

ADM Trading Australia Pty Ltd - PORT TERMINAL SERVICES AGREEMENT (PTSA) 2022/2023

Client Name:

Client Allocation Reference #:

Shiploader: ADM Trading Australia Pty Ltd

ABN: 92 126 806 979

Office Address: 191 Pulteney Street, Adelaide SA, 5000, Australia

Loading Port: Mobile Bulk Loading Operation on Berth 5, Port Pirie, South Australia

Authorised Client Signature:

Authorised Client Name & Title:

Date:

Authorised ADM Signature:

Authorised Client Name & Title:

Date:

1. Definitions and Interpretations:

1.1. Definitions

ADM Port Pirie Site refers to ADM's Site located on 77 Abattoir Rd, Port Pirie.

AO means the Authorised Officer from DAWE inspecting grain as it is loaded onto the vessel

Authority to Load refers to the Client's email giving the Shiploader approval to load the cargo onto their vessel

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

Cargo Accumulation Plan (CAP) means accumulation proposal the Client supplies the Shiploader before loading can commence proving they can achieve the daily load rate of 5,000 metric tonnes.

Client means the entity or agent that has entered into the PTSA with the Shiploader and is the shipping capacity holder who will use ADM Port Pirie Berth 5 bulk loading for their shipping.

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

DAWE means the Department of Agriculture, Water and the Environment (previously known as Department of Agriculture and Water Resources (DAWR), Department of Agriculture, Fisheries and Forestry (DAFF) or Australian Quarantine and Inspection Service (AQIS)).

Delivery Period means the 10 day laycan nominated by the Client included in the Intent to Ship Notice that stipulated the period in which the Client's Vessel's will arrive and load at the Port.

ETA means estimated time of arrival at Port Pirie Berth 5.

Export Standard refers to quality standards applicable for the destination country and includes infestation, weed seeds and contaminants.

Grain means wheat, barley and pulses destined for an approved nominated Vessel.

Insolvency Event means

- (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.

Intent to Ship Notice means the email supplied by the Client to the Shiploader acknowledging they wish to ship within a specified Shipping Slot purchased.

Load Plan means the document supplied by the Client to the Shiploader that provides instructions on how the vessel shall be loaded, as set out in these Port Loading **Protocols**.

Nomination Fee means the fee that is payable upon the Client accepting a Shipping Slot offered by the Shiploader.

Outturn refers to the outturn of Grain from ADM Port Pirie Site or any other 3rd party approved site, and "**Outturned**" has a corresponding meaning.

Port means the Port Pirie Berth 5, South Australia.

Port Authority refers to Flinders Port Pirie

Port Loading Protocol describes how the Shiploader shall manage shipping capacity at Port Pirie Berth 5 and manage the operations.

Port Terminal Services means any service in relation to mobile bulk loading operation through ADM Port Pirie Berth 5.

PTSA or this Agreement means this Port Terminal Services Agreement.

Receival Standards means GTA Standards for receival and classification of commodities delivered from the Upcountry Facility to ADM Port Pirie Site.

Shiploader means ADM Trading Australia Pty Ltd.

Shipping Slot means the 15 day period offered by the Shiploader to the Client that indicates the best estimate for the commencement and completion of vessel loading.

Shipping Stem refers to the published Shipping Stem found on ADM's website at [<https://www.admgrain.com.au/grain-marketing/grain-storage-options/adm-port-pirie> insert web address here].

Testing means GTA testing and Export Standard testing carried out at ADM Port Pirie Site in accordance with Clause 8 of this PTSA.

Tonnes refers to metric tonnes loaded onto the vessel as calculated based on the ADM Port Pirie Abattoir Road site weighbridge.

Upcountry Facility is any third party site/s approved by ADM from which Grains can be loaded onto the Vessel only after testing and weighing at ADM Port Pirie first.

Vessel means the shipping vessel nominated by the Client and accepted for loading by the Shiploader in the Vessel Nomination.

Vessel Issue means

- (a) a delay in the Vessel's arrival or loading of the Grains;
- (b) cancellation or substitution of the Vessel;
- (c) inability of the Vessel to load the Grains for any reason whatsoever;
- (d) delayed or slow loading of the Grains;
- (e) mechanical breakdown of the Vessel howsoever caused;
- (f) failure of the Vessel to obtain any prior approvals or authorisations; or
- (g) failure of the Vessel in relation to any survey or inspection.

Vessel Nomination means the document supplied by the Client to the Shiploader as set out in Annexure A of the ADM Port Loading Protocols.

- 1.2. Headings are for convenience only, and do not affect interpretation.
- 1.3. When a reference is made in this Agreement to Clause or Sub-Clause, such reference shall be to a Clause or Sub-Clause of this Agreement unless otherwise indicated.
- 1.4. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”
- 1.5. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 1.6. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein.
- 1.7. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.
- 1.8. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein.
- 1.9. If an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of that party having prepared any of the provisions of this Agreement.

2. Port Terminal Services Agreement (PTSA)

- 2.1. The Shiploader provides Port Terminal Services to the Client solely in accordance with the PTSA from the commencement date.
- 2.2. The Client is bound by the terms and conditions of this Agreement from the earlier of the signing date or from the time Port Terminal Services are first provided to the Client.
- 2.3. If the Shiploader continues to provide Port Terminal Services to the Client after the term has ended then the terms and conditions of this Agreement will continue to apply until a further agreement is executed or this Agreement is terminated.

3. Slot Management

- 3.1. Shipping Slots may be purchased at any time at the approval of the Shiploader, which will be dependent on available capacity, the current Shipping Stem, stock positioning and Upcountry Facility access.
- 3.2. Subject to Clause 3.4, purchased Shipping Slots may be rolled by the Client into deferred available capacity, provided the Client provides the Shiploader with no less than 60 days' notice prior to the commencement of the shipping window.
- 3.3. Failure to use the capacity or roll before the 60 day notice period will result in forfeiture of the Shipping Slot at the purchased booking fee (Schedule A).
- 3.4. The Client may only roll a Shipping Slot within the current crop year.

4. Intent to Ship

- 4.1. The Client must submit an Intent to Ship Notice at least 30 days prior to the first day of a Shipping Slot to the ADM Bulk operations email: bulk.ade@adm.com.
- 4.2. The Intent to Ship Notice sent by the Client will stipulate tonnes, commodity, grades, Upcountry Facility and Delivery Period within the purchased Shipping Slot.
- 4.3. Within 2 Business Days of receipt of a valid Intent to Ship Notice email the Shiploader may accept or reject the Intent to Ship Notice by email.

5. Shiploader Loading

- 5.1. At Port Pirie Berth 5 the Shiploader will:
 - (a) ensure inspection is carried out by a DAWE AO with the use of an automatic sampling system;
 - (b) load the Vessel in accordance with Clause 10; and
 - (c) if requested by the Client and at the Client's cost and risk, gather samples from the loaded Grain and test in accordance with the Client's instruction.
- 5.2. The Client agrees and acknowledges that:
 - (a) there is no weighbridge at Port Pirie Berth 5 and all loads will be weighed using a certified weighbridge at ADM Port Pirie Site to quantify the Tonnage; and
 - (b) Outturn weights from the ADM Port Pirie Site are recorded on a truck by truck basis less Shrinkage (dust) Allowance as per Schedule A to the PTSA and, in the absence of manifest error or fraud, certified weighbridge weight will be deemed as the final loaded weight on the Vessel.

6. Movement of cargo from Upcountry Facility/ies

6.1. Following acceptance by the Shiploader of the Intent to Ship Notice the Client:

- (a) will notify the Shiploader of arrangements made with third party site/s and dates when Grain is likely to be moved;
- (b) Outturn dates will be reconfirmed and defined once the Vessel is nominated by the Client and a clearer picture on berthing prospects is established;
- (c) the Client will do all things necessary to facilitate timely and efficient delivery to ADM Port Pirie Site following all instructions given by the Shiploader;
- (d) all third party Grain will need to pass through ADM Port Pirie Site for Testing and Export Standard inspection;
- (e) each load will also be entered into the ADM system for traceability and recording of loaded onboard Tonnes; and
- (f) the Port Terminal Services will be charged as per Schedule A.

7. Receival Standards

7.1. The Grain delivered to ADM Port Pirie must comply with the Receival Standards. If the Grain is not in fit condition and/or does not comply with the Receival Standards and the Export Requirement Standards, the Shiploader has every right to refuse Receival.

7.2. The Shiploader may refuse at the Shiploader's sole discretion to accept, transport or load grain known or suspected to contain chemical contaminants, residues or genetically modified (GM) grain.

8. Testing Parameters

8.1. Testing will be undertaken at ADM Port Pirie Site. Each load will be tested against current GTA Standards and inspected for current Export Standards by ADM staff before proceeding to Berth 5 whereby a DAWE AO will inspect the Grain with the use of an Autosampler.

8.2. The Client will be notified if:

- (a) Grain is not compliant with GTA standard; and/or
- (b) Grain has failed to comply with Export Standards.

8.3. In the absence of proven manifest error or fraud, the Client is deemed to have accepted the results of any Testing carried out in accordance with Clause 8.1.

8.4. The Shiploader makes no warranty or guarantee as to the Testing, including but not limited to the accuracy of the results of any Testing or Export Standard inspection.

9. Transportation and Freight

- 9.1. Unless the Client has purchased FOB from the Shiploader for the entire cargo, transportation and freight from Upcountry Facilities will be:
- (a) sourced by the Client unless the Client directly requests the Shiploader, and the Shiploader agrees, to procure the freight on the Client's behalf;
 - (b) communicated to the Shiploader in writing who the road carrier/s will be before accumulation commences;
 - (c) meet all Chain of Responsibility compliance requirements as issued by the National Heavy Vehicle Regulator ("NHVR") including but not limited to legislation such as the Heavy Vehicle National Law and its related regulations; and
 - (d) at the cost to the Client, have the correct passes for Port Pirie Berth 5 entry.
- 9.2. Any costs outside of the Shiploader's control will be for the Client's account.

10. Laycan and Vessel Nomination

- 10.1. Vessel Nomination will be submitted to ADM Bulk distribution email: bulk.ade@adm.com no later than 15 days prior to the Vessel's ETA.
- 10.2. The Vessel's ETA must fall within the nominated 10 day Delivery Period. If the vessel falls outside the nominated Delivery Period the Shiploader will try to accommodate the Client's request factoring other nominated Vessel and Berth operations at the time. The Shiploader offers no guarantee of accommodating the request should it eventuate.
- 10.3. The Client may substitute the Vessel provided the substituted Vessel arrives within 3 days of the original ETA and within the nominated Delivery Period.
- 10.4. Any deviation from the original Cargo Accumulation Plan must be approved by the Shiploader and all additional costs will be for the Client's account.
- 10.5. Failure of the Vessel to present in all respects ready to load within the nominated laycan disassociates the Shiploader from their obligation to load the Vessel. The Shiploader reserves the right to give priority to other vessels on the Shipping Stem and Flinders Port Pirie Berth 5 stem, and to explore all options on a new later berthing date for the Client.

11. Port Loading Protocols and Vessel Loading

- 11.1. The Client shall stipulate the Delivery Period within which they wish to load their Vessel. The information required will consist of;
- (a) Commodity and Grade, Tonnage, destination and a general Cargo Accumulation Plan indicating the break up of tonnes and grades per site to the best of their ability. In addition to the following the Client must also provide evidence of:
 - (i) an existing account with Flinders Ports;

- (ii) the preferred road carrier/s having sufficient Port access passes so that their trucks can enter Port Pirie Berth 5 without delay or inefficiencies
 - (b) capacity requests will be on a case by case basis and at the sole discretion of the Shiploader;
 - (c) the Shiploader will confirm acceptance or rejection of the Client's capacity request within 48hrs, commencing from 9am on the next Business Day after receipt of the request; and
 - (d) the Shiploader will consider current line ups and operations at Port Pirie Berth 5 along with the Client's CAP before making the Shiploader's final confirmation
- 11.2. The Client and Shiploader agree to comply with the requirements of the Port Protocols published on the Shiploader's webpage when the Client seeks to load a Vessel using the Shiploader's approved export pathway.
- 11.3. Subject to Clause 11.15 and any days where Port Pirie Berth 5 access is closed, the Shiploader endeavours to load the Vessel at a minimum of 5,000 metric tonnes per day. Where Port Terminal Services are provided on a non-Business Day, the applicable rates shall be determined as per Schedule A.
- 11.4. Before loading can commence and the nominated Vessel is allowed to berth alongside Port Pirie Berth 5, the Shiploader shall email the Client an Authority to Load notice seeking the Client's approval to load. The email will also include all quality information related to the Cargo.
- 11.5. At least 7 days prior to the Vessel ETA, the Client must provide the Shiploader with a final CAP for all Grain being delivered to the ADM Port Pirie Site. Where any Grain is originating from third party sites, the CAP must evidence to the Shiploader's satisfaction that there will be sufficient Grain available to enable the Shiploader to efficiently load a minimum of 5,000 metric tonnes of Grain per day. Failure to provide sufficient evidence will jeopardise the Vessel's position on the Shipping Stem. However, the Shiploader shall, at its discretion, work with Client in order to load the Vessel and may at its sole discretion do so at a rate that is slower than 5,000 metric tonnes per day, provided that the Shiploader may at its discretion require the Client to be responsible for any resulting costs, loss or expense incurred. If the Grain to be loaded on the Vessel is a mixture of ADM Port Pirie Grain and third party Grain, the Client and the Shiploader shall agree on a plan as to how to best manage the Grain to be loaded onto the Vessel within the Shipping Slot.
- 11.6. If required by the Shiploader, the Client shall supply the Shiploader with an Import Permit (IP) as early as possible and no later than 72hrs before the Vessel's ETA.

- 11.7. At least 48hrs before the Vessel arrives at its destination the Client must send to the Shiploader the relevant Authority to Load via email to ADM Bulk distribution email: bulk.ade@adm.com.
- 11.8. At least 48hrs before loading commences the Client will provide the Shiploader with a Request For Permit (RFP) and Export Declaration Number (EDN).
- 11.9. The Client permits the Shiploader to communicate directly with the Vessel, the nominated Vessel agent and if necessary the Vessel's Master to promote and encourage loading efficiently. It is acknowledged and agreed that the Shiploader shall not take on any risk or responsibility in doing so.
- 11.10. The Client is solely responsible for the condition of readiness the Vessel presents to the Shiploader and for a Vessel passing marine surveyor and DAWE surveyor.
- 11.11. Should the Vessel fail any necessary survey, whether it be marine, DAWE or any other export survey required by law, statutory or relevant Port authority, the Shiploader reserves its right to take any steps necessary to ensure the efficient use of the Shipping Stem, including but not limited to moving the Vessel from the berth and/or amending the Shipping Stem, giving berthing and loading priority to other vessels on the Shipping Stem, and/or to assign a new load date once representation and passing of the failed Vessel has occurred.
- 11.12. The Client acknowledges and accepts that loading will occur at a common user berth and at all times is subject to the Flinders Ports Common User Port Protocols as applicable to Berth 5 Port Pirie.
- 11.13. The Shiploader will endeavour to load the nominated Vessel within the agreed Shipping Slot – however, the Shiploader does not take responsibility for the line-up at Berth 5 Port Pirie, and there may be other vessels that may be using the same berth.
For further information, the Client may refer to Flinders Ports Shipping Stem: www.flindersports.com.au
- 11.14. Where a Vessel is cancelled by the Client within 15 days of the first day of the relevant Shipping Slot, in addition to retaining the Shipping Slot fee, the Shiploader maintains the right to recover from the Client all resultant losses including but not limited to any cancelled labour costs, fumigation and/or other treatment costs, carrying charges and/or delay costs.
- 11.15. Notwithstanding any other provision in this PTSA, the Client understands and accepts that matters and events beyond the Shiploader's control may occur from time to time, for

which the Shiploader will not be responsible, including but not limited to changes in vessel scheduling and arrival or departure times, failure of vessels to pass any quarantine 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, rain or high winds, pandemic or epidemic (including but not limited to Covid-19), that prevent vessel loading which means the Shiploader cannot guarantee that Grain will be ready for loading, or that it can or will be loaded as scheduled. The Shiploader will use reasonable endeavours to avoid any changes or delays where possible, and will keep the Client informed of any such developments that may affect the Client's.

12. Client Warranties

- 12.1. The Client warrants and represents to the Shiploader that:
- (i) it is the legal and beneficial owner of the whole of the Grain 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 Shiploader prior to Outturn of the Grain; and
 - (ii) any CAP is and will, at all times, remain accurate and capable of execution.
- 12.2. The Client will pay, reimburse, indemnify (on demand) and keep the Shiploader indemnified against any breach of the warranties at Clause 12.1.
- 12.3. The Client agrees and acknowledges that the Shiploader may deduct from the Grain to be loaded in accordance with Clause 11 the Shrinkage (dust) Allowance as set out in Schedule A of this Agreement.

13. Charges and Invoices

- 13.1. Unless agreed otherwise, the Client will pay to the Shiploader all sums due under this Agreement within 14 days of the date of a valid tax invoice.
- 13.2. The Shipping Slot fee:
- (a) is payable, in full, within 14 days of the date of a valid tax invoice that will be immediately issued once the Shiploader has accepted the slot request through email confirmation. Until the Shipping Slot invoice/s are paid, the Shipping Slot/s will be indicative only and subject to cancellation/removal by the Shiploader in its discretion; and
 - (b) applies to the reserving of the nominated shipping capacity (without tolerance).

Do note that after loading of Vessel:

- (i) if loaded Tonnage is less than the tonnage quantity nominated by the Client under the Intent to Ship Notice, and the Client has made a pre-payment in respect of that nominated quantity, a credit will be issued to the Client which will be reflected on the invoice issued upon completion of loading;
- (ii) if loaded Tonnage is greater than the quantity nominated by the Client under the Intent to Ship Notice, and the Client has made a pre-payment in respect of that nominated quantity, a further charge will apply for all loaded quantity in addition to the quantity nominated. This amount will be reflected on the invoice issued upon completion of loading.
- (c) is non-refundable and will be forfeited if the Shipping Slot is not used or rolled over in accordance with Clause 10.

13.3. Payment must be made by direct credit into the Shiploader's bank account as follows:

Account name: ADM Trading Australia Pty Ltd
Financial Institution: JP Morgan Chase Bank, Sydney Branch
BSB: 212200
Account number: 016042627

- 13.4. If the Client fails to pay any amounts owing under this PTSA by the due date such outstanding amounts will be subject to interest at the rate of 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.
- 13.5. All amounts payable under this Agreement must be paid in full without any deduction, withholding, counter-claim or set-off.
- 13.6. Any Port related charges will be borne by the Client and the Client shall have no recourse against the Shiploader.

14. Liability and Indemnity

- 14.1. The Client will indemnify and keep the Shiploader indemnified against all costs, consequences and liability whatsoever and which is not caused by or contributed to by the Shiploader.

- 14.2. The Shiploader will only be liable for failing to load the Grains onto the Vessel if such failure is:
- (a) as a result of a material breach of this Agreement by the Shiploader (or the Shiploader's employees, representatives);
 - (b) as a result of fraudulent or unexplained physical stock shortage; or
 - (c) as a result of a quality defect caused by the Shiploader's (or the Shiploader's employees, representatives) negligence, wilful default, or wilful misconduct.
- 14.3. It is agreed that the Shiploader will not be liable for any other loss or damage, and the Client irrevocably waives any actions arising out of or in connection with and such loss or damage, including but not limited to:
- (a) any special or unusual event or any natural process (as determined by the Shiploader acting reasonably) causing loss or damage to the Grains;
 - (b) 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 Shiploader's (or the Shiploader's employees, representatives, agents or contractors) negligence, wilful default or wilful misconduct;
 - (c) any loss or damage arising out of or related to comingling of different Grades of Grain unless such comingling is caused by the Shiploader's (or the Shiploader's employees, representatives, agents or contractors) negligence, wilful default or wilful misconduct;
 - (d) the natural deterioration of Grain;
 - (e) in respect of any loss or damage arising out of or related to any quality or quantity deficiencies;
 - (f) any loss or damage arising out of or related to Grain passing or failing to pass inspection by any surveyor, officer or inspector (if not the Shiploader's employees or representatives);
 - (g) any loss or damage arising out of or related to toxic or other chemical residues, other contamination or genetic modification unless caused by the Shiploader's (or the Shiploader's employees, representatives, agents or contractors) negligence, wilful default or wilful misconduct;
 - (h) 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 Grain however caused (including without limitation any loss, cost, damage or expense caused by the failure of the Shiploader to comply with any of its obligations under this Agreement or any negligent act or omission on the part of the Shiploader, its employees or agents).

- 14.4. In any event, the Shiploader's liability in respect of providing the Port Terminal Services under this Agreement whether in tort or in contract or otherwise, will not exceed \$100,000 in respect of any one event or \$250,000 in aggregate.
- 14.5. To the extent permitted by law the Shiploader excludes all conditions and warranties implied at law or by statute relating to the obligations of the Shiploader under this Agreement.
- 14.6. The Shiploader'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 and having the goods repaired.

15. Risk and Insurance

- 15.1. The Client agrees and acknowledges that:
- (a) no Grain storage is available at the Port Terminal and as a result, the Port Terminal Services are provided using a "just in time" logistics operation;
 - (b) time is of the essence in respect of the Client's obligations under this Agreement including without limitation Grain Outturned, Vessel arrival, readiness for loading and accuracy of CAP;
 - (c) third party costs, for which the Client agrees to be responsible, will be incurred once labour and transportation are engaged; and
 - (d) the Shiploader in providing the Port Terminal Services will act in reliance on the Client fulfilling its obligations under this Agreement, including in relation to timing.
- 15.2. The Client will pay, reimburse, indemnify (on demand) and keep the Shiploader indemnified against any and all loss, liability, cost or expense that arises as a result of or in connection with a failure by the Client to strictly comply with the requirements of this Agreement.
- 15.3. The Client bears the risk of all loss or damage to the Grain which has not been caused by the negligence, wilful default, or wilful misconduct of the Shiploader (or the Shiploader's employees, representatives, agents or contractors).
- 15.4. The Client must, for the entire period that the Grain is subject to this Agreement, keep the Grain insured, with an insurer and on terms acceptable to the Shiploader, against the risks it bears pursuant to Clause 15.3.

- 15.5. The Client must, and must cause any person entering the Up-Country Facility or ADM Port Pirie Site for or on behalf of the Customer, 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 Client must at the request of the Shiploader, provide details of insurance policies taken out under Clause 15.3.

16. Termination

- 16.1. This Agreement may be terminated by either party immediately:
- (a) if the other party commits a material breach of any term or warranty of this Agreement or of the Port Protocols, and
 - (b) if the other party fails to remedy that breach within a period of not more than 10 Business Days after the party gives the other party written notice of that breach; or
 - (c) upon the occurrence of an Insolvency Event.
- 16.2. Termination will not affect any rights or remedies accrued to a party under this Agreement.
- 16.3. Notwithstanding any other provisions of this Agreement or of the Port Protocols, the Shiploader may refuse to provide Port Terminal Services:
- (a) if the Client has not paid any undisputed amounts owing to the Shiploader; or
 - (b) if the Grain is not Outturned from an Upcountry Facility or the Client does not have ownership of Grain in an Up-Country Facility.

17. Force Majeure

- 17.1. For the purposes of this Agreement, a "Force Majeure Event" affecting a party means anything outside that party's reasonable control, including but not limited to the following events or circumstances:
- (a) accident, fire, adverse weather conditions, cyclones, storms, flood, tidal conditions, earthquake, explosion, or like natural disasters, blockages at ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, pandemic or epidemic (including, without limitation, Covid-19) or declarations of a state of emergency;
 - (b) strikes, stop works, lockouts, boycotts or any other form or industrial dispute or labour shortage;
 - (c) breakdown, accidental or malicious damage to, or destruction of, any of the Shiploader's equipment;

- (d) failure, disruption or delay in transportation that impacts upon the Shiploader performing the Port Terminal Services;
 - (e) executive or administrative order or act of either general or particular application of any Government or statutory authority or any official purporting to act under the authority of that Government or statutory authority, prohibitions or restrictions by domestic or foreign Laws, regulations or policies, quarantine or custom restrictions or prohibitions on export; and
 - (f) acts or omissions of any third party (including without limitation, Governments, Government agencies, subcontractors or customers).
- 17.2. Subject to Clause 17.4, if a Party (in this Clause, the "**Affected Party**") is wholly or partially precluded from complying with its obligations under this PTSA by a Force Majeure Event, then the Affected Party's obligations to perform in accordance with the terms of this PTSA shall be suspended for the duration of the Force Majeure Event.
- 17.3. As soon as reasonably possible after the Force Majeure Event arises, the Affected Party must notify the other Party of:
- (a) the nature of the Force Majeure Event;
 - (b) the cause of the Force Majeure Event;
 - (c) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event (the "**Affected Obligations**");
 - (d) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
 - (e) the expected duration of the delay arising as a result of the Force Majeure Event; and
 - (f) the steps that are being taken by the Affected Party to minimize the Force Majeure Event and to ameliorate and remedy the consequences of the Force Majeure Event.
- 17.4. Despite any other provision of this PTSA, the occurrence of a Force Majeure Event will not relieve the Client of the obligation to pay any amounts owing under this PTSA. .
- 17.5. If the Affected Party is relieved from performing the PTSA under Clause 17 due to a Force Majeure Event for a period exceeding 60 consecutive Business Days, either party may terminate this PTSA with immediate effect by written notice to the other party.
- 18. COVID-19 Infectious or Contagious Diseases Clause**
- Notwithstanding the COVID-19 outbreak, both parties shall exercise due diligence in relation to the performance of their respective obligations and this Agreement generally. The COVID-19 outbreak shall constitute an event for the purposes of any term of this Agreement dealing with impediments and/or delays to performance outside the control

of either party, including the prevention of shipment, force majeure and/or prohibition clauses, regardless of whether the impact of the outbreak is foreseeable or not.

19. Impaired financial condition

- 19.1. If the financial standing of the Client is, in the reasonable opinion of the Shiploader, such that the Client may not tender, or has not tendered, any payment due under the PTSA, the Shiploader may:
- (a) require the Client to pre-pay some or all of the Port Terminal Services charges due and owing to the Shiploader within 24 hours of a written demand and before any further Port Terminal Services are provided; and/or
 - (b) suspend further Port Terminal Services without notice to the Client until all amounts owing are paid or security for payment for future Port Terminal Services is provided to Shiploader's satisfaction; and/or
 - (c) terminate the PTSA effective immediately and seek all available remedies under the PTSA and under the law from the Client.

20. Dispute Resolution

- 20.1. In the event that there is an unresolved dispute between the parties in connection with this Agreement, the following procedure shall apply:
- (a) Either party must notify the other in writing of the dispute, including a description of the dispute and suggest a desired outcome.
 - (b) The other party shall respond to the dispute within 2 Business Days by providing a written explanation regarding that party's position.
 - (c) Where the aggrieved party is not satisfied with the other party's response, the dispute may be escalated by serving a further written notice to the other party's Nominated Representative.
 - (d) The Nominated Representative (or authorised delegate, if the Nominated Representative is unavailable) shall endeavour to arrange a meeting or phone call between the parties to be held within 2 Business Days of receipt of the abovementioned escalation notice.
 - (e) The parties will discuss the issue at the escalation meeting in an attempt to achieve a better understood and / or satisfactory outcome.
- 20.2. No party may commence formal proceedings until at least 10 Business Days after the commencement of discussions under Clause 20.1, except to:
- (a) seek urgent interlocutory relief;
 - (b) avoid the expiration of any applicable statutory limitation period;
 - (c) preserve a priority in relation to other creditors.

- 20.3. Pending the resolution of a dispute in accordance with this Clause 20, 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.
- 20.4. For the avoidance of doubt, this Clause 20 will not affect the ability of a party to serve a valid termination notice under this Agreement.

21. Confidentiality

- 21.1. All information and documents exchanged in oral, written, electronic and/or any other form between the parties under or in connection with this Agreement (including the terms of this Agreement) or during the negotiations preceding this Agreement shall be "Confidential Information" for the purposes of this Clause 21 and may not be disclosed to any other person except:
- (a) to its legal representatives requiring the information for the purposes of this Agreement;
 - (b) with the consent of the party disclosing such Confidential Information ("Disclosing Party");
 - (c) if required by any court order, law, or the applicable rules of any financial market (as defined in the Corporations Act);
 - (d) if strictly and necessarily required in connection with legal proceedings related to this Agreement; or
 - (e) if the information is generally and publicly available other than as a result of a breach of confidence by the person receiving the Confidential Information ("Receiving Party").
- 21.2. A Receiving Party may disclose Confidential Information to a Representatives only if the disclosure is made to the Representatives strictly on a need to know basis and, prior to the disclosure:
- (a) the Receiving Party notifies the Representatives of the confidential nature of the Confidential Information to be disclosed; and
 - (b) the Representatives 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.
- 21.3. 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 21 complies at all times with the terms of this Agreement as if that person were a Receiving Party.

22. Compliance

22.1. The Shiploader will at its cost:

- (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 Port Terminal Services by the Shiploader.

22.2. The Client will at the Client's cost:

- (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.

22.3. The Client will provide all reasonable assistance to the Shiploader to enable it to comply with its obligations under this Clause 22.

23. Entire understanding

23.1. 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.

23.2. Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any 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.

24. Waiver

24.1. 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.

24.2. 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.

24.3. A waiver of a breach does not operate as a waiver of any other breach.

25. Assignments

- 25.1. The Shiploader may assign its rights under this Agreement or any parts thereof, or otherwise sub-contract or novate any of its obligations under this Agreement upon written consent the Client (which consent will not be unreasonably withheld or delayed).
- 25.2. The Client may assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement only with the prior written consent of the Shiploader.

26. Lien

The Shiploader has, in priority to all other claims, liens or security, a lien over any Grain received by it, in respect of any fees and charges payable to the Shiploader in respect of that Grain. Notwithstanding any other term of this Agreement, the Shiploader may, at its sole discretion, refuse to Outturn the Customer's Grain if the Customer has not paid any amounts owing to it.

27. GST

- 27.1. Words used in this clause that are defined in the A New Tax System (Goods and Services Tax) Act 1999 have the meaning given in that legislation.
- 27.2. Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated without regard to GST.
- 27.3. 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.
- 27.4. 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.
- 27.5. If there is an adjustment to a taxable supply made under this Agreement then the Supplier must provide an adjustment note to the Recipient.
- 27.6. 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.
- 27.7. 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.

28. Notices

- 28.1. Unless otherwise stated under this Agreement, notices given by either Party or their agents or their agents in accordance with this PTSA, shall be in writing, legible and in the English language. For avoidance of doubt, 'in writing' means personal service, post, email or facsimile to the persons set out below;

If to the Shiploader:

Address: 191 Pulteney Street, Adelaide SA, 5000, Australia

Attention:

Email:

If to the Client:

Address:

Attention:

Email:

- 28.2. A notice is regarded as given and received:
- (a) if it is sent by post mail, on the third Business Day after posting; or
 - (b) if it is sent by e-mail, on the day of transmission.

29. No right of set-off

- 29.1. No party has right of set-off against a payment due to another party unless this PTSA expressly states otherwise.

30. No Partnership

- 30.1. Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the parties.

31. No Variation

- 31.1. This PTSA cannot be varied or amended in any way except when both parties have agreed to any variation or amendment in writing signed by the authorized representatives of both parties.

32. Costs

- 32.1. Each party must pay its own legal costs and incidentals to the completion of this Agreement.

33. Subcontracting

- 33.1. The Shiploader may sub-contract any part of the PTSA. Any sub-contracting will not relieve the Shiploader from any liability or obligation under the PTSA.

34. Governing Law and jurisdiction

- 34.1. The PTSA is governed by, and shall be construed in accordance with, the laws of the State of South Australia, Australia.
- 34.2. The parties agree that the Courts of South Australia shall have exclusive jurisdiction to determine any disputes arising under or in relation to this Agreement, and the parties irrevocably submit to the jurisdiction of those Courts.

35. Counterparts and Execution

- 35.1. The PTSA might consist of a number of counterparts and if the counterparts are taken together constitute one document.
- 35.2. Each individual signing the PTSA on behalf of a Party warrants that they are authorised to execute the PTSA and to bind that party on whose behalf the individual is signing.
- 35.3. The parties agree that:
- (a) a party may electronically sign a soft copy of this Agreement and by doing so will:
 - (i) bind itself to this Agreement; and
 - (ii) satisfy any statutory or other requirements for this Agreement to be in writing and signed by that party; and
 - (b) a party may exchange an executed counterpart of this Agreement with another party by sending it by email to the other party or that other party's legal representative. In such an instance the exchange by email will be deemed to be an effective exchange of an originally executed counterpart and is intended to take effect as delivery of the Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Port Terminal Services Agreement to be executed by their duly authorized representatives in duplicate, each duplicate to be considered an original and each Party to retain one duplicate, as of the day and year first above written.

SIGNED BY [**]** as authorised
signatory of ADM Trading Australia Pty Ltd:

Signature of authorised signatory

*If this Agreement was signed electronically, I
certify that my electronic signature was affixed
by me, or at my direction.*

SIGNED BY [**]** as authorised
signatory of []:

Signature of authorised signatory

*If this Agreement was signed electronically, I
certify that my electronic signature was affixed
by me, or at my direction.*

SCHEDULE A – EXPORT SHIPPING FEES AND CHARGES

VESSEL LOADING FEE

\$60.00/mt (TRACK to FOB) Wheat and Barley

Includes:

- Booking fee and Vessel loading
- Harvest receival and storage
- Weighing via certified weighbridge
- Grains testing at site level
- Movement of Grain from ADM Port Pirie (Abattoir Road site) to Port Pirie (Flinders Ports) Berth 5
- Stevedoring (Stow trimming as per vessel instruction)
- AO inspection as required by DAWE

\$35.00/mt (DLV ADM Port Pirie to FOB)

Includes:

- Booking fee and vessel loading
- Weighing via certified weighbridge
- Grains testing at site level
- Stevedoring (stow trimming as per vessel instruction)
- AO inspection as required by DAWE
-

*Fees are based on cereal grain with other commodities POA

Shrinkage (dust) Allowance 0.3%

Nomination (pre-payment) fee \$7.00/mt (pre-payment immediately after Shipping Slot acceptance via email).

Excludes fumigation, port related charges and any other fees outside the reasonable control of ADM Trading Australia Pty Ltd.

Vessel demurrage and breakdowns will not be compensated.

ADDITIONAL FEES AND CHARGES

Sampling Fee \$200 per sample.
(Courier costs at Client's expense)

Sunday/Holiday rates \$15,000 per day (additional).

Cancellation Fees \$25,000 per cancelled 24 hour shift

Minimum Tonnage per vessel	20,000MT
----------------------------	----------

Where a vessel loads less than the Minimum Tonnage of 20,000 MT, an additional fee of \$10 per MT on the shortfall will apply.

PAYMENT TERMS

Payment Terms – 14 days from invoice date

NB: All prices quoted are \$AUD per tonne and GST Exclusive