



**CARGILL AUSTRALIA – EXPORT GRAIN SERVICES AGREEMENT**

**2023 / 2024**

**Date:** 1 September 2023

**Loader:** Cargill Australia Pty Ltd ABN 42 004 684 173

**Customer Name:** \_\_\_\_\_

**Customer Reference Number Allocation:** \_\_\_\_\_

**Up-Country Loading Sites:** as listed in **Schedule A**

**Loading Port:** Mobile Bulk Loader at Berth 20, Inner Harbour, Port Adelaide, South Australia

**Booking Fee:** as per **Schedule A**

**Loading Fee:** as per **Schedule A**

**Other terms and conditions:** All services are provided in accordance with and subject to the Port Loading Protocols and the terms and conditions contained in this Cargill Australia Export Grain Services Agreement 2023/2024 for Berth 20, Inner Harbour, Port Adelaide South Australia. In the event of any inconsistency between the Port Loading Protocols and this Agreement, the terms and conditions of this Export Grain Services Agreement will prevail.

Authorised Customer signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Authorised Customer Representative Name: \_\_\_\_\_

Authorised Cargill signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Authorised Cargill representative name: \_\_\_\_\_

**CARGILL AUSTRALIA EXPORT GRAIN SERVICES TERMS & CONDITIONS - 2023/2024**  
**FOR BERTH 20, INNER HARBOUR, PORT ADELAIDE, SOUTH AUSTRALIA**

**1. Interpretation:**

**1.1 Definitions:**

- (a) **Applicable Laws** means any laws and regulations of Australia and any other relevant jurisdiction including, without limitation, relating to export, sanctions, anti-corruption, anti-money laundering, anti-modern slavery, and tax.
- (b) **Allocated Slot** means the shipping slot specified in the Booking Note as varied from time to time in accordance with this Agreement.
- (c) **Authority to Load** means the document in the form set out at **Annexure 5** issued by the Loader and approved by the Customer.
- (d) **Booking Fee** means the fee per metric tonne of Tonnage payable by the Customer to the Loader for reserving the nominated shipping capacity as set out and labelled "Booking Fee" in **Schedule A**.
- (e) **Booking Note** means the booking note issued by the Loader under this Agreement in the form at **Annexure 4** confirming (among other things) an Allocated Slot.
- (f) **Business Day** means any day on which the principal office of the Loader is open for business and does not include a Saturday, Sunday or day that is a public holiday in Victoria.
- (g) **Cargo Assembly Plan** means the document of that title provided by the Customer to the Loader pursuant to clause 9(d) in the form at **Annexure 3** and as amended from time to time and which will include full particulars of the Tonnage for Outturn and Loading.
- (h) **Charges** means the fees, costs and expenses set out in **Schedule A** of this Agreement and include the Booking Fee, the Loading Fee, the Port Related Charges (to the extent not paid directly to the Port Authority) and the Other Charges (as applicable).
- (i) **Claim** means any allegation, demand, claim, suit, action, proceeding, damage, Loss, cost, expense or liability incurred by or made or recovered by or against a person, however arising, whether present, immediate, actual, contingent or future.
- (j) **Customer** means a customer that uses the Export Grain Services under this Agreement.
- (k) **Confidential Information** has the meaning given to that term in clause 20.
- (l) **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 this Agreement.
- (m) **Corporations Act** means the Corporations Act 2001 (Cth).
- (n) **Damaged Grain** means Grain that has been damaged in an incident or event to such an extent that it can no longer be classified by any Receival Standards and is only of salvage value or suitable for disposal.
- (o) **Disclosing Party** means the party disclosing the Confidential Information or the party to whom the Confidential Information belongs or relates.

- (p) **DAFF** means the Australian Government's Department of Agriculture Fisheries and Forestry and any successor or re-named equivalent Department.
- (q) **DAFF Export Preparations** means preparations required to be undertaken by the DAFF authorised officer/s in accordance with the guidelines and work instructions provided by DAFF for the inspection of prescribed grain and plant products for export (guidelines) and inspecting prescribed grain and plant products (work instruction) located at the DAFF website.
- (r) **Export Grain Services or Services** means:
- (i) Procurement of all road freight required for transportation.
  - (ii) Receival of Tonnage into road transport at the Up-Country Loading Site.
  - (iii) Road Transport management.
  - (iv) Transporting the Tonnage from the Up-Country Loading Site to the Port Terminal.
  - (v) Organising Testing of Tonnage.
  - (vi) Organising DAFF Export Preparations
  - (vii) Loading the Tonnage onto the Vessel in accordance with the terms of this Agreement. This includes stevedoring of the cargo into the Vessel carrying holds (spout trimmed as per direction of Vessel).
- (s) **Force Majeure Event** has the meaning set out in clause 17 of this Agreement.
- (t) **Fumigation and Phytosanitary Requirements Form** means the form at **Annexure 6**.
- (u) **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.
- (v) **Grain** means the seed of any crop or pasture species including Pulses and Oilseeds.
- (w) **GST** means the tax imposed by the GST Law.
- (x) **GST Law** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).
- (y) **Industrial Dispute** includes a strike, stop-work, boycott or lockout.
- (z) **Insolvency Event** means in relation to a Party:
- (i) 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;
  - (ii) the Party suspends payment of its debts generally;
  - (iii) the Party is insolvent within the meaning of the Corporations Act;
  - (iv) 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;
  - (v) 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

- (vi) an administrator is appointed under Division 2 of Part 5.3A of the Corporations Act and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days.
- (aa) **Intent to Ship Advice** means the form at **Annexure 1**.
- (bb) **Laycan** means the 10 day period specified under clause 9 during which the Customer's Vessel must arrive at the Port Terminal tendering a valid NOR (Notice of Readiness).
- (cc) **Loader** means Cargill Australia Limited ABN 42 004 684 173.
- (dd) **Loading** or **Load** means loading of the Vessel at the Port Terminal using a mobile bulk loading system (and "load" has a corresponding meaning).
- (ee) **Loading Fee** means the fees set out at **Schedule A** labelled "Loading Fee (excluding road Freight)" that apply per metric tonne of Tonnage.
- (ff) **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.
- (gg) **Loading Port** means the port managed by the Port Authority at Inner Harbour, Port Adelaide, South Australia.
- (hh) **NOR** means the Notice of Readiness tendered to the Loader.
- (ii) **Oilseeds** means canola.
- (jj) **Other Charges** means the charges set out **Schedule A** under the heading "Other Charges".
- (kk) **Outturn** or **Outturned** means to cause Tonnage to physically leave the custody of the Up-Country Loading Site and is deemed to occur when the Tonnage exits the delivery spout into road transport at which point physical possession of the Tonnage passes from the Up-Country Loading Site to the Customer or a third party authorised by the Customer.
- (ll) **Party** means, depending upon the context, either the Loader or the Customer and **Parties** means both the Loader and the Customer.
- (mm) **Port Authority** means Flinders Ports.
- (nn) **Port Block Out** means, in respect of the Port Terminal, an event or series of events which results in the Port Terminal being unable to receive Grain or load Grain onto a waiting Vessel for any reason including as a result of a delay in the loading of a previous Vessel or a disruption occurring in connection with the delivery of Grain to the Port Terminal.
- (oo) **Port Loading Protocols** means the document of that title as published on the Cargill Australia website [www.cargill.com.au/en/port-adelaide-berth](http://www.cargill.com.au/en/port-adelaide-berth) at the time of the relevant activity.
- (pp) **Port Related Charges** means any charges levied by the Port Authority in respect of or related to the Export Grain Services some examples of which are set out under the heading "Port Related Charges" in **Schedule A**.
- (qq) **Port Terminal** means the Loader's loading operation located at Berth 20, Inner harbour, Port Adelaide.
- (rr) **Pulses** means faba beans and lentils.

- (ss) **Receival** or **Receive** means the process of receiving the Tonnage into road transport at the Up-Country Loading Site, truck identification, verification of commodity, quality and net weight, and tamper proof security tagging of each truck in preparation for transportation to the Port Terminal.
- (tt) **Receival Standards** means AWB GrainFlow Pty Ltd ABN 62 088 928 858 standards for the receival and classification of commodities delivered to the AWB GrainFlow sites which are available at [www.grainflow.com.au/growers](http://www.grainflow.com.au/growers) (under the tab "Receivals Standards"). Additional Receival Standards may be created and published by the Loader from time to time and agreed by the Customer, with which agreement must not be unreasonably withheld.
- (uu) **Receiving Party** means the party receiving or obtaining the Confidential Information belonging or relating to the Disclosing Party.
- (vv) **Recipient** means any employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party.
- (ww) **Related Entities** has the meaning given to it in the Corporations Act 2001 (Cth).
- (xx) **Road Freight Fee** means the fees set out at **Schedule A** labelled "Road Freight Fee that apply per metric tonne, out-loaded from the Up Country site, to Port, subject to any increase in applicable monthly fuel levies (and which may differ depending on the Up Country Loading site at which Outturn occurs)
- (yy) **Sampling Methods** means the guidelines and work instructions provided by DAFF for the inspection of prescribed grain and plant products for export (guidelines) and inspecting prescribed grain and plant products (work instruction) located on the DAFF website.
- (zz) **Season** means the period in which most of the Grower's Grain is harvested and delivered to Up-Country Loading Site, typically commencing in October in one year and going through to the February of the following year.
- (aaa) **Shrinkage** means that quantity of the tonnage Outturned at the Up-Country Loading Site, which is lost in:
- (i) the normal handling process including loss of mass through changes in moisture content;
  - (ii) handling; and
  - (iii) Waste,
- but does not include Grain lost from Damaged Grain.
- (bbb) **Shrinkage Allowance** means the allowance for Shrinkage specified under this Agreement in Schedule A or such other allowance for Shrinkage as may be agreed between the Loader and the Customer from time to time.
- (ccc) **Storer** means the operator of the Up-Country Loading Site.
- (ddd) **Term** means the period commencing on 1 October 2023 ("**Commencement Date**") and concluding on 30 September 2024 ("**Termination Date**").
- (eee) **Testing** means testing as described in clause 8.
- (fff) **Tonnage** means the quantity and Grade/s of Grain Out turned from the Up-Country Loading Site for Transporting and Loading under a Booking Note issued pursuant to this Agreement (which takes into account the Shrinkage Allowance set out in this Agreement).

- (ggg) **Transporting** or **Transport** means moving the Tonnage from an Up-Country Loading Site to the Port Terminal.
- (hhh) **Up-Country Loading Site** means a Cargill approved site at which the Tonnage is Outturned by the up country loading site for Receipt by the Loader. Cargill approved sites are set out in **Schedule A** of this Agreement.
- (iii) **Vessel** means the shipping vessel accepted by the Loader for Loading as nominated by the Customer in a Vessel Nomination Form.
- (jjj) **Vessel Default** means any delay in the Vessel's arrival or Loading of the Tonnage; cancellation or substitution of the Vessel; inability of the Vessel to load the Tonnage for any reason; slow loading of the Tonnage; mechanical breakdown of the Vessel however caused; failure of the Vessel to obtain any approvals or authorisation, or failure of any survey or inspection.
- (kkk) **Vessel Nomination** means the Vessel as nominated in the Vessel Nomination Form issued under this Agreement and as varied from time to time.
- (lll) **Vessel Nomination Form** means the form at **Annexure 2**.
- (mmm) **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.
- (nnn) **Work Instructions** shall mean work instructions provided and updated by Cargill from time to time which must be followed by any private storage facility that's linked to Cargill's mobile bulk loading supply chain including their staff when out-turning loads and/or receiving any rejected loads for Cargill's mobile bulk loading supply chain which involves loading Vessels from Berth 20 in Port Adelaide.

## 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) A reference to:
- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) 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;
  - (iii) 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;
  - (iv) 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;
  - (v) anything (including a right, obligation or concept) includes each part of it;
  - (vi) 'A\$', '\$A', 'dollar', '\$' or any charge making reference to a monetary amount is a reference to Australian currency; and

- (vii) a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of this Agreement unless otherwise stated.
- (b) In addition:
- (i) time is of the essence under this Agreement;
  - (ii) a singular word includes the plural, and vice versa;
  - (iii) a word which suggests one gender, includes the other genders;
  - (iv) 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;
  - (v) 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;
  - (vi) 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;
  - (vii) a reference to "include" or "including" means includes, without limitation or including without limitation, respectively;
  - (viii) 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; and
  - (ix) 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.

## 2. Export Grain Services Agreement:

- (a) Subject to these terms and conditions, and the prompt payment of all Charges, the Loader will provide the Export Grain Services to the Customer on the terms and conditions of this Agreement during the Term.
- (b) The Customer is bound by the terms and conditions of this Agreement from the date of signing of this agreement or the time any of the Grain Export Services are first provided to the Customer, whichever is the earlier.
- (c) If the Loader continues to provide Services to the Customer after the end of the Term then the terms and conditions of this Agreement will continue to apply until a new Agreement is executed or this Agreement is terminated in accordance with clause 16.

## 3. Intent to Ship:

- (a) The Customer may submit an Intent to Ship Advice form **Annexure 1** from time to time to the Cargill Port Operations Team at *Bridget\_O'Sullivan@cargill.com*
- (b) Within 5 Business Days of receipt of a valid Intent to Ship Advice form the Loader may accept an Intent to Ship Advice by issuing a Booking Note **Annexure 4** confirming (among other things) an Allocated Slot.

## 4. Receival and Transportation of Grain by Loader/Outturn by Up-Country Loading Site:

- (a) Following confirmation by the Loader of an Allocated Slot the Customer:

- (i) will procure the Outturn of the Tonnage to the Loader at the Up-Country Loading Site when required for transportation and Loading;
- (ii) will notify the Loader of the Outturn arrangements made with the Up-Country Loading Site;
- (iii) will do all things necessary to facilitate the timely and efficient Outturn of the Tonnage including (without limitation):
  - (A) promptly complying with all reasonable instructions issued by the Loader; and
  - (B) authorising the Storer to comply with all reasonable directions issued by the Loader on the Customer's behalf.
- (b) The Customer indemnifies, releases and holds the Loader harmless in respect of all and any liability incurred by the Loader in executing the Outturn and Receipt of the Tonnage save to the extent that liability results solely as a result of the negligence of the Loader (or the Loader's employees, representatives, agent or contractors).
- (c) On Outturn the Loader will:
  - (i) Receive the Tonnage at the Up-Country Loading Site into road transport organised by the Loader provided that in the opinion of the Loader the Grain in each case complies with the Receipt Standards, and is in fit condition;
  - (ii) Transport the Tonnage to the Port Terminal.
- (d) The Customer warrants that the Tonnage:
  - (i) will be available for Outturn at the time required by the Loader. Additional charges may apply if Up Country outloading is less than 400mt per hour;
  - (ii) will have been fumigated and passed clearance within 90 days of Vessel load commencement date, and
  - (iii) will have grain treatment details for the period of time the Tonnage was stored prior to Outturn.

## **5. Port Terminal Loading:**

- (a) At the Port Terminal the Loader will:
  - (i) ensure the Tonnage undergoes automated scalping for the removal of any large foreign objects;
  - (ii) organise DAFF Export Preparations and Testing in the event Loader has received Grain ex farm or from a non-approved upcountry site;
  - (iii) Load the Tonnage in accordance with Clause 10; and
  - (iv) if so requested by the Customer in writing, and at the Customer's sole cost and risk, use best endeavours to procure that samples are drawn from the loaded cargo and tested in accordance with the Customer's instructions.
- (b) The Customer agrees and acknowledges that:
  - (i) there is no certified weigher at the Port Terminal;



- (ii) on Outturn the weight of the Tonnage recorded at the Up-Country Loading Site less the Shrinkage Allowance will, in the absence of manifest error or fraud, be deemed the final loaded weight.

## **6. Transport and Freight:**

- (a) The Loader will procure all road freight required for transportation. The Loader reserves the right to adjust its Charges at any stage to accommodate any road freight price increases. Any costs outside of the Loader's control will be for the Customer's account.

## **7. Receival Standards:**

- (a) The Tonnage must comply with the Receival Standards. If Grain has characteristics which do not comply with the Receival Standards, is not free from contamination or is not in fit condition the Loader may refuse to Receive, Transport or Load that Grain.
- (b) The Loader may refuse to Receive, Transport or Load Grain known or suspected to contain unacceptable chemical contaminants or residues or genetically modified (GM) events that are unapproved or above permitted levels.

## **8. Testing:**

- (a) Testing of the Tonnage will be undertaken at the Port Terminal. This testing will be limited to inspection by a DAFF authorised officer/s of insects and other contaminants (such as, rodents, soil or weed seeds) of quarantine concern to the importing country. Employees, agents or representatives of the Loader may also visually inspect the Grain for insects and other contaminants (such as, rodents, soil or weed seeds).
- (b) The Customer agrees and acknowledges that:
  - (i) no quality testing will be undertaken by or on behalf of the Loader or by a DAFF authorised officer/s;
  - (ii) samples of the Tonnage Received and Loaded will be retained by the Loader.
- (c) Testing undertaken by a DAFF authorised officer/s will be undertaken in accordance with the Sampling Methods.
- (d) The Customer will be notified if the Testing identifies live injurious insects or other contaminants of quarantine concern.
- (e) If the Customer disputes the results of the Testing the Customer must immediately notify the Loader. In the absence of manifest error or fraud the Customer is deemed to have accepted the results of the Testing as final and binding within 24 hours after receiving notice set out in clause 8 (d).
- (f) The Customer agrees and acknowledges that Testing is only conducted on a sample taken in accordance with the Sampling Methods.
- (g) The Loader makes no warranty or guarantee in relation to the Testing including the results of any Testing.

## 9. Laycan and Vessel Nomination:

- (a) 30 days prior to the first day of the Allocated Slot the Customer shall provide Cargill Port Operations Team at *Bridget\_O'Sullivan@Cargill.com* a 10-day Laycan that must be entirely within the period of the Allocated Slot.
- (b) The Customer will submit a Vessel Nomination Form **Annexure 2** to the Cargill Port Operations Team at *Bridget\_O'Sullivan@cargill.com* no later than 15 days prior to the Vessel's ETA. The Vessel's ETA must be within the 10-day Laycan.
- (c) The Customer may substitute a Vessel provided that the substitute Vessel arrives within 5 days of the original ETA and within the original Laycan.
- (d) The Customer must provide a Cargo Assembly Plan **Annexure 3** to the Cargill Port Operations Team at *Bridget\_O'Sullivan@cargill.com* at least 15 days prior to the first day of the Laycan or on Vessel Nomination, whichever occurs first.
- (e) Any variation to the Cargo Assembly Plan must be agreed with the Loader (consent to which the Loader will not unreasonably withhold) and any additional costs or expenses will be for the Customer's account.
- (f) The Loader has no obligation to load a Vessel that does not present in readiness to load within the 10-day Laycan and the Loader reserves the right to give berthing and loading priority to other vessels on the shipping stem, and to assign a new load date to any Vessel arriving outside the 10-day Laycan.
- (g) The Customer must provide Cargill Port Operations Team (by emailing *Bridget\_O'Sullivan@cargill.com*) the Vessel's pre-shipment stow plan and load sequence at least 10 days prior to Vessel's ETA.
- (h) Acceptance of the Nominated Vessel and subsequent pre-shipment stow plan and load sequence is at the discretion of the Loader.

## 10. Port Loading Protocols and Vessel Loading:

- (a) The Customer and the Loader undertake to comply with and are bound by the following:
  - i) requirements of the Loader's published Port Loading Protocols and any other procedures outlined in an attachment to this Agreement or published on Loader's website, as updated and varied from time to time when the Customer engages the Loader to provide the Export Grain Services which include Loading a Vessel at the Port Terminal, and
  - ii) Work Instructions for ex Farm, Viterra and other third party private storage deliveries;

The Customer acknowledges and agrees that the Port Loading Protocols, any other procedures and the Work Instructions for ex Farm, Viterra and other third party private storage deliveries form an integral part of this Agreement (including, where applicable, work instructions provided by third party private storage providers).
- (b) Subject to clauses 10(c) through 10(l) and any days during which the Port Terminal is closed, the Loader will aim to load the Vessel at 7,500 metric tonnes per day, Sunday, Holidays Included (if worked), provided that the Vessel can receive at this rate.
- (c) The Customer must provide the Loader with prompt notice:
  - (i) (no less than 48 hours) of Vessel arrival time;

- (ii) (no less than 24 hours) of Vessel readiness for Loading.
- (d) Prior to calling a Vessel to the Port Terminal and commencing Loading, the Loader will forward to the Customer an Authority to Load for the Customer's approval. The Authority to Load will include all quality information relating to the Customer's cargo.
- (e) At least 72 hours prior to the arrival of the Vessel at the Loading Port the Customer must:  
approve the Authority to Load and return it to the Cargill Port Operations Team at *Bridget\_O'Sullivan@Cargill.com*;  
  
Unless otherwise agreed in writing, Loading will not commence until the Authority to Load has been provided to the Loader.
- (f) The Customer must provide the Loader an Export Declaration Number, Request for Permit to Export and valid import permit, if required, latest 72 hours before Vessel's ETA.
- (g) The Customer must complete the Fumigation and Phytosanitary Requirements Form (**Annexure 6**) and send it to the Loader at least 15 days prior to the 1st day of the Laycan.
- (h) The Customer agrees and acknowledges that the Loading will occur at a common user berth at the Port Terminal and subject, at all times to the Flinders Ports Common User Port Protocols as applicable to the Port Terminal (available at *www.flindersports.com.au*). While all reasonable efforts will be made to Load in the agreed period the Loader and its related bodies take no responsibility for the line-up at the Port Terminal.
- (i) The Customer is solely responsible for the condition and state of readiness of Vessels presented to the Loader for Loading and for a Vessel passing relevant marine, DAFF and any other survey required by regulation relating to the export. In the event the Customer's Vessel fails a marine, DAFF or other survey that may be required, the Loader reserves the right to give berthing and loading priority to other Vessels on the shipping stem, and to assign any Vessel that has failed a survey, which is re-presented for loading, a new load date.
- (j) The Customer acknowledges that the Loader has the right to mitigate dust emissions at the Port Terminal. Such mitigation may include moisture conditioning of grain paths.
- (k) The Customer grants the Loader full authority to liaise with the Vessel, the Vessel's Master and agent to facilitate efficient Loading.
- (l) Notwithstanding any other provision in this Export Grain Services Agreement, the Customer understands and accepts that matters and events beyond Loader's control may occur, including but not limited to, changes in Vessel scheduling and arrival or departure times, failure of Vessels to pass any quarantine, pandemic, Covid-19 related requirements or other inspections, grain quality related matters, harbour/port congestion, berth occupation by Vessels under the direction of a Port Authority, lack of performance and delays due to freight or other service providers and rain or high winds, that prevent Vessel loading which means the Loader cannot guarantee that cargo Tonnage will be ready for loading, or that they can or will be loaded as scheduled. The Loader will use reasonable endeavours to avoid any changes or delays where possible, and will keep the Customer informed of developments.

#### **11. Allocated Slot management:**

- (a) An Allocated Slot may be rolled-over by the Customer at the Customer's sole cost and expense to slots that are available under the administration of the Loader on no less than 90 days' written notice by the Customer to the Cargill Port Operations Team at *Bridget\_O'Sullivan@cargill.com* from the start of the slot period. For the avoidance of doubt

slots can be rolled over by the Customer to any available slot within the same shipping year (October to September) as confirmed by the Cargill Port Operations Team at [Bridget\\_O'Sullivan@cargill.com](mailto:Bridget_O'Sullivan@cargill.com).

- (b) Non-use of an Allocated Slot by the Customer or the Customer's failure to notify the Loader in writing of rollover under paragraph 11(a) (on 90 days' written notice) will, at the Loader's discretion, trigger forfeiture of the slot/s plus any prepaid Booking Fee/s.

## 12. Charges and Invoices:

- (a) Unless specified otherwise, the Customer will pay to the Loader within 14 days of the date of a valid tax invoice being issued which sets out the Charges therein, subject to allowance for any applicable Booking Fee that has been paid and not forfeited.
- (b) The Booking Fee:
- (i) is payable by the Customer, in full, within 14 days of the date of a valid tax invoice that will be issued once the Loader has accepted an Intent to Ship Advice and issued a Booking Note. Allocated Slot/s will be indicative only and subject to cancellation/removal by the Loader in its absolute discretion until the Booking Fee is paid;
  - (ii) is non-refundable and will be forfeited if the Allocated Slot is not used or rolled over by the Customer in accordance with clause 11;
  - (iii) applies to the reserving of the nominated shipping capacity (without tolerance). After Vessel Loading:
    - (A) if loaded tonnes is less than the tonnage upon which the Booking Fee is calculated a credit will be issued to the Customer which will be reflected on the invoice issued upon completion of Loading;
    - (B) if loaded tonnes is greater than the tonnage confirmed on the Booking Note a further charge will apply for all loaded tonnes in addition to the tonnage confirmed on the Booking Note. This amount will be reflected on the invoice issued upon completion of Loading.
- (c) The Customer must bear the costs of and shall have no recourse against the Loader for any Port Related Charges.
- (d) Payment must be made by the Customer direct credit into the Loader's bank account as follows or any other account notified by the Loader to the Customer in writing:

<b>Account name</b>	GrainFlow Pty Ltd
<b>Financial Institution</b>	JP Morgan Chase Sydney
<b>BSB</b>	212-200
<b>Account number</b>	86015173

- (e) If the Customer fails to pay any amounts owing under this Agreement by the due date such outstanding amounts 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. Disputed amounts will also incur interest if they are subsequently determined to be legitimate charges.

- (f) All undisputed amounts payable under this Agreement must be paid in full without any deduction, withholding, counter-claim or set-off.

### **13. Customer Warranties:**

- (a) The Customer warrants and represents to the Loader that;
  - (i) it is the sole legal and beneficial owner of all of the Tonnage 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 Loader prior to Outturn of the Grain;
  - (ii) any Cargo Assembly Plan is and will, at all times, remain accurate and capable of execution.
- (b) The Customer will pay, reimburse, indemnify (on demand) and keep the Loader indemnified against any breach of the warranties at clause 13 (a).
- (c) The Customer agrees and acknowledges that the Tonnage to be loaded in accordance with Clause 10 will allow for a deduction by the Loader of the Shrinkage Allowance.
- (d) The Customer will comply with all Applicable Laws in connection with this Agreement.

### **14. Risk and Insurance:**

- (a) The Customer agrees and acknowledges that:
  - (i) no Grain storage is available at the Port Terminal and as a result, the Export Grain Services are provided using a "just in time" logistics operation;
  - (ii) time is of the essence in respect of Customer obligations under this Agreement including without limitation Outturn, Vessel arrival, readiness for loading and accuracy of Cargo Assembly Plan; Export Declaration Number, Authority to Load, Request for Permit to Export and/or valid import permit, if required;
  - (iii) third party costs, for which the Customer agrees to be responsible, will be incurred once labour and transportation are engaged by the Loader;
  - (iv) the Loader will act in reliance on the Customer fulfilling its obligations under this Agreement, including in relation to timing, in providing the Export Grain Services.
  - (v) any transportation of Grain is at the Customer's risk. Apart from Claims or Losses caused by the Loader's negligence, wilful default or wilful misconduct, the Loader will not be liable for any Claim or Loss incurred by the Customer caused by or otherwise relating to the transportation of Grain.
- (b) The Customer will pay, reimburse, indemnify (on demand) and keep the Loader indemnified and harmless from and against all Claims any and all Loss, liability, cost or expense that arises as a result of or in connection with a failure by the Customer to strictly comply with the requirements of this Agreement or which may result from or be connected to the Customer's failure to pay any fees, Charges and Other Charges, moneys properly due and payable in accordance with this Agreement.

- (c) The Customer bears the risk of all loss or damage to the Tonnage which has not been caused by the negligence, wilful default, or wilful misconduct of the Loader (or the Loader's employees, representatives, agents or contractors).
- (d) The Customer must, for the entire period that the Tonnage is subject to this Agreement, keep the Tonnage insured against the risks it bears pursuant to clause 14.(c).
- (e) The Customer must, and must cause any person entering the Up-Country Loading Site or Port Terminal for or on behalf of the Customer, to hold:
  - (i) public liability insurance with coverage of \$10 million per event and in the aggregate;
  - (ii) workers' compensation insurance required by law; and
  - (iii) comprehensive motor vehicle insurance.
- (f) The Customer must at the request of the Loader, provide details of insurance policies taken out under clause 14.

#### **15. Liability and Indemnity:**

- (a) The Customer will indemnify and keep the Loader indemnified against all costs, consequences and liability whatsoever associated with any Vessel Default.
- (b) The Loader will only be liable for failing to Load the Tonnage if such failure is:
  - (i) a result of a material breach of this Agreement by the Loader (or the Loader's employees, representatives, agents or contractors);
  - (ii) a result of fraudulent or unexplained physical stock shortage;
  - (iii) a result of a quality defect caused by the Loader's (or the Loader's employees, representatives, agents or contractors) negligence, wilful default, or wilful misconduct.
- (c) It is agreed that the Loader will not be liable to Customer or any third party or any person claiming through or on behalf of the Customer, for any Claims or Loss, including but not limited to:
  - (i) any special or unusual event or any natural process (as determined by the Loader acting reasonably) causing loss or damage to the Tonnage;
  - (ii) any loss or damage arising out of or related to the incidence or effect or both of any delays in the loading or unloading of trains, trucks, containers or ships unless such delays are caused by the Loader's (or the Loader's employees', representatives', agents' or contractors') negligence, wilful default or wilful misconduct;
  - (iii) any loss or damage arising out of or related to comingling of different Grades of Grain unless such comingling is caused by the Loader's (or the Loader's employees', representatives', agents' or contractors) negligence, wilful default or wilful misconduct;
  - (iv) the natural deterioration of Grain;
  - (v) in respect of any loss or damage arising out of or related to any quality or quantity deficiencies;
  - (vi) any loss or damage arising out of or related to Grain passing or failing to pass inspection by any surveyor, officer or inspector;

- (vii) any loss or damage arising out of or related to toxic or other chemical residues, other contamination or genetic modification unless caused by the Loader's (or the Loader's employees', representatives', agents' or contractors') negligence, wilful default or wilful misconduct;
  - (viii) any indirect or Consequential Loss suffered or incurred directly or indirectly by the Customer as a result of any loss or downgrade of or damage to Grain however caused (including without limitation any loss, cost, damage or expense caused by the failure of the Loader to comply with any of its obligations under this Agreement (except where this liability cannot be excluded by law).
  - (ix) the Customer remains the owner of the Grain at all times until the Grain is sold or removed from the Port Terminal subject to applicable fees.
  - (x) where contaminated Grain is received from or on behalf of the Customer from any site, and this Grain contaminates other stock at the Port Terminal, the Customer is deemed the owner of the contaminated Grain and is liable for all Loss incurred by the Loader (including from Claims by other Customers) caused by and all costs associated with the contaminated stock.
  - (xi) notwithstanding any other provision in this Agreement, the Customer acknowledges and accepts that matters and events beyond Loader's control may occur (including but not limited to Vessel Default, Grain quality issues, Vessel congestion, lack of performance and Port Block Outs or other service providers) which means Loader cannot guarantee all cargos can or will be loaded as scheduled. Loader will try to avoid any changes or delays where possible and load Vessels as scheduled and will keep the Customer informed.
- (d) Except where a Claim or Loss has been solely caused by the Loader's negligence or wilful misconduct, the Loader's maximum liability in respect of providing the Services under this Agreement in respect of any Claim or Loss shall not exceed \$100,000 in respect of any one event or \$250,000 in aggregate.
  - (e) To the extent permitted by law the Loader excludes all conditions and warranties implied at law or by statute relating to the obligations of the Loader under this Agreement.
  - (f) The Loader's liability under any non-excludable implied condition or warranty is limited to:
    - (i) in the case of services, the lowest of the costs of supplying the services again and having the services supplied again; and
    - (ii) in the case of goods, the lowest of the costs of replacing the goods, acquiring equivalent goods and having the goods repaired.

## 16. Termination:

- (a) This Agreement may be terminated by either party with immediate effect upon written notice:
  - (i) if the other party commits a material breach of any term or warranty of this Agreement, and
  - (ii) if the other party fails to remedy that breach within a period of not more than 5 days after the party gives the other party written notice of that breach; or
  - (iii) upon the occurrence of an Insolvency Event.
- (b) Termination will not affect any rights or remedies accrued to a party under this Agreement.

- (c) Notwithstanding any other provisions of this Agreement the Loader may refuse to provide Export Grain Services to the Customer and/or the Loader may terminate this Agreement immediately upon written notice to the Customer:
  - (i) if the Customer has not paid any undisputed amounts owing to the Loader under this Agreement or any other agreement between the Customer and the Loader or its Related Entities within 7 days from being notified by the Loader;
  - (ii) if the Grain is not Outturned from an Up-Country Loading Site or the Customer does not have ownership of Grain in an Up-Country Loading Site.
  - (iii) if the Customer breaches a material term, representation, obligation or warranty as set out in this Agreement or any other agreement between the Customer and its Related Entities;
  - (iv) if the Customer fails to follow a direction of Loader made reasonably and lawfully and material adverse consequences arise from the failure to follow that direction;
  - (v) if Customer commits an act or omission which compromises the safety of any person or brings Loader in to disrepute.
- (d) The Customer must pay all Charges, Other Charges and any amounts due and payable in connection with this Agreement not later than 5 days following the termination date.
- (e) Notwithstanding expiry of the Term, or termination of this Agreement as set out in this Clause 16, the Customer must ensure that prior arrangements are made to Outturn and / or outload any Grain held by the Loader prior to termination; otherwise the Customer shall be bound by the terms of this Agreement or the Port Terminal Services Protocols (as applicable).
- (f) Termination of this Agreement shall not prejudice any rights of either party that have accrued prior to the date of termination and the provisions set out in 2a, 4b, 12, 13b, 14, 15, 16, 19, 20, 27, 34, 37 and 40 shall survive termination of this Agreement.

#### **17. Force Majeure:**

- (a) For the purpose of this Agreement, a Force Majeure Event affecting a party means any event or circumstance (or combination of events or circumstances) beyond the reasonable control of a party which delays, interferes with or prevents the performance of any of that party' obligations under this Agreement and "**Force Majeure Event**" will be deemed to include any of the following events or circumstances:
  - (i) Acts of God, accident, fire, severe weather conditions, inclement or adverse weather conditions, flood, tidal conditions, fire, earthquake, explosion, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, pandemic or declarations of a state of emergency or other public health emergency;
  - (ii) defect or failure of the Loading equipment or Loading machinery; explosions; breakages; derailments; collapses of gantries, loaders or conveyors; accident to Loading machinery or lines or pipes;
  - (iii) material shortages, utility failures including but not limited to loss of water, power or gas supply for any reason;
  - (iv) Port Block Out, embargo, strikes, Industrial Disputes or any other form of labour dispute or labour shortage;



- (v) failure, disruption or delay in transportation;
  - (vi) changes in any laws, regulations or schemes, 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
  - (vii) acts or omissions of any third party (including without limitation governments, government agencies, subcontractors or customers).
- (b) For the avoidance of doubt, Vessel Default is not a Force Majeure Event.
- (c) If a party is wholly or partially precluded from complying with its obligations under this Agreement by a Force Majeure Event (in this clause 17 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. Notwithstanding any other provision of this Agreement, neither party shall be liable to the other party for any cost, charge, loss, damage, delay or failure in the performance of any obligation under this Agreement that results from or arises out of any Force Majeure Event.
- (d) As soon as possible after the Force Majeure Event arises, the Affected Party must notify the other party of:
- (i) the nature of the Force Majeure Event;
  - (ii) the cause of the Force Majeure Event;
  - (iii) 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 17 called the **Affected Obligations**);
  - (iv) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations; and
  - (v) the expected duration of the delay arising as a result of the Force Majeure Event.
- (e) Upon receiving a notice under clause 17 (d) the Parties will discuss and agree:
- (i) 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; and
  - (ii) 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.
- (f) The Affected Party must keep the other party fully informed of its plan to minimise the effect of the Force Majeure Event and use all reasonable endeavours to resolve and minimise the impact of, the Force Majeure Event.
- (g) A Customer's obligation to pay money, fees, Charges and Other Charges to the Loader in terms of this Agreement will not be excused by a Force Majeure Event unless the Loader agrees this in writing.
- (h) In relation to an Industrial Dispute, 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.

**18. Impaired financial condition:**

- (a) If the financial condition of the Customer is, in the reasonable opinion of the Loader, impaired or the Customer fails to tender any payment hereunder when due, the Loader may:
  - (i) require the Customer to pre pay some or all of the Charges and Other Charges within 24 hours of a written demand and before any further Grain Export Services are provided; and/or
  - (ii) suspend further Grain Export Services without notice to Customer until all amounts owing are paid or security for payment for future Services is provided to Loader's satisfaction; and/or
  - (iii) terminate the Agreement effective immediately and seek all available remedies from Customer.

**19. Dispute Resolution:**

- (a) In the event that there is an unresolved dispute between the parties in connection with this Agreement, each of the disputing parties must promptly nominate a senior representative and procure those representatives to promptly commence good faith discussions in an attempt to resolve the dispute without resorting to formal proceedings.
- (b) No party may commence formal proceedings until at least 10 Business Days after the commencement of discussions under clause 19(a), except to:
  - (i) seek urgent interlocutory relief;
  - (ii) avoid the expiration of any applicable statutory limitation period;
  - (iii) preserve a priority in relation to other creditors.
- (c) Pending the resolution of a dispute in accordance with this clause 19, the parties must continue to perform their obligations under this Agreement to the extent that those obligations are not the subject of the dispute and it is reasonably practical to do so.
- (d) For the avoidance of doubt, this clause 19 will not affect the ability of a party to serve a valid termination notice under this Agreement.

**20. Confidentiality:**

- (a) All information exchanged between the parties under or in connection with this Agreement (including the terms of this Agreement) or during the negotiations preceding this Agreement is confidential to them (**Confidential Information**) and may not be disclosed to any person except:
  - (i) to Recipients requiring the information for the purposes of this Agreement;
  - (ii) with the consent of the Disclosing Party;
  - (iii) if required by any court order, law, or the applicable rules of any financial market (as defined in the Corporations Act);
  - (iv) if strictly and necessarily required in connection with legal proceedings related to this Agreement; or
  - (v) if the information is generally and publicly available other than as a result of a breach of confidence by the person receiving the information.

- (b) A Receiving Party may disclose Confidential Information to a Recipient only if the disclosure is made to the Recipient strictly on a need to know basis and, prior to the disclosure:
  - (i) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed; and
  - (ii) the Recipient has given an undertaking to the Receiving Party, for the benefit of the Disclosing Party, to be bound by the obligations in this Agreement as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed.
- (c) The Receiving Party must take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 19 (b) complies at all times with the terms of this Agreement as if that person were a Receiving Party.

## **21. Compliance with Applicable Laws:**

- (a) The Loader will at its cost:
  - (i) obtain and maintain any necessary licenses and approvals; and
  - (ii) comply with all Acts, Regulations, By-laws and other Legislation; and
  - (iii) 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 Export Grain Services by the Loader, including any requirements relating to any environmental risk or damage or contamination of land that may be caused by or relate to the loading of the Grain under this Agreement.
- (b) The Customer will at the Customer's cost:
  - (i) obtain and maintain any necessary licenses and approvals; and
  - (ii) comply with all Applicable Laws, Acts, Regulations, By-laws and other Legislation; and
  - (iii) 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.
- (c) The Customer will provide all reasonable assistance to the Loader to enable it to comply with its obligations under this clause 21.

## **22. Entire understanding:**

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes, terminates and replaces all prior agreements and communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any oral explanation or information or representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Agreement.

**23. No adverse construction:**

- (a) This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

**24. Further assurances:**

- (a) A party, at its own expense and within a reasonable time of being requested by the other party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

**25. No waiver:**

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

**26. Severability:**

- (a) Any provision of this Agreement, which is invalid in any jurisdiction must, in relation to that jurisdiction:
  - (i) be read down to the minimum extent necessary to achieve its validity, if applicable; and
  - (ii) be severed from this Agreement in any other case,without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

**27. Successors and assigns:**

- (a) This Agreement binds and benefits the parties and their respective successors and permitted assigns.

**28. Assignment:**

This Agreement

- (a) may be assigned by Loader to any of its Related Entities without the consent of the Customer;
- (b) except as in paragraph (a), neither party may assign or otherwise transfer the benefit of this Agreement to any third party without the prior written consent of the other party, such consent not to be unreasonably withheld.

**29. Consents and approvals:**

- (a) Where anything depends on the consent or approval of a party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

**30. No variation:**

- (a) This Agreement cannot be amended or varied except in writing signed by the parties.

**31. Costs:**

- (a) Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

**32. GST:****32.1 Definitions**

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

**32.2 Consideration is GST-exclusive**

Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated without regard to GST.

**32.3 GST payable on taxable supply**

- (a) If a supply made under this Agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (c) If there is an adjustment to a taxable supply made under this Agreement then the Supplier must provide an adjustment note to the Recipient.
- (d) The amount of a party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.
- (e) 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.

**33. Notices:**

- (a) Any notice or other communication to or by a party under this Agreement:
  - (i) may be given by personal service, post, email or facsimile;
  - (ii) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:

**If to the Loader:**

Address: Cargill Australia Limited, Level 11, Twenty8 Freshwater Place, Southbank VIC 3006

Attention: Bridget O'Sullivan

Facsimile: +61 3 9682 2677

Email : *Bridget\_O'Sullivan@cargill.com*

If to the Customer:

Address:

Attention:

Facsimile:

Email:

or to any other address last notified by the party to the sender by notice given in accordance with this clause;

- (iii) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and
- (A) is deemed to be given by the sender and received by the addressee;
- (B) if delivered in person, when delivered to the addressee;
- (C) if posted, two (2) Business Days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or
- (D) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause,
- (E) if sent by email when the sender receives an automated message confirming delivery; or 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

**34. Set-off & Lien:**

- (a) The Loader may apply any amounts whatsoever then due and payable by it to the Customer in satisfaction of any amounts whatsoever then due and payable by the Customer (or any of its Related Entities) to Loader (or any of its Related Entities) under this Agreement or for any other reason.
- (b) Without limiting any other terms of this Agreement, or the Loader's rights at law and/or under any statute of the Commonwealth, a State or Territory, the Customer acknowledges and agrees:

(i) This Clause 34 b. applies irrespective of the capacity in which the Customer owes any amount to Cargill, whether or not the Customer is liable as principal or surety and whether or not the Customer is liable alone, jointly, or jointly and severally; (ii) The Loader will have a contractual right of lien and/or a right of set off over the Customer's Grain for all amounts due and payable by the Customer or any of its Related Entities to Cargill or any of its Related Entities under this Agreement or for any other reason; (iii) The Loader's rights described in clause (ii) above are in addition to, and do not exclude or limit, any other rights or remedies provided to the Loader by law and/or under any statute of the Commonwealth, a State or a

Territory, including, without limitation, any rights and remedies that Loader may have under the PPSA.

**35. Relationship of parties:**

- (a) Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary between the parties.

**36. Subcontracting:**

- (a) The Loader may sub-contract any part of the Export Grain Services. Any such sub-contracting will not relieve the Loader from any liability or obligation under this Agreement.

**37. Governing Law and Jurisdiction:**

- (a) This Agreement is governed by and must be construed in accordance with the laws for the time being in force in the State of Victoria.
- (b) The Parties submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

**38. Counterparts and Execution:**

- (a) The parties agree that this Agreement may be signed and delivered electronically. The words "execute," "execution," "signed," "signature," and similar words used in this Agreement will be deemed to include electronic signatures, and electronic signatures will be of the same legal effect, validity or enforceability as provided for in any Applicable Law.
- (b) This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes an original of the Agreement, and all together constitutes one Agreement.
- (c) The counterparts of this Agreement may be signed and delivered electronically in accordance with clause 38(a).

**39. Authority to Sign:**

- (a) Each individual signing this Agreement on behalf of a party warrants that the individual has been duly authorised to execute this Agreement and to bind that party on whose behalf the individual is signing.

**40. Privacy:**

Both parties acknowledge the right of the other party to access information pursuant to this Agreement in accordance with the Privacy Act 1998 (Cth). Both parties agree that any information related to the performance of this Agreement may be collected, held and used by the other party as follows:

- (a) for any purpose required or permitted by any Governmental Department or regulator, or as required by any Applicable Law;
- b) in order to maintain records and administer payments;

(c) used by Loader or its Related Entities for purposes connected with the provision of products or services by Loader or its Related Entities which the Customer has agreed to obtain from Loader or its Related Entities;

(d) used by Loader and disclosed to Loader's Related Entities to market other products and services to the Customer and

(e) disclosed by either party to any party for the purpose of enforcing any rights that party may have in connection with the Grain.



**SCHEDULE A – EXPORT GRAIN SERVICES CHARGES**

<b>Cargill Approved Sites</b>	<b>Crystal Brook Grainflow</b>	<b>Maitland Grainflow</b>	<b>Mallala Grainflow</b>	<b>Pinnaroo Grainflow</b>	<b>Shea-Oak Log Tremlett Grain</b>
<b>Booking Fee</b>	\$5.00/mt	\$5.00/mt	\$5.00/mt	\$5.00mt	\$5.00mt
<b>Loading Fee (ex. Road freight)</b>  <b>Note: An additional \$1.00/mt applies to Loading on Sundays and Public Holidays in South Australia</b>	\$23.50/mt	\$23.50mt	\$23.50/mt	\$23.50/mt	\$23.50/mt
<b>Road Freight Rate (Base rate, subject to any increase in applicable monthly fuel levy (as November 2023))</b>	\$27	\$26.50	\$16	\$45	\$17.80
<b>Shrinkage Allowance (applies to total tonnage of Grain out turned from Up-Country Loading Site)</b>	0.2%	0.2%	0.2%	0.2%	0.2%

**Supply chains that are not specifically DAFF approved for Berth 20 can be accessed by request and approval by Cargill. An additional fee of \$2/mt will be applied to the loading fee. Freight rates will be advised upon request.**

The Charges listed above are based on the loading of cereal grains (i.e. grains other than Pulses and Oilseeds) through the Port Terminal with all other commodities priced on application.

Note: onboard fumigation of stocks in the hold of the Vessel that may be required for certain destinations is not included in the above and if required, is an additional cost to the Customer.

**Port Related Charges not included in Loading Fee:**

Berth hire, wharfage, channel levy or any other related Port charges including additional charges levied by the Port Authority if a Vessel must be moved due to loading configuration issues.

<b>Other Charges (per metric tonne unless otherwise stated)</b>	<b>Charge</b>
Sample Requests (per sample) This charge does not include freight. The Customer must organise a courier or other means to pick up the sample/s from the Port Terminal.	\$130 per sample
Cancelled Port Operation Shifts (per shift) Applies where scheduled operations have been delayed or cancelled resulting in cancellation of a shift.*	\$4,500
Cancelled Up-Country Loading Site Reival Shift (per shift) Applies where scheduled operations have been delayed or cancelled resulting in cancellation of a shift.*	\$2,200
Vessel Failed Survey	\$0.55 m/t
Delays caused by contaminated grain	\$1500 Per hour
Weather Delay Charge -applies if weather delays or prevents loading	\$1500 per hour

**\*Please Note:** Loader will attempt to mitigate such costs by reallocation of labour to other operations but if in the sole opinion of Loader this is not possible, the charge will apply.

**Annexure 1: CARGILL AUSTRALIA - INTENT TO SHIP ADVICE**



Customer Name: \_\_\_\_\_

Requested shipping slot (Month FH/LH): \_\_\_\_\_

Requested quantity: \_\_\_\_\_ mt

Anticipated products and grade (max 3 per Vessel):

Product 1: \_\_\_\_\_ Grade 1: \_\_\_\_\_ Volume: \_\_\_\_\_

Product 2: \_\_\_\_\_ Grade 2: \_\_\_\_\_ Volume: \_\_\_\_\_

Product 3: \_\_\_\_\_ Grade 3: \_\_\_\_\_ Volume: \_\_\_\_\_

Authorised customer signature: \_\_\_\_\_ Date: \_\_/\_\_/\_\_

Authorised customer representative name: \_\_\_\_\_

Cargill received time and date: \_\_\_\_\_ \_\_/\_\_/\_\_

Authorised Cargill representative name: \_\_\_\_\_

Capacity allocation accepted or Declined:    Accepted    Declined

Customer reference number allocation: \_\_\_\_\_

Authorised Cargill signature: \_\_\_\_\_ Date: \_\_/\_\_/\_\_

Authorised Cargill Representative Name: \_\_\_\_\_

**This document must be returned to *Bridget\_O'Sullivan@cargill.com***

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**Annexure 2: CARGILL AUSTRALIA – VESSEL NOMINATION FORM**



Customer Name: \_\_\_\_\_

Customer Reference Number Allocation #: \_\_\_\_\_

Shipping slot allocation: Month \_\_\_\_\_ FH/LH: \_\_\_\_\_

Vessel laycan: \_\_\_\_\_

Contracted volume and tolerance: \_\_\_\_\_ Tolerance \_\_\_\_\_%

Stock allocations:

Product 1 volume: \_\_\_\_\_ Grade 1: \_\_\_\_\_ Sites: \_\_\_\_\_

Product 2 volume: \_\_\_\_\_ Grade 2: \_\_\_\_\_ Sites: \_\_\_\_\_

Product 3 volume: \_\_\_\_\_ Grade 3: \_\_\_\_\_ Sites: \_\_\_\_\_

Sale destination: \_\_\_\_\_

**Vessel information**

Vessel name: \_\_\_\_\_

Vessel owner : \_\_\_\_\_ Vessel flag: \_\_\_\_\_

Year built : \_\_\_\_\_

IMO: \_\_\_\_\_

Vessel ETA: \_\_\_\_\_

Vessel LOA: \_\_\_\_\_ Vessel Beam width: \_\_\_\_\_

Vessel DWT: \_\_\_\_\_ Vessel draft: \_\_\_\_\_

# of holds: \_\_\_\_\_

Vessel agents: \_\_\_\_\_

Prior cargo (x3): \_\_\_\_\_

Prior 3 port calls: \_\_\_\_\_

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**Annexure 3: CARGILL AUSTRALIA – CARGO ASSEMBLY PLAN**



**Loader:** Cargill Australia Pty Ltd ABN 42 004 684 173

**Customer Name:** \_\_\_\_\_

**Customer Reference Number Allocation:** \_\_\_\_\_

**Loading Port:** Mobile Bulk Loader at Berth 20, Inner Harbour, Port Adelaide, South Australia

**Vessel:**

**Allocated Slot (Month FH/LH):** \_\_\_\_\_

**Tonnage:** \_\_\_\_\_ mt (+/- 10%)

**Products and grade (max 3 per Vessel) and Tonnage per grade (if loading more than one grade):**

Product 1: \_\_\_\_\_ Grade 1: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

Product 2: \_\_\_\_\_ Grade 2: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

Product 3: \_\_\_\_\_ Grade 3: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

**Loading Plan:**

**Other terms and conditions:** All services are provided in accordance with and subject to the Cargill Australia Export Grain Services Agreement 2023/24 for Berth 20, Inner Harbour, Port Adelaide South Australia

Authorised Cargill signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Authorised Cargill Representative Name: \_\_\_\_\_

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**Annexure 4: CARGILL AUSTRALIA – BOOKING NOTE**



**Loader:** Cargill Australia Pty Ltd ABN 42 004 684 173

**Customer Name:** \_\_\_\_\_

**Customer Reference Number Allocation:** \_\_\_\_\_

**Up-Country Loading site:**

**Loading Port:** Mobile Bulk Loader at Berth 20, Inner Harbour, Port Adelaide, South Australia

**Allocated Slot (Month FH/LH):** \_\_\_\_\_

**Tonnage:** \_\_\_\_\_ mt (+/- 10%)

**Booking Fee:**

**Loading Fee:**

**Products and grade (max 3 per Vessel) and Tonnage per grade (if loading more than one grade):**

Product 1: \_\_\_\_\_ Grade 1: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

Product 2: \_\_\_\_\_ Grade 2: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

Product 3: \_\_\_\_\_ Grade 3: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

**Other terms and conditions:** All services are provided in accordance with and subject to the Cargill Australia Export Grain Services Agreement 2023/24 for Berth 20, Inner Harbour, Port Adelaide South Australia

Authorised Cargill signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Authorised Cargill Representative Name: \_\_\_\_\_

**Annexure 5: CARGILL AUSTRALIA – AUTHORITY TO LOAD**



**Loader:** Cargill Australia Pty Ltd ABN 42 004 684 173

**Customer Name:** \_\_\_\_\_

**Customer Reference Number Allocation:** \_\_\_\_\_

**Loading Port:** Mobile Bulk Loader at Berth 20, Inner Harbour, Port Adelaide, South Australia

**Vessel:**

**Allocated Slot (Month FH/LH):** \_\_\_\_\_

**Tonnage:** \_\_\_\_\_ mt (+/- 10%)

**Products and grade (max 3 per Vessel) and Tonnage per grade (if loading more than one grade):**

Product 1: \_\_\_\_\_ Grade 1: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

Product 2: \_\_\_\_\_ Grade 2: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

Product 3: \_\_\_\_\_ Grade 3: \_\_\_\_\_ Tonnage: \_\_\_\_\_ mt

Please indicate your authority to load the above Vessel by signing and dating the below and return via email. Loading will not commence until received.

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Authorised Cargill signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Authorised Cargill Representative Name: \_\_\_\_\_

Authorised Customer signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Authorised Customer Representative Name: \_\_\_\_\_

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**Annexure 6: CARGILL AUSTRALIA – FUMIGATION AND PHYTOSANITARY REQUIREMENTS**



**Customer Name:** \_\_\_\_\_

**Customer Reference Number Allocation:** \_\_\_\_\_

<b>Blending Requirements</b>
<b>Special fumigation and/or phytosanitary requirements:</b>
<b>Post-shipment samples (3kg composite sample and 1kg per hatch) will be forwarded to your nominated laboratory. Please provide Contact and address:</b>
<b>Please specify other sampling requirements (type of sample, quantity etc):</b>
<b>Other requirements/comments</b>

**Other terms and conditions:** All services are provided in accordance with and subject to the Cargill Australia Export Grain Services Agreement 2023/24 for Berth 20, Inner Harbour, Port Adelaide South Australia

Authorised Customer signature: \_\_\_\_\_ Date: \_\_/\_\_/\_\_

Authorised Customer Representative Name: \_\_\_\_\_