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## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this Agreement:

**“Addendum”** means any addendum modifying this Agreement signed by the Company and the Client

**“Binned Grade”** means the Grade of Grain stored in a Cell.

**“Blending”** means either the mixing of originally segregated Binned Grades within a Facility or during the outturn process.

**“Bulk Wheat”** means wheat for export from Australia other than wheat that is exported in a bag or a container capable of holding not more than 50 tonnes of wheat.

**“Business Day”** means any day on which the principal office of the Company is open for business and does not include a Saturday, Sunday or day that is a public holiday in the State of Victoria.

**“Cargo Assembly Plan”** means the document of that title provided by the Client to the Company from time to time.

**“Cell”** means a physical unit for storage of Grain.

**“Charges”** means those charges calculated in accordance with Schedule A.

**“client”** means a person that uses the Facilities for Storage of Grain and may, if the context permits, include the Client.

**“Client”** means the party to this agreement that is not the Company and where applicable its contractors and agents and their successors and permitted assigns.

**“Client Grain”** means that quantity of Grain held by the Company for the Client within all Facilities.

**“Commingling”** is the situation where different Grades of Grain are stored in the same Cell.

**“Company”** means Emerald Logistics Pty Ltd ABN 39 087 280 260.

**“Damaged Grain”** means Grain that has been damaged in an unusual incident or event to such an extent that it can no longer be classified by

any Receival (Classification) Standards and is only of salvage value or suitable for disposal.

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

**“Delivered”** means, in respect of Grain, the point and time at which Grain first arrives at a Facility.

**“Dust”** means Grain dust attributable to the Client Grain extracted from dust collection plants in a Facility, but excluding Damaged Grain.

**“Emerald”** means Emerald Logistics Pty Ltd.

**“Facility”** means any Grain receival, storage and handling facilities used by the Company in connection with the provision of Receival or other services to the Growers and/or the provision of the Services to the Client, including the Upcountry Facilities and the Port Terminal.

**“Force Majeure Event”** has the meaning given to it in clause 20.1

**“GMO”** or **“Grain Movement Order”** means an authorisation to Outturn Grain issued by the Client:

- (a) in writing, or
- (b) by electronic mail, or
- (c) via the Company’s grain management system accessible through the Company’s website.

**“Grade”** means a grade of Grain of a given Season specified in the Receival Standards of that same Season, or any other grade agreed by the Parties.

**“Grain”** means the seed of any crop or pasture species including Pulses and oilseeds.

**“Grain Trade Australia”** means the organisation previously known as the National Agricultural Commodities Marketing Association.

**“Gross Negligence”** means, where a duty is owed by the Company to the Client, an act or omission done with reckless disregard, whether consciously or not, for the consequences of the act or omission.

**“Grower”** means a person or entity involved in the growing of Grain, the contact details for whom have been registered by the Client or the Company or a national grower register.

**“Grower Storage”** means Grain stored by the Company on behalf of a Grower.

"**GST**" means the tax imposed by the GST Law.

"**GST Law**" has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).

"**Harvest**" means the period of time during which grain may be harvested and Delivered, this is usually between 1 October in the first year and 31 January in the following year.

"**Industrial Dispute**" includes a strike, stop-work, boycott or lockout.

"**Insolvency Event**" means in relation to a Party:

- (a) a receiver, receiver and manager, administrator, trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Party and is not removed within 30 days;
- (b) the Party suspends payment of its debts generally;
- (c) the Party is insolvent within the meaning of the Corporations Act 2001 (Cth);
- (d) the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application (other than a vexatious application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other Party and, in the case of an application, the application is not withdrawn or dismissed within 60 days; or
- (f) an administrator is appointed under Division 2 of Part 5.3A of the Corporations Act 2001 (Cth) and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days.

"**Interest**" means the legal title that a client holds to a percentage of Stored Grain, being equivalent to the percentage which Grain of a particular type and Grade received from that client bears to the total Stored Grain of that particular type and Grade.

"**Non Company Facilities**" means storage facilities which are not owned, either in whole or in part, by the Company or are not affiliated with the Company via operating agreements. "Non Company Facility" has a corresponding meaning.

"**Outturn**" means:

- (a) the loading of Grain from a Facility for transportation to Non Company Facilities or such other place as directed by the Client;
- (b) the disposal of Damaged Grain; or
- (c) any other outturn required and directed by the Client for the purposes of stock accounting; and
- (d) as evidenced by a GMO.

"**Outturn Entitlement**" has the meaning given to it in clause 7.1.

"**Outturn Protocol**" means the document/s of that title as published on the Company website at the time of Outturn and includes, as relevant, the Outturn Protocol for port, road and rail.

"**Party**" means, depending upon the context, either the Company or the Client.

"**Port Terminal**" means the Company's seaboard terminal at 18-20 Enterprize Road West Melbourne or such other port terminals as may be operated by the Company.

"**Port Loading Protocols**" means the document of that title as published on the Company website at the time of the relevant activity.

"**Pulses**" means chickpeas, lupins, field peas, faba beans, lentils, vetch, broad beans and any other grain legumes.

"**Purchase Options**" means the various alternative products, including price at depot, offered or to be offered to Growers by the Client for the purchase of Grain in accordance with the relevant documents published on the Company website at the time the Grain is Received.

"**Purchase Options Procedures**" means the purchase options procedures published on the Company website at the time the Grain is Received.

"**Receival**" means the process of Testing, weighing, tipping, inwardly elevating and placing the Grain into the Facilities on behalf of a Grower or client. "**Receive**" has a corresponding meaning.

**“Receival Standards”** means the standards as published on the Company website (Commodity Information) in respect of Receival, at the time the Grain is received, and in respect of Outturn, at the time of Outturn.

**“Regrade”** means the re-grading of Grain of the Grade of one Season to the same Grade of Grain of another Season or as the case may be the re-grading of Grain of one Grade of a Season to a different Grade of Grain of the same or different Season.

**“Sampling Methods”** means the document of that title as published on the Company website, in respect of Receival, at the time the Grain is received, and in respect of Outturn, at the time of Outturn.

**“Season”** means the period in which most of the Grower’s Grain is harvested and delivered to Company sites, typically commencing in October in one year and going through to the February of the following year.

**“Segregation”** means the physical separation of the storage of Grain by type, Grade, variety or such other distinguishing quality as may be determined by the Company.

**“Services”** means the services provided by the Company to the Client under this Agreement in respect of all Grains at the Facilities and includes:

- (a) posting Purchase Options;
- (b) Receival;
- (c) Storage;
- (d) Grain handling and Outturn; and
- (e) Grain export services.

**“Shrinkage”** means that quantity of Client Grain, which is lost in the normal storage and handling process including:

- (a) loss of mass through changes in moisture content;
- (b) handling; and
- (c) Waste,

but does not include Grain lost as Dust or Damaged Grain.

**“Shrinkage Allowance”** means the allowance for Shrinkage specified in Schedule A or such other allowance for Shrinkage as may be agreed between the Company and the Client from time to time.

**“Sprouting Management Strategy”** means the document of that title as published on the Company website at the time of Testing.

**“Storage”** means warehousing, control and movement of Grain. “Store” has a corresponding meaning.

**“Stored Grain”** means, in respect of a particular type and Grade of Grain, all of the Grain of that type and Grade Stored by the Company at its Facilities, in which the Company’s clients have an Interest.

**“Testing”** means testing as described in clause 5.

**“Upcountry Facility”** means a Company facility for Receival and storage of Grain including those listed on the front page of this Agreement but excluding the Port Terminal.

**“Washout Price”** means the price determined in clause 7.3.

**“Waste”** means Grain that as a result of the normal handling process has been downgraded to Grain of no commercial value, for example mouldy grain, grain mixed with dirt and stones.

**“Weather Working Day”** means a day on which weather permits continuous work.

**“Working Days”** means all days except Saturday, Sunday and Public Holidays of the State in which the relevant Facility is located.

## 1.2 Rules for interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

A reference to:

- (a) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document, terms and conditions, or a provision of a document or terms and conditions, is to that document, terms and conditions or provision as amended, supplemented, replaced or novated;
- (c) a Party to this Agreement or to any other document or terms and conditions includes a permitted substitute or a permitted assign of that Party;

- (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) anything (including a right, obligation or concept) includes each part of it;
- (f) 'A\$', '\$A', 'dollar', '\$' or any charge making reference to a monetary amount is a reference to Australian currency; and
- (g) a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of this Agreement unless otherwise stated.

In addition:

- (a) a singular word includes the plural, and vice versa;
- (h) a word which suggests one gender, includes the other genders;
- (i) if a word or phrase is defined, a matching word or phrase containing another part of speech has a corresponding meaning, whether or not the word or words in the matching phrase commence with a capital letter;
- (j) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (k) the word "agree" includes an undertaking or other binding arrangement or understanding, and, unless otherwise qualified in this terms and conditions, whether or not in writing;
- (l) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement;
- (m) in the event of an inconsistency or conflict between the provisions of the main body of the Agreement and the relevant schedule, the provisions of the relevant schedule shall prevail; and
- (n) in the event of an inconsistency or conflict between the provisions of this Agreement and a Port Terminal Services Access Agreement, the provisions of the Port Terminal Services Access Agreement shall prevail in respect of the storage and handling of Bulk Wheat at the Port Terminal.

## 2. Term and Services

- 2.1 Subject to this Agreement and in consideration of the Client paying the Company the Charges, the Company agrees to provide the Services to the Client from 1 October 2017 to 30 September 2018 (the "**Term**").
- 2.2 The Client is bound by the terms and conditions of this Agreement from the earlier of:
  - (a) the date of execution of this Agreement; or
  - (b) the date, during the term, that the Company provides Services to the Client, including in respect of Grain of Seasons prior to the 2017/2018Season.
- 2.3 This Agreement supersedes any previous agreement between the Company and the Client for the provision of the Services or services similar to the Services.
- 2.4 If the Company continues to provide Services to the Client 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 19.

## 3. Purchase Options

- 3.1 Subject to and in accordance with the Purchase Options Procedures the Company will make available to Growers the Client's Purchase Options at the Facilities

## 4. Receival Standards

- 4.1 All Grain that is to be Received and Stored by the Company for the Client must comply with the Receival Standards. If Grain has characteristics which do not comply with the Receival Standards the Company may, in its absolute discretion, refuse to Receive that Grain.
- 4.2 The Company may, in its discretion, reasonably refuse to Receive Grain known or suspected to contain chemical contaminants or residues or genetically modified (**GM**) events in Canola.
- 4.3 The Client must not deliver, and must take reasonable steps to ensure that none of its suppliers deliver, Grain known or suspected to contain chemical contaminants or residues, to any of the Facilities.
- 4.4 The Client indemnifies the Company against all loss (excluding consequential and indirect loss) resulting from the delivery by it or its suppliers of



Grain containing chemical contaminants or residues.

## 5. Testing

5.1 The Company will conduct Testing on Grain:

- (a) delivered by the Client, for the purpose of classifying the Grain and determining whether to Receive the Grain (**Receival Tests**); and
- (b) intended for Outturn (**Outturn Tests**).

5.2 Testing will be undertaken in accordance with the Receival Standards and Sampling Methods as published by the Company from time to time.

5.3 The Client will be provided with the results of the Testing. If the Client does not agree with the results of the Testing the Client must immediately notify the Company. In the absence of manifest error or fraud, the Client is deemed to have accepted the results of the Testing as final and binding:

- (a) in the case of Receival Tests, if the Client fails to immediately notify the Company, or
- (b) in the case of Outturn Tests, immediately upon Outturn.

5.4 For wheat and barley only: protein, moisture, test weight, screenings, defective grains and contaminants testing will be undertaken. Falling number testing will be provided in accordance with the Sprouting Management Strategy.

5.5 For Canola only: oil content, test weight, moisture, impurity, defective seed and contaminant testing will be undertaken. Free fatty acid testing will not be undertaken.

The Company at its sole discretion may use dilution methods to ensure that GM events in non-GM canola storages are maintained at or below the level permitted by the relevant classification standards for adventitious admixture.

5.6 The Client acknowledges that:

- (a) Testing is conducted on a sample taken in accordance with the Receival Standards and the Sampling Methods,
- (b) Testing is indicative of the quality of Grain, it is not determinative of the quality of all of the Grain Delivered,
- (c) A variation in results between the Receival Tests and Outturn Tests is not abnormal.

5.7 The Company warrants only that it will conduct the Testing in accordance with the Receival Standards. The Company makes no other warranty or guarantee in relation to the Testing, including but not limited to, that malting barley will germinate after Outturn.

5.8 The Client agrees to comply with the Outturn Protocols applicable at the date of Outturn of Grain and accepts the quality allowances and variations on Outturn as set out in such Outturn Protocols.

## 6. Receipt and Storage

6.1 The Company will:

- (a) Receive Grain Delivered at the Facilities during the Term provided that in the sole opinion of the Company the Grain in each case complies with the Receival Standards, is in fit condition for safe and hygienic storage and in the opinion of the Company, storage space permits;
- (b) Store the Grain for the Client at the Facilities; and
- (c) Outturn the Grain for the Client at such time, or times, and in such quantities as the Client requires in accordance with Clause 7.

6.2 In respect of the Port Terminal only, the Client must, in addition to compliance with all other requirements of this clause 6:

- (a) notify the Company that the Client wishes to Deliver Grain to the Port Terminal, including the expected time of Delivery,
- (b) obtain the agreement of the Company to Deliver the Grain to the Port Terminal,
- (c) Require the Grower to complete an Ex-farm Grower Treatment Declaration available on the Emerald Website.

6.3 The Client will ensure that where a Grain is Delivered by a Grower, or agent on behalf of the Client, the Grower or agent will clearly state in writing the Client's name at the time of delivery ("**Nomination**"). The Client will also ensure that a Nomination contains a statement to the effect that the delivering Grower or agent transfers all of the right, title and interest to and in the Grain to the Client. All Nominations are final and irrevocable and the Company may rely on the details of the Nomination without any further enquiries.

- 6.4 The Client will ensure that where Grain is Delivered from a Non Company Facility, it provides:
- (a) written confirmation to the Company of fumigation clearance, and
  - (b) grain treatment details for the period of time Grain was at a Non Company Facility.
- 6.5 Unless specifically agreed otherwise, the Company reserves the right to mix the whole or any part of any Grain delivered to it by any client or Growers with Grain of similar specification and any and all such Grains so received will be Stored Grain.
- 6.6 The Company reserves the right to move Client Grain to a Facility other than the Facility at which the Client acquired the Client Grain if:
- (a) sufficient evidence exists to indicate the quality or condition of Grain at a Facility may be adversely affected if the Client Grain remains in any particular location;
  - (b) the Facility fills to capacity (or is expected to fill to capacity during the Season); or
  - (c) the Company determines (in the Company's reasonable opinion) that it is operationally efficient to move the Client Grain.
- 6.7 Any movements described in Clause 6.6 will be at the expense of the Client. The Company will use location differentials published by Grain Trade Australia prior to the commencement of the Season in order to charge the Client for the movement.
- 6.8 If the Client Grain is not Outturned on or prior to 30 September 2018, the Company may Regrade the Client Grain. The Client recognises that grain quality may deteriorate whilst in storage and the Company requires operational flexibility for the following harvest.
- 6.9 Where Client Grain of a particular type and grade of Grain at any non-port Company facility is between or equal to the values  $-1.00$  and  $+1.00$  tonne, the Client Grain of that particular type and grade of Grain will be deemed to have no value and will be removed from the Client's Outturn Entitlement and neither party will have any liability for any Claim or Loss to the other for that amount of Grain.
- 6.10 Only in respect of malting barley:
- (a) if the Client Grain has been carried over in the Facility from a previous season and in the Company's opinion it is impractical to

maintain the Grain Segregation, the Company may regrade malting barley to feed barley grade where the germination quality is less than 95%; or

- (b) if malt barley is stored by the Client the Company at its discretion may reclassify malt barley to feed where the germinative quality is determined by the Company to be less than 95% or it remains stored grain after 30<sup>th</sup> September 2018.

and in each case the Client indemnifies the Company against any claims arising out of or related to the Regrading.

## 7. Outturn

### Outturn Entitlement

- 7.1 The Client will be entitled to an Outturn by weight of the Client Grain initially received on behalf of the Client; after deduction of the Shrinkage Allowance and Dust ("**Outturn Entitlement**"). The Client may access the whole or part of the Outturn Entitlement by issuing a GMO.
- 7.2 When all Client Grain has been Outturned from all Facilities the Company will advise the Client of any variation between the Outturn Entitlement and the tonnage actually outturned ("**Variation**"). If the Outturn Entitlement has not been completely received by the Client, the Company will, in its absolute discretion, either
- (a) replace the physical short Outturn Entitlement of the Client, or
  - (b) determine, acting reasonably, the value of the Variation including any freight component base grade quality.
- 7.3 If the Company determines in accordance with clause 7.2(b), that after the Outturn of all Client Grain of a Season from all Company non-port Facilities for a Grade, there is a difference between the Client's Outturn Entitlement and the tonnage actually Outturned to the Client.
- (a) If the actual tonnage Outturned to the Client exceeds the Client's Outturn Entitlement, the Client must either pay the Company for the excess at the Washout Price or replace the shortfall by using other grades as negotiated and agreed with the Company.
  - (b) If the actual tonnage Outturned to the Client is less than the Client's Outturn Entitlement, the Company may, at its discretion, either replace the physical Grain shortfall in the Client's Outturn Entitlement,

or pay the Client for the deficiency in the Outturn Entitlement at the Washout Price.

- (c) For the purposes of this clause 7.3, “**Washout Price**” for the Client Grain, unless otherwise agreed, a spot price will be determined (average of three independent brokers) on the day that the Client is advised of the variation.

7.4 The Company is not required to Outturn Grain if it has received notice from a person holding a security interest over that Client Grain until;

- (a) the person holding the security interest has consented to the Outturn; or  
 (b) the Company receives a court order requiring it to Outturn the Grain.

7.5 The Client will indemnify the Company against all losses (excluding consequential and indirect loss), costs, damages, expenses, charges and surcharges the Company incurs or sustains as a result of a claim made against the Company by any person holding a security interest over Client Grain.

#### In-Store Transfer

7.6 The Client may elect to transfer title to all or part of the Outturn Entitlement to a client by providing prior notice of such transfer (“**In-Store Transfer**”).

7.7 All title transfers from Growers to the Client are automatically approved by the Client. The Client needs to request the reversal of the Title Transfer to The Company within 48 hours if the Client chooses to not accept the Title Transfer.

7.8 An In-Store Transfer is effective from the date of the notice by the Client. The Client remains liable for all Charges incurred up to the date of the In-Store Transfer.

#### Outturn

7.9 The Company undertakes to Outturn Grain in accordance with the Outturn Protocol.

7.10 The Company will order the Outturn of Outturn Entitlements for the loading of the Client’s vessels (where applicable) in accordance with the Port Loading Protocol and the Cargo Assembly Plan.

7.11 The Company reserves the right to swap the Client Outturn Entitlement between non-port Facilities and Outturn at a non-port Facility other than the non-port Facility at which the Client acquired the Grain if that non-port Facility no

longer holds the required quantity and/or grade of Grain or the required quantity and/or grade of Grain is unavailable for outturn at that particular time. Freight adjustment will be made on the basis of GTA location differentials.

7.12 The Company’s obligations in respect of the Grain cease immediately upon Outturn of the Grain from a Facility.

7.13 The minimum Outturn request for road transport is 225mt per day. Outturn requests for less than 225mt per day will be reviewed on a case by case basis. The Company reserves the right to refuse an Outturn request for anything less than 225mt per day.

#### Client Warranties

7.14 The Client warrants and represents to the Company that it is the sole legal and beneficial owner of all of its Grain held by the Company on behalf of the Client with full right, title and interest, free from any mortgage, charge, lien, option, encumbrance or other adverse claim or interest other than as notified in writing to the Company prior to:

- (a) Outturn of that Grain; or  
 (b) Receipt of a notice of an In-Store Transfer.

### **8. Transport and Freight**

8.1 The Client must comply with the requirements of the Outturn Protocol when the Client:

- (a) engages the Company as the freight provider (rail or road), or  
 (b) contracts direct with the freight provider, and requests the Company to Outturn grain to rail or road transport.

8.2 The Client accepts all risk to Grain in transport used by the Client to deliver or to Outturn Grain at Facilities.

### **9. Port Loading Protocols**

9.1 The Client undertakes to comply with the requirements of the Company’s published Port Loading Protocols when the Client engages the Company to load a vessel at the Port Terminal or the Company’s requirements in relation to container packing when the Client engages the Company to pack grain into containers at the Port Terminal.

### **10. Stored Grain**



10.1 The Client acknowledges that when the Company receives the Client Grain, it becomes Stored Grain and the Client maintains an Interest in the Stored Grain.

10.2 Except if the Company suffers an Insolvency Event, the Client does not have the right to nominate any particular parcel of Stored Grain as being owned by the Client.

- 10.3 While the Company has possession of the Client Grain:
- (a) the relationship between the Company and the Client in respect of the possession of the Grain is one of bailment only;
  - (b) that relationship will continue to exist despite the Grain losing its identity by being part of Stored Grain, or despite the inability of the Company to redeliver to the Client Grain the subject of the bailment; and
  - (c) unless specifically agreed otherwise, the Company as bailee may manage, use, deal with or otherwise control the Grain in its possession in any manner not inconsistent with the Outturn Entitlement.

10.4 Where the Company suffers an Insolvency Event the Client will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Stored Grain, to re-take possession of the Client Grain from the sites at which the Outturn Entitlement is located.

## 11. Charges and Invoices

11.1 The Client will pay the Charges in accordance with this clause 11 and Annexure A.

11.2 The Client will pay to the Company within 14 days of the date of an invoice or statement from the Company the Charges set out therein.

11.3 Payment must be made by either:

- (a) direct credit into the company's bank account as follows or any other account notified to the Client in writing:

<b>Account name</b>	Emerald Logistics Pty Ltd
<b>Bank</b>	Westpac
<b>BSB</b>	033 039
<b>Account</b>	365462

- (b) cheque or money order by post.

11.4 The Client must submit a remittance advice clearly identifying the invoice/s being paid:

- (a) in the case of clause 11.3(b) to any of the following on the same day that payment is made:

<b>Email</b>	<a href="mailto:accounts@emeraldgrain.com">accounts@emeraldgrain.com</a>
<b>Fax</b>	03 9274 8889
<b>Mail</b>	Emerald Logistics Pty Ltd Attention: Accounts Level 2, 600 Victoria Street Richmond Vic 3121

11.5 If the Client purchases Grain, including through an In-Store Transfer, the Company may invoice the Client for all Charges remaining unpaid at the time of the In-Store Transfer and the Client must pay those Charges in accordance with this clause 11.

11.6 The Client agrees to pay any charges levied by the Port Authority or DAFF, relating to the Commodities or the provision of Services (including, but not limited to, wharfage, berth hire, harbour dues and quarantine inspection fees). In addition, to the extent that the Company has any liability to pay those charges, the Client agrees to indemnify the Company against that liability, unless the Company specifically agrees to pay these charges on the Client's behalf.

11.7 The Company and the Client acknowledge that all fees and charges payable as stated in this Agreement have been calculated on a GST exclusive basis unless otherwise stated.

11.8 Any reimbursement of money pursuant to this Agreement paid by a Party to a third party shall be net of the benefit of GST input tax credits claimable by the Party in respect of the payment.

11.9 If the Client fails to pay any amounts owing under this Agreement by the due date any amount outstanding will bear simple interest at the rate of interest being 5% higher than the 90 day Bank Bill Rate offered by the Commonwealth Bank as at the due date, calculated from the due date to the date of actual payment in full.

## 12. Books and Records

12.1 All information provided to the Client by the Company will be treated as conclusive evidence of the correctness of the details set out in that information unless:

- (a) the Client notifies the Company in writing, setting out the detailed reasons, within 14 days of receipt of that information that there exists a bona fide dispute concerning the correctness of that information; or
- (b) it is demonstrated at any time that there is a clear and manifest error in that information.

### 13. Lien

- 13.1 Notwithstanding that the Grain received by the Company under this Agreement may be deemed to be Stored Grain, the Company shall have a first and paramount lien on the Client Grain for all monies payable (on any account whatsoever) by the Client to the Company under this Agreement or otherwise.
- 13.2 In the case of Stored Grain, the Company may nominate and identify any particular quantity of Grain comprising the Stored Grain as being the Client Grain for the purposes of enforcing its lien.
- 13.3 Subject to any requirement of law the Company will be entitled for the purpose of enforcing such lien to retain possession of the whole or any part of the Client Grain until all amounts due and payable are paid, or to sell all or any of the Client Grain in such manner as it thinks fit (after giving the Client at least 7 days prior notice) whereupon the proceeds of such sale will be applied in or towards the satisfaction of the moneys due to the Company and the costs of effecting the sale and the balance (if any) will be paid by the Company to the Client. Where the Company sells all or any of the Client Grain for the purpose of enforcing its lien, the Client irrevocably appoints the Company as its agent and attorney.

### 14. Security

- 14.1 The Client will, if reasonably required by the Company obtain or deposit with the Company an unconditional bank guarantee or bond in a form and for an amount given approved by the Company (acting reasonably) in guarantee of the Client's performance of this Agreement ("security").
- 14.2 Any written guarantee or security required by the Company must be established:
  - (a) prior to the Company receiving Grain for storage on behalf of the Client; and
  - (b) within 7 days after it has been requested by the Company.
- 14.3 If the Client defaults, then the Company may call up, draw on, use, appropriate and apply the

whole or part of the security as may be necessary in the opinion of the Company to compensate the Company for loss or damage suffered by the Company by reason of the Client's default, and:

- (a) any use or appropriation of the security by the Company does not operate to waive the default and does not affect the Company's other rights; and
- (b) if the security or any part of it is used or appropriated by the Company, the Client must within seven (7) days from receipt of a request by the Company pay to or deposit with the Company new or additional security in a form and for an amount as specified by the Company.

- 14.4 On termination of this Agreement and if the Client has complied with this Agreement, the security less any sums drawn on, used or appropriated by the Company and not reinstated by way of further security, must be refunded, returned or cancelled.

### 15. Risk and Insurance

- 15.1 Throughout the Term, the Company will maintain an insurance policy covering the usual insurable risks of accidental loss or damage to Client Grain during the provision of the Services.
- 15.2 The Company bears the risk of accidental loss or damage to Client Grain to the extent covered by insurance policies taken out by the Company.
- 15.3 The Client bears the risk of all loss or damage events to their Grain which are not covered by the Company's insurance policies (or where coverage for a specific claim is refused by the Company's insurer) which commonly includes, without limitation, the risk of flood, inherent vice and contamination.
- 15.4 The Client must, for the entire period that Client Grain is stored at a Facility, keep Client Grain insured against the risks it bears pursuant to clause 15.3.
- 15.5 The Client must, and must cause any person entering a Facility for or on behalf of the Client, to hold:
  - (a) public liability insurance with coverage of \$10 million per event and in aggregate,
  - (b) workers' compensation insurance required by law, and
  - (c) comprehensive motor vehicle insurance.

15.6 The Company shall, upon request of the Client, provide details of insurance policies taken out by the Company under clause 15.1.

## 16. Liability

16.1 The Company will only be liable for failing to Outturn the Client Grain in accordance with this Agreement if such failure is as:

- (a) a result of fraudulent or unexplained physical stock shortage;
- (b) a result of a quality defect caused by the Company's Gross Negligence or wilful default; or
- (c) a consequence of an event against which the Company is required to insure pursuant to clause 15.1.

16.2 It is agreed that the Company will not be liable for any other loss or damage, including but not limited to:

- (a) any special or unusual event or any natural process (as determined by the Company) which is not covered by the Company's insurance pursuant to clause 15.1, causing loss or damage to the Grain;
- (b) the natural deterioration of Grain which has been carried over at a Facility from one season to the next;
- (c) any loss or damage arising out of or related to the incidence or effect or both of any delays in the loading of trains, trucks, containers or ships;
- (d) any loss or damage arising out of or related to Grain passing or failing to pass inspection by the DAFF inspectors, DAFF authorised officers, or similar;
- (e) any loss or damage arising out of or related to any quality or quantity deficiencies claimed after the time period specified in the Outturn Protocol;
- (f) any loss or damage arising out of or related to toxic or other chemical residues, other contamination or genetic modification;
- (g) any indirect or consequential loss (including but without limitation loss of profit, loss of opportunity or loss of reputation), cost, damage or expense suffered or incurred directly or indirectly by the Client as a result of any loss or downgrade of or damage to a Grain;

however caused (including without limitation any loss, cost, damage or expense caused by the failure of the Company to comply with any of its obligations under this Agreement or any negligent act or omission on the part of the Company, its employees or Agents).

16.3 In any event, other than in the circumstances described in clause 16.1, the Company's liability in respect of providing the Services under this Agreement, whether in tort or in contract, will not exceed \$100,000 in respect of any one or a series of related events and \$250,000 in aggregate claims during the Term.

16.4 To the extent permitted by law, the Company excludes all conditions and warranties relating to the obligations of the Company under this Agreement implied or otherwise.

16.5 The Company's liability under any non-excludable implied condition or warranty is limited to:

- (a) in the case of services, the lowest of the costs of supplying the services again and having the services supplied again; and
- (b) in the case of goods, the lowest of the costs of replacing the goods, acquiring equivalent goods or having the goods repaired.

## 17. Indemnity

17.1 The Client will indemnify the Company and keep the Company indemnified from and against all losses, costs, damages, expenses, charges and surcharges suffered or incurred by the Company arising directly or indirectly out of or in relation to:

- (a) any breach non-observance or non-performance by the Client of any of its obligations under this Agreement;
- (b) any claim by a third party relating to the Client Grain; or
- (c) any claim by a third party relating to the operation of the Purchase Options, including but without limitation claims arising out of the failure of the Client to provide information or the inaccuracy of information supplied by the Client under the Purchase Options,

except to the extent that the Gross Negligence of the Company contributed to the losses, costs, damages, expenses, charges or surcharges.

## 18. Variations

18.1 No variation on the face of this Agreement is valid or has any effect unless initialled by both the Client and the Company.

## 19. Termination

19.1 This Agreement may be terminated by the Company:

- (a) by giving the Client 30 days' prior written notice; or
- (b) by giving the Client 30 days' prior written notice if a Force Majeure Event under clause 20 subsists for 60 days or more.

19.2 This Agreement may be terminated by the Company by written notice with immediate effect:

- (a) if the Client breaches any term of this Agreement the breach is not capable of remedy; or
- (b) if the Client breaches any term of this Agreement and the breach is capable of remedy, but the Client has failed to remedy that breach within a period of not less than 30 days after the Company gives the Client written notice of that breach; or
- (c) if the Client suffers an Insolvency Event.

19.3 Within 28 days of termination of this Agreement, the Client must remove any Client Grain from the Facilities. The Company may dispose of any Client Grain still remaining after that time. Surplus proceeds from the sale of that Client Grain after deducting costs incurred by the Company in its disposal and for amounts owing to the Company will be returned to the Client.

19.4 Termination will not affect any rights or remedies accrued to a party under this Agreement.

19.5 Notwithstanding any other provisions of this Agreement, the Company may refuse to provide Services, including to Outturn Client Grain, if the Client has not paid any amounts owing to the Company pursuant to clause 11 of this Agreement.

## 20. Force Majeure

20.1 Force Majeure Event

For the purpose of this Agreement, a "Force Majeure Event" affecting a Party means anything outside that Party's reasonable control including without limitation:

- (a) accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, or declarations of a state of emergency;
- (b) strikes, stop works, lockouts, boycotts or any other form of labour dispute or labour shortage;
- (c) breakdown, damage or destruction of any of the Company's Storages or Facilities;
- (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 Clients).

20.2 Suspension of Obligations

If a party is wholly or partially precluded from complying in the normal manner required by this Agreement with its obligations under this Agreement by a Force Majeure Event (in this clause 20 called the "Affected Party"), then the Affected Party's obligations to perform in accordance with the terms of this Agreement, will be suspended for the duration of the Force Majeure Event.

20.3 Notice

As soon as 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 (in this clause 20 called 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;



- (f) the steps that are being taken to minimise the impact of the Force Majeure Event; and
- (g) the steps which would be taken (subject to the Parties reaching an agreement as to the payment of any additional costs involved) to minimise the impact of the Force Majeure Event.

#### 20.4 Minimisation of Impact

Upon receiving a notice under clause 20.3 the Parties will meet to discuss and agree:

- (a) what action can be taken to minimise the effect of the Force Majeure Event on the performance by the Affected Party of the Affected Obligation;
- (b) whether the Affected Party is able to work around the Force Majeure Event either to prevent the delay in the performance of the Affected Obligations or to minimise the impact of that delay; and
- (c) what modifications or additions to the terms of this Agreement or any other agreements between the Parties (including without limitation any modifications or additions relating to the appointment of any additional costs) are required to give effect to any proposal to minimise the effect of the Force Majeure Event.

#### 20.5 Obligation to Mitigate

The Affected Party must:

- (a) keep the other party fully informed of its plan to minimise the effect of the Force Majeure Event; and
- (b) subject to reaching agreement concerning any modifications or addition required to give effect to any proposal to minimise the effect of the Force Majeure Event;
- (c) comply with all reasonable requests made by the other Party relating to the prevention or minimisation of the impact of the Force Majeure Event; and
- (d) use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

#### 20.6 Payments

An obligation to pay money is never excused by a Force Majeure Event.

#### 20.7 Labour Disputes

The requirement to use all reasonable endeavours to resolve or minimise the impact of the Force Majeure Event will not require either Party to settle any strike, lockout, boycott or other dispute or claim, or any demand by a third party, on the terms contrary to the wishes of that Party.

### 21. Disputes

21.1 The parties will endeavour to resolve any dispute concerning the terms of this Agreement between themselves, including where necessary escalating the dispute for negotiation between both parties' chief executives.

21.2 During any dispute resolution process, the pre-dispute status quo will continue. Accordingly:

- (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.

### 22. Notices

22.1 Notices under this Agreement may be served in person, delivered by post, faxed or emailed.

22.2 Notices are deemed served when:

- (a) If delivered in person, when delivered;
- (b) If delivered by post, when it ought to have been delivered in the ordinary course by the postal medium;
- (c) if delivered by fax, the time-stamp on the sender's facsimile machine; and
- (d) if delivered by email, the time the email left the sender's server, provided that no delivery error was received by the sender.

### 23. Assignment

23.1 The Company may assign or novate this Agreement or any part of its rights and obligations under this Agreement if the Company reasonably believes that the assignment or novation would not cause detriment to the Client, and provides written notice to the Client of such assignment.

23.2 The Client must not assign or novate this Agreement or any part of its rights and obligations under this Agreement without the prior



written consent of the Company, which may be withheld in at the Company's sole discretion.

#### 24. Costs

The Company and the Client must pay their own cost of preparation, negotiation and execution of this Agreement. The Client must pay any stamp duty and other taxes payable in respect of this Agreement or anything arising under it.

#### 25. Compliance with Laws

25.1 The Company will at its cost (with the Client's assistance if necessary):

- (a) obtain and maintain any necessary licenses and approvals; and
- (b) comply with all Acts, Regulations, By-laws and other Legislation; and
- (c) comply with all lawful restrictions, directions, orders, notices or instructions given or made by any Body, Authority, Port Authority or the like acting under any Acts, Regulations, By-laws or other Legislation, relating to the provision of Services by the Company, including any requirements relating to any environmental risk or damage or contamination of land that may be caused by or relate to the storage or loading of the Grain under this Agreement.

25.2 The Client will at the Client's cost (with the Company's assistance if necessary);

- (a) obtain and maintain any necessary licenses and approvals; and
- (b) comply with all Acts, Regulations, By-laws and other Legislation; and
- (c) comply with all lawful restrictions, directions, orders, notices or instructions given or made by any Body, Authority, Port Authority or the like acting under any Acts, Regulations, By-laws or other Legislation, relating specifically to the Grain and the export of the Grain.

#### 26. Governing Law

This Agreement and the rights and liabilities of the parties under this Agreement will be governed by the law of the State of Victoria. The courts of Victoria will possess territorial jurisdiction to hear and determine any cause of action arising under this Agreement.

#### 27. No Endorsement

27.1 The Client must not (without the prior written consent of the Company):

- (a) make any reference, comment or statement either written or oral, that could be construed as an endorsement by the Company of the Client or of the Client's products or services; or
- (b) refer to the Company or the services provided by the Company to the Client in any publication, promotional or advertising material.

27.2 The Client acknowledges that:

- (a) the Company will treat the obligation provided by the Client to the Company in clause 27.1 as a serious undertaking; and
- (b) it is aware that any breach of this serious undertaking may result in the Company suffering damage.

#### 28. Severability

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

#### 29. Waiver

29.1 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.

29.2 Any 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.

#### 30. No Partnership

This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties.

**Schedule A: Charges**
**Upcountry Facility Charges 2017/2018**

Charge Type (per tonne)	Wheat	Barley	Oilseeds & Maize	Pulses
Receival	\$12.30	\$13.00	\$16.35	\$15.50
Receival Shrink	0.70%	0.70%	0.75%	1.00%
Outturn	\$2.10	\$2.10	\$2.10	\$2.10
<b>Monthly Storage</b>				
1 Oct 2017 to 30 Sep 2018	\$1.65	\$1.65	\$1.75	\$1.75
Prior seasons	\$3.00	\$3.00	\$3.50	\$3.50

Other Charges (per tonne unless otherwise stated)	Charge
Re-grade	\$5.00
Title Transfer (Buyer pays)	\$0.25
Stock Swap (Initiating party to Pay)	\$0.50
Sample Collection (per sample)	\$100
Rail Order Cancellation within 24hrs of ETA	\$4.00
Throughput Tonnes	POA

## EXPLANATORY NOTES TO UPCOUNTRY FACILITY CHARGES

**Receival** – *applies to receival tonnage (i.e. pre-shrunk tonnes)*

Covers the receival, weighing, sampling, classifying (including protein and oil testing where applicable), elevation, initial storage, insurance cover and ongoing hygiene management in accordance with the Company's commodity protection regime.

**Receival Shrink** – *applies to receival tonnage*

A percentage deducted for each load delivered to account for loss of mass during the receival and handling process. There will be no rebate of shrinkage on Grain received into Emerald's country sites and outturned to other BHC facilities.

**Outturn** – *applies to shrunk tonnes outturned to rail or road transport during normal day shift operations.*

**Storage** – *applies to shrunk tonnes of stored Grain that is commingled and is applied to the opening stock balance at the first day of the month. Charges for 2017/18 season Grain commence on the first of the month, one month after the month of first delivery from the 1<sup>st</sup> October 2017. Charges for prior seasons Grain commence on 1st October 2017 until 30th September 2018. Charges for Storage for any non-commingled Grain will be negotiated.*

**Re-grades** – *applies to shrunk tonnes*

Applies to all Client requested regrades across grades or across seasons. The Company will not

undertake regrades that may compromise outturn quality at the Company's Site.

**Title Transfer** – *applies to shrunk tonnes*

Applies to In-Store Transfers – Warehouser to Marketer, Warehouser to Warehouser, Marketer to Marketer - and is payable by the Buyer.

**Stock Swap** – *applies to shrunk tonnes*

Applies to Stock Swaps between 2 clients. The swap charge is payable by the Client who initiates the Stock Swap. Freight differential charges will be calculated independent of the swap charge.

**Sample Collection** – *applies per sample*

Applies to a client request for a representative sample of a grade in an Upcountry Facility. The charge does not include courier costs.

**Rail Order Cancellation** – *applies to ordered tonnage*

Applies to a client who cancels a rail order within 24 hrs of the train arrival time at the Emerald site. This fee covers the cost of loading the cargo into rail bins and returning it to storage.

**Throughput Tonnes** – *applies to receival tonnage (i.e. pre-shrunk tonnes)*

Applies to a Client request to deliver Grain to a Facility from Non Company Facilities. The Monthly Storage charge will apply if grain is not Outturned within the same month as Received. A fee for Outturn will apply as per the Upcountry Facility Charges 2017/2018.

## Melbourne Port Terminal Charges 2017/2018

Charge all grains (per tonne)				
Booking Fee		\$8.00		
Receival – Road		\$8.00		
Receival – Rail		\$6.00		
Shrink (ex Third Party)		0.4%		
Storage (per week)	Refer Explanatory Notes - carry charge may be applicable			
Domestic Outload		\$8.00		
Charge Type (per tonne)	Wheat	Barley	Oilseeds & Maize	Pulses
Ship Loading	\$7.50	\$8.50	\$9.50	\$10.50
Container Packing	POA	POA	POA	POA

POA = Price on Application

Other MPT Charges (per tonne unless otherwise stated)	Charge
Methyl Bromide Fumigation (silo wheat equivalent capacity)	\$POA
Phosphine Fumigation (assumes 1,500t silo)	\$2.50
Falling Number Test (per test)	\$75.00
Flow Path Cleaning (per clean)	\$4,000
Vessel Fails Survey	\$2.00

## EXPLANATORY NOTES TO PORT FACILITY CHARGES

### **Booking Fee** – *applies to shrunk tonnes*

This charge applies to the booking of shipping capacity for either bulk or container loading. Emerald will assess booking applications in accordance with the Port Loading Protocols published on its website. This is a non-refundable charge.

### **Receival** - *applies to receival tonnage (i.e. pre-shrunk tonnes)*

This charge applies to all Grain received 24 hours per day and covers the services of receival, weighing, sampling, classifying and elevation into storage. It is for Client Receival orders and Site to Site receival Orders.

### **Shrink (Non-Emerald sites)** - *applies to receival tonnage (i.e. pre-shrunk tonnes)*

Shrink will be deducted at the time of Receival from deliveries from Non-Company Facilities into the Port Terminal.

### **Ship Loading** – *applies to shrunk tonnes*

Covers loading of Grain into vessels from the Port Terminal 24 hours per day. It also covers, shipping related positioning, preparation and any related documentation, blending, stevedoring export inspection, dust losses and an assumed carry period for the grain.

### **Container Packing** – *applies to shrunk tonnes*

This service applies to 20' and 40' containers and is for Farmer Dressed bulk Grain (FD bulk) and includes container pickup, AQIS and container inspection, fitting bulkhead, filling container, weighing and delivery to wharf.

### **Outturn to Road** – *applies to shrunk tonnes*

Minimum tonnage per day is 200 tonnes. This charge applies to services provided on normal

working days and normal working hours of 07:00 – 15:30.

### **Storage** – *applies to shrunk tonnes*

Storage will not be charged to a Client who has an approved Cargo Accumulation (as described in the Melbourne Port Terminal Loading Protocol) and has met the obligations of the Melbourne Port Terminal Loading Protocol.

If, due to circumstances outside the Company's control, a vessel does not commence loading five (5) calendar days following the original vessel ETA (as notified by the Client to Emerald), an initial carry charge of \$1.50/mt is applicable. This carry charge will then apply every seven (7) calendar days from the initial carry charge until the vessel commences loading.

Any residual Grain in Port Terminal after vessel departure incurs a carry charge of \$1.50/mt/week (proportionally adjusted) which will be charged from 12.00am (midnight) on the immediately following Sunday.

### **Flow Path Cleaning**

Applies where:

- i. any grain handled for the Client is subsequently found to contain contaminants or properties in excess of the grade specifications or levels of contaminants or other properties not permitted under export or quarantine regulations.
- ii. Export regulations require that the flow path/s used to handle commodity require cleaning.
- iii. Delays to commencement or continuity of shipping due to factors outside of Emerald control such as vessels failing survey or delays in cargo accumulation may result in additional Flow Path Cleaning events and costs.
- iv. Grain being handled for the Client is found to contain any contaminant or physical property which Emerald



determines in its complete discretion presents an unacceptable risk.

**Fumigation – applies to shrunk tonnes**

This charge applies to the capacity of a storage unit (cell, shed, bunker) in which the Grain is to be fumigated, not the tonnage of Grain received and stored, where:

- i. a Client requests a fumigation;
- ii. Live grain insects or any insect subject to quarantine or export restrictions are detected at any stage either during the Receival process, while in storage, during or after the loading of the grain onto export vessels, shipping containers or road transport; and
- iii. Emerald accepts infested Grain and fumigates the infested Grain.

**Falling Number Test**

Applies to any load of Grain requiring the use of the “falling number test” method to determine or confirm the grade. Testing may be applied at Emerald discretion to loads exhibiting signs of weather damage including shot and sprouted grains or where in the sole opinion of the Company the testing is necessary to ensure the quality integrity of grain being accumulated.

**Vessel Failed Survey**

Applies where the vessel fails to pass marine or DAFF survey and is subsequently unable to load as per planned ETA. This fee is waived where there is no delay to accumulation or shipping program.