a Consignment, despite having accepted a CPA, if amounts are due by the Client under this agreement or any other agreement the Client has with QBT, but unpaid;
- (d) QBT reserves the right to adjust any invoice issued to the Client if it contains an error, or to issue a replacement invoice for the adjusted amount.

12.5 Late payment

- (a) If the Client fails to pay any amount under this Agreement on the due date, interest will accrue on the overdue amount from the due date up to the date of actual payment, at the rate of 15% per annum;
- (b) For so long as amounts are due and owing under this Agreement but unpaid by the Client, QBT may retain possession of Product;
- (c) Following the expiry of 30 days notice to the Client, QBT may sell the Product (in a manner determined at the sole discretion of QBT) and apply the sale proceeds in payment of any outstanding amount.

12.6 No set-off

The Client is not entitled to withhold payment of any disputed amount for which an invoice has been issued to the Client, or to set-off any payment due from QBT against the amount of any invoice or other claim that it may have against QBT.

13. GST

13.1 To be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

13.2 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

13.3 Revenue exclusive of GST

Any reference in this Agreement to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST (unless otherwise expressly stated).

13.4 Cost exclusive of GST

Any reference in this Agreement (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST (unless otherwise expressly stated).

13.5 GST obligations to survive termination

This Clause will continue to apply after expiration or termination of this Agreement.

14. Credit arrangement

14.1 Credit arrangements

Prior to any of the Services being provided under this Agreement, the Client will comply with at least one of the following credit arrangements (as specified by QBT):

- (a) the Client must provide to QBT, in a form approved by QBT, an irrevocable, unconditional and non-expiring bank guarantee (in a form satisfactory to QBT), or a security deposit to be maintained and available at all times, for an amount of not less than the Guaranteed Sum.

QBT may from time to time and at its sole discretion apply some or all of the bank guarantee or security deposit in respect of any Fees or other money which may from time to time be due and payable by the Client to QBT. The amount of the bank guarantee or security deposit may be reduced if QBT so agrees and must be increased should QBT so require as the amount of Product expected to be the subject of this Agreement decreases or increases. If the Client has an obligation to provide a bank guarantee or security deposit under more than one agreement with QBT, it may provide the one bank guarantee or security deposit to meet the requirements of

all agreements it has with QBT, so long as the total security provided is sufficient to cover the amounts required in each of the agreements; or

- (b) the Client will have the benefit of the 14 day payment terms for the payment of Fees in Clause **4,5,6 and 7**, provided that the Client otherwise complies with all of its obligations pursuant to this Agreement and any other agreement with QBT or its Related Bodies Corporate and makes payment to QBT in respect of any service charges or any other moneys which may from time to time be due and payable by the Client to QBT under this or any other Agreement with QBT or its Related Bodies Corporate;
- (c) the Client pre-pays the fees set out in clause **6** for the Services provided by QBT in respect of each Consignment. Following a request from the Client, QBT will provide an estimate of the amount to be paid for such Services and the estimated amount will be paid by the Client prior to provision of the Services. For clarification, if QBT's estimate exceeds the actual Fees for the Services subsequently provided, QBT will reimburse the excess amount to the Client. Similarly, if QBT's estimate is less than the actual Fees for the Services, the Client must pay the difference notified by QBT.

14.2 Applying for Credit

- (a) The Client must complete a Credit Application Form and submit the Form to QBT for assessment 15 days prior to the provision of any services;
- (b) QBT will advise the Client of the outcome of the credit assessment within 7 business days;
- (c) If the Client is unsuccessful in obtaining credit, all services being requested by the Client must be paid as and when incurred.

14.3 No obligation to extend credit

Where the Client does not pay for Services when due, QBT is not obliged to continue to provide the Services unless and until the Client pays all outstanding amounts in full (or any other arrangements which QBT has agreed to have been entered into).

15. Insurance

- (a) Product is stored, handled and transported from the Facility at the Client's risk. During the Term the Client must effect and keep current an insurance policy covering all usual insurable risks of accidental Loss or damage to the Product at the Facility and while in transit (including disease and vermin infestation);
- (b) The Client will at all times during the Agreement insure and keep insured against all risks all Product the property of the Client held by QBT at its Facility or in transit. The Client will ensure that QBT is named in each and every policy of insurance as a joint insured in its capacity as custodian or alternatively a waiver of subrogation rights against QBT is to be included in each such policy of insurance;
- (c) QBT reserves the right to request the Client to submit to QBT written evidence that the Client has insured the Product in accordance with clause 15(b).

16. QBT's liability for damages

16.1 No liability for reduction in quality

QBT will not be liable to the Client for any Claim or Loss including in relation to any alleged or actual reduction in standard or quality of Product where:

- (a) the diminution in quality or standard of Product has not resulted in the downgrading of the Product from the grade to which the Product was classified on receipt by QBT;
- (b) QBT has received the Product in accordance with the Receival Standards or other minimum receival specifications and sampling methodology agreed in writing between QBT and the Client;
- (c) the Client has requested QBT to blend two or more grades of Product into one grade of Product and the blended Product is at least the same quality of the lower grade; or
- (d) the moisture content of the representative sample for all grades unloaded is within 0.3% of the maximum allowable under the Receival Standards.

16.2 Limitation on liability for Downgraded Product

If the Receival Standards are not met, any Claims made by the Client against QBT in respect of Downgraded Product will be limited to the following formula:

$$\text{Limit} = T \times (P - V)$$

Where:

- T = the quantity in tonnes of Product downgraded from one grade to a lower grade;
- P = the fair market value of the Product, had it not been downgraded, on the date at which the Claim was made; and
- V = the fair market value of the Downgraded Product on the date at which the Claim was made.

16.3 Limit for Claims

Where a Claim is recognised by QBT to be valid and QBT agrees to compensate the Client or, in any other event where QBT is liable to compensate or indemnify the Client, then QBT's maximum liability in respect of any Claim will not exceed \$150,000 per event.

16.4 Actions by the Client prior to a Claim

QBT's liability for a Claim under this clause 14 is subject to:

- (a) the Client having advised QBT immediately of any suspected Downgraded Product and allowing QBT to inspect it;
- (b) QBT having been allowed a reasonable opportunity to mitigate any losses;
- (c) Client informing QBT of any potential Claim against QBT within 2 business days of receiving the Product;
- (d) the Client having provided QBT with a sample of the Downgraded Product the subject its Claim; and
- (e) QBT having been allowed to test the sample and compare it with any sample Product retained by QBT.

16.5 Downgraded Product

- (a) QBT may, in its discretion, mitigate or satisfy any Claim in respect of Downgraded Product by:
 - (i) blending a sufficient quantity of other Product so as to upgrade the Product;
 - (ii) substituting (at QBT's expense) other Product of the same type of the required grade and quantity; or
 - (iii) taking any other course of action agreed by the parties, acting reasonably.
- (b) In no circumstances is QBT liable for any Consequential Loss relating to Downgraded Product, or any claim made by or through the Client.

16.6 Defects and contaminants

The Client acknowledges and agrees that QBT is not liable for any quality Claims resulting from the detection of defects and contaminants detected at levels of 0.01% by weight or less.

16.7 Chemical residues

QBT does not take any responsibility for chemical residues detected in any Product.

16.8 Non-conformity of the Product

The Client acknowledges that QBT, while using best endeavours to Outturn Product in accordance with the Receival Standards, is not liable for any non-conformance to the specification where the attribute does not form part of the original testing procedure or cannot be comprehensively determined by QBT at the time of receival at the Facility. This includes, but is not limited to, the presence of objectionable, toxic and chemical residues.

17. Exclusion of liability

17.1 General exclusion

Unless specifically provided otherwise in this Agreement, QBT is not liable for any Loss or Claim, including damage, destruction, contamination or loss of Product, suffered by the Client, unless (and then only to the extent that) such is caused directly by the negligence of QBT or its employees.

17.2 Exclusion of transportation liability

The Client acknowledges that any transportation of the Product is at the Client's risk, and QBT is not liable for any Loss incurred by the Client caused by or otherwise relating to the transportation of Product.

17.3 No liability for Product

Where Product of any person other than the Client is affected by a contaminant or residue but is nevertheless delivered to the Facility, QBT will not be liable to the Client or to any other person for any loss (including Consequential loss), cost, damage or expense suffered or incurred directly or indirectly as a result of that contaminated delivery.

17.4 Time delays

Without limitation, QBT is not liable to the Client or any third party, or any person claiming through or on behalf of the Client, for any costs, losses or delays, whether direct or indirect, that may arise if a Consignment cannot be Outturned from the Facility at the designated time for any reason.

18. Force Majeure

- (a) If any party is prevented, hindered or delayed from performing any of its obligations under this Agreement (other than an obligation to pay money) by an Event of Force Majeure, then as long as that situation continues, that party will be excused from performance of such obligation to the extent it is so prevented, hindered or delayed, and the time for performance of such obligation will be extended accordingly;
- (b) A party affected by an Event of Force Majeure will immediately notify the other party of its occurrence and its effect or likely effect, and (subject to paragraph (c)) use all reasonable endeavours to minimise the effect of the Event of Force Majeure and to bring it to an end;
- (c) No party will be obliged to settle any strike or other industrial action, dispute or disturbance of any kind, except on terms wholly satisfactory to it.

19. Termination

19.1 Termination by QBT

This agreement may be terminated by QBT:

- (a) immediately by written notice to the Client, if the Client:
 - (i) has a liquidator or administrator appointed to it;
 - (ii) fails to pay any amount that is due and payable under this Agreement or any other agreement between the Client and QBT;
 - (iii) breaches a material term, representation, obligation or warranty as set out in this Agreement or any other agreement between the Client and QBT;
 - (iv) fails to follow a direction of QBT made reasonably and lawfully; or
 - (v) commits an act or omission which compromises the safety of any person or brings QBT into disrepute; or
- (b) by written notice to the Client, if the Client commits a breach of any other provision of this Agreement or any other agreement between the Client and QBT, and does not remedy the breach to QBT's satisfaction within 14 days after being requested by QBT to do so.

19.2 Payment of Fees and charges

Despite clause 12.4, the Client must pay all Fees and other amounts due and payable in connection with this Agreement no later than 5 Business Days following the date of termination.

19.3 Failure to remove Product after termination

- (a) If the Client does not procure the Product to be Outturned from the Facility within 7 days of the termination of this Agreement, then the Product will be deemed to have been abandoned by the Client and to have become the property of QBT, which may at its option cause the Product to be removed or stored in the manner QBT in its absolute discretion considers fit (at the risk and at the cost of the Client).
- (b) The Client must pay to QBT on demand (as a liquidated debt) any costs incurred by QBT in exercising its rights to remove and store the Product not so removed by the Client.

19.4 Rights after termination

Termination of this Agreement will not prejudice any rights of either party that have accrued prior to the date of termination and the provisions set out in clauses 12, 16,17 and 24 will survive termination of this Agreement.

20. Assignment

This Agreement may be assigned (including by way of novation) by QBT to a successor in title to the land on which the Facility is located, but must not be assigned by the Client without the prior written consent of QBT.

21. Dispute resolution

21.1 Dispute process

- (a) A party raising a Dispute under this Agreement (**Initiating Party**) must give the other party (**Recipient Party**) a notice setting out brief details of the Dispute (**Dispute Notice**).
- (b) Within 5 Business Days of service of a Dispute Notice, the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party's position in respect of the Dispute (**Reply Notice**).
- (c) Within 10 Business Days of service of a Reply Notice, senior representatives from each party, with authority to settle the Dispute, will meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.
- (d) If the Dispute is not resolved within 20 Business Days after the date of the Reply Notice, the dispute must, unless the parties agree otherwise, be submitted to mediation in accordance with the following:
 - (i) the dispute will be referred to formal mediation in Queensland to be mediated by a single mediator appointed by agreement of the parties or if they fail to agree within 3 Business Days, a mediator appointed by either:
 - (A) the President of the Queensland Chapter of the Institute of Arbitrators and Mediators of Australia (**IAMA**); or
 - (B) the Chief Executive Officer of Grain Trade Australia (**GTA**).
- (e) Unless the parties agree otherwise, a mediation conducted by a mediator appointed by IAMA will be conducted under the IAMA Mediation Rules and a mediation conducted by a mediator appointed by GTA will be conducted under the GTA Trade and Dispute Resolution Rules (whether or not the mediator is a legal practitioner).
- (f) The parties may appoint a person, including a legally qualified person to represent it or assist it in the mediation.
- (g) The costs of the mediator will be borne equally by the parties with each party to bear their own costs relating to the preparation for and attendance at the mediation.
- (h) The mediation process will terminate within 20 Business Days of the appointment of the mediator, upon which either party will be entitled to commence court proceedings in relation to the dispute.
- (i) Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a Court.

21.2 Obligations of the parties during the Dispute

During any Dispute resolution process:

- (a) each party will comply with its obligations, and may exercise its rights under this Agreement; and
- (b) the fact that a party ceases to do anything in Dispute will not be taken to be an admission by that party that it had breached, or had been in breach of, this Agreement.

21.3 Dispute regarding grade, quality and other testing

Despite clause 21.1(d), any dispute concerning the grade, quality, sampling, testing or classification of the Product which QBT and the Client cannot resolve may be referred to a accredited independent testing facility nominated by QBT (after consultation with the Client), for resolution.

22. Notices

22.1 Notices

A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the party giving it;
- (b) addressed to the party to whom it is to be given; and
- (c)
 - (i) delivered or sent by prepaid main to that Party's address; or
 - (ii) sent by fax to that Party's fax number and the machine from which it is sent produces a report that states that it was sent in full.

22.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail, on the third Business Day after posting;
- (b) if it is delivered or sent by fax:
 - (i) by 5.00pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day.

22.3 Address for Notices

A Party's address and fax number are those set out in the Reference Table, as amended at any time by notice given in accordance with this clause 22.

23. Confidentiality

- (a) 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.
- (b) Unless it has received QBT's express prior written approval, the Client must not:
 - (i) make any statements or authorise or publish any material in relation to any QBT personnel, site, facility or any matter connected to the Services or this Agreement; and

- (ii) make any statements or authorise or publish any material which may be construed as having been approved by or endorsed by QBT.

24. General provisions

24.1 Legal operation

QBT is not required to perform any obligation under this Agreement if, in QBT's opinion, it would contravene or might contravene any Commonwealth, State, Territory or Local Government statute, code or other law, including any condition of accreditation or access or under any laws, government or endorsed scheme or arrangement.

24.2 Exercise of Rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise. A party is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising the right, power or remedy.

24.3 Remedies cumulative

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

24.4 Governing law

This Agreement is governed by and will be construed in accordance with the laws for the time being in force in the State of Queensland and the parties agreed to submit to the non-exclusive jurisdiction of the courts of that State in Brisbane.

24.5 Costs

Each party must bear its own legal and other costs and expenses of and incidental to the negotiation, preparation and execution of this Agreement.

24.6 Amendment

This Agreement may only be varied or replaced by an agreement executed by both parties.

24.7 No proprietary interest

This Agreement is not be construed as a lease or licence to the Client of any storage facilities or land upon which any storage facility is located.

24.8 Counterparts

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

24.9 Entire understanding

- (a) This Agreement (including the schedules or annexures to it) contains the entire understanding between the parties as to its subject matter;

- (b) Each party acknowledges that, in entering into the Agreement, it has not relied on any warranty, representation or other promise of any nature not contained in the Agreement;
- (c) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document, including any interim access arrangements provided pursuant to the Access Undertaking, are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters;
- (d) No oral explanation or information provided by any party to another affects the meaning or interpretation of this document; or constitutes any collateral agreement, warranty or understanding between any of the parties.

Schedule 1

Reference Table

Item 1: Commencement Date

Item 2: Expiry Date

Item 3: Guaranteed Sum

Item 4: Address for notices:

Executed as an Agreement

Signed for and on behalf of **Queensland Bulk Terminals Pty Ltd** by its authorised representative in the presence of:

Authorised Representative Signature

Witness

Print Name

Print Name

Signed for and on behalf of
[Client],
ACN []: by its authorised
representatives

Director Signature

Director/Secretary Signature

Print Name

Print Name

Annexure A

Services

Receival Services include:

With respect to each Consignment, the Receival Services include (but are not limited to):

- a) sampling, testing and classification of Product;
- b) weighing;
- c) tipping and inward elevation to the Facility;
- d) segregation; and
- e) placing into silos'.

Storage Services include:

With respect to each Consignment, the Storage Services include (but are not limited to):

- a) the physical storage of Product;
- b) standard Product protection and maintenance;
- c) dis-infestation; and
- d) recording of relevant information.

Outturn Services include:

With respect to each Consignment, the Outturn Services include (but are not limited to):

- a) monitoring quality of Outturned Product;
- b) blending;
- c) weighing;
- d) install a suitable bulkhead and packing into containers for shipping;
- e) outloading onto road transport or delivery of packed containers to Port of Brisbane;
- f) provide a packing list within a reasonable time once the last container is packed; and
- g) the recording of relevant information.

Services to which this Agreement does apply

The Client acknowledges and agrees that this Agreement does not apply to:

- (a) bulk storage;
- (b) outturning Product onto Vessels at the facility;
- (c) the importation of Product from Vessels arriving at the Facility; and
- (d) receival and outloading of Bulk Liquid,

which are or may be subject to separate arrangements between QBT and the Client.

Annexure B

Fees (for the Season current at the date of this Agreement)

Container Packing Fee on acceptance by QBT of a Container Packing Application;

\$..... per metric tonne

This includes:

- Receival of Product
- Sampling and testing of Product
- Storage of Product until not later than the Vessel Cut-off
- Outturn into containers and delivery to the Port of Brisbane
- Preparation and lodging of PRA's
- Sending samples to local Independent lab
- AQIS Inspection

Fumigation to be charged separately where applicable

Additional Storage Fee for the storage of Product prior to commencement of the Delivery Window (if accepted by QBT) or after Vessel Cut-off Date in accordance with clause 5;

- \$650 per day (or part day) for each silo in use. If Comingled \$1 per metric tonne per day. Unless otherwise agreed.

Outloading Fee for the Domestic Outload of Product in accordance with clause 7

- \$13 per metric tonne

Other fees and charges

Overtime fees (cl. 3.5): At cost as determined by QBT on case by case basis

Transfer to Bulk Storage (clause 5.1(b):

- | | |
|--------------------------|---------------------------------|
| - Transfer fee: | as agreed on case by case basis |
| - Bulk storage fee | as agreed on case by case basis |

Fuel Surcharge

The Client will reimburse QBT the amount of any fuel surcharge payable by QBT to the container transport company for transporting each Consignment in accordance with this Agreement.