

# Terms and Conditions

CLEAR Commodities Pty Ltd

ACN 126 444 219

1st October 2009



# CLEAR Terms and Conditions

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## Highlights<sup>1</sup>

The CLEAR Grain Exchange is an electronic platform developed to facilitate the trading of grain harvested in Australia, and intended to provide Australia-wide industry transparency.

All industry participants (including growers, traders, brokers, agents, consultants, accumulators, speculators and end users) are eligible to become Registered Users on CLEAR and may record bids and offers on grain themselves, or via an Authorised Representative.

Warehoused grain can be automatically viewed in the inventory of a Registered User's CLEAR account, **except** at those Storage Providers (Bulk Handlers) that still require Registered Users to nominate CLEAR<sup>2</sup>. For nominated grain, CLEAR will hold the entitlement to that grain on a bare trust so that at all times the Registered User remains the owner of the grain until full payment is received.

gTickets are issued as CLEAR's unique electronic identification record of warehoused grain. Registered Users or their Authorised Representatives are in control of determining when, and for how much, they wish to buy or sell their grain.

Bids and offers are made automatically on an opt-out basis where the Storage Provider supports CLEAR integration with their warehousing system. Automatic bids can be calculated using daily cash bid sheets. Automatic offers are subject to the seller providing a price.

CLEAR has engaged Perpetual Nominees Limited<sup>3</sup> as the independent Custodian to deal with all trade proceeds. Perpetual disburse the trade proceeds to the relevant parties.

For nominated grain, a Registered User is free to remove their grain from CLEAR at any time before an offer or bid for that grain is accepted, subject to paying applicable storage and handling fees.

The CLEAR Grain Exchange is accessible 24 hours, 7 days a week and is open for business between the hours of 10.00am and 6.00pm AEST each Business Day. Bids and Offers entered on CLEAR outside these hours will be recorded, time and date stamped (in the sequence they are received by CLEAR) ready for matching at the commencement of business the following Business Day.

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1. These Highlights are for general guidance only and do not form part of the Terms and Conditions

2. Currently CBH (Western Australia), ABB Grain and AWB Grainflow (South Australia) still require nomination

3. Perpetual Nominees Limited acts as an Authorised Representative of Perpetual Trustee Company Limited ("PTCL") under PTCL's Australian Financial Services Licence number 236643 (Authorised Representative number 266798)

**The Terms and Conditions bind all Registered Users and govern the use of the CLEAR System. Without affecting the application of the previous sentence, by nominating CLEAR as the 'Client' of the Storage Provider for your Grain or by Depositing your Grain or having your Grain Deposited on the CLEAR System , you agree to be bound by the following Terms and Conditions.**

## **1. Registration**

### **1.1 Use of the CLEAR System**

- (a) Use of the CLEAR System is subject to the Terms and Conditions.
- (b) The CLEAR System can only be used by a Registered User.

### **1.2 Registration**

- (a) A person may apply to CLEAR to become a Registered User.
- (b) In order to be registered as a Registered User, a person must:
  - (i) submit a completed Application Form to CLEAR (including but not limited to providing CLEAR with all information required by CLEAR in order for it to undertake a background and financial check on each Applicant as well as ascertain whether an Applicant is a member of any applicable national or state industry body in order for CLEAR to make a determination whether to approve an Applicant's application and whether any trading limits should be applied to a Registered User's registration as a Registered User;
  - (ii) inform CLEAR of the person's bank account details to be used with respect to dealings on CLEAR by the Custodian; and
  - (iii) agree to be bound by the Terms and Conditions and, in this regard, by applying to CLEAR to become a Registered User a person is deemed to have agreed to be bound by the Terms and Conditions.
- (c) A Registered User that appoints an Authorised Representative to act on its behalf must:
  - (i) notify CLEAR of the identity of the Authorised Representative;
  - (ii) confirm the authority of the Authorised Representative to act on behalf of that Registered User on the CLEAR System; and
  - (iii) provide CLEAR with the Authorised Representative's User Details or procure its Authorised Representative to provide CLEAR with its User Details, and

the Authorised Representative must provide to CLEAR written confirmation that it acts for the said Registered User on the CLEAR System.

- (d) Subject to compliance with clause 1.2(c), CLEAR will provide the Authorised Representative with the necessary access to the CLEAR System in relation to the gTickets held by the Registered User that it represents in order for that Authorised Representative to be able to act on behalf of that Registered User in accordance with the Terms and Conditions.
- (e) CLEAR may accept or reject an application in its sole discretion.
- (f) CLEAR will provide each person approved as a Registered User with a unique username and password to access, use and/or view the CLEAR System, which username and password the Applicant

must confirm on the CLEAR System before registration as a Registered User is complete. A Registered User must not reveal the password to any other person (including CLEAR) or allow any other person to access their account on the CLEAR System. CLEAR will provide separate access for an Authorised Representative concerning that Authorised Representative's Registered Users.

### **1.3 Cancellation of Registration**

- (a) The registration of a Registered User may be cancelled:
  - (i) by CLEAR at any time in its sole discretion without providing any reason or cause, and CLEAR shall inform the former Registered User by 5pm on the next Business Day;
  - (ii) at the request of a Registered User made in writing to CLEAR by giving 10 Business Days notice to CLEAR, all Offers and Bids of that Registered User not Accepted at the date of that notice are deemed to be withdrawn by the Registered User from the CLEAR System at the date of that notice.
- (b) If a Registered User is the subject of an Insolvency Event, the Registered User's registration will be deemed to be immediately cancelled.
- (c) On cancellation of the registration of a Registered User pursuant to clause 1.3(a) or 1.3(b):
  - (i) any open Bids or Offers made by the Registered User will be deemed cancelled and removed from the CLEAR System;
  - (ii) subject to compliance with clause 1.3(c)(iv), any gTickets held by the Registered User will be available for Release to the Registered User in accordance with clause 10.3;
  - (iii) if the Registered User is a party to a Sale Contract which has not yet been settled, the Registered User will be deemed to be in breach of that Sale Contract;
  - (iv) the Registered User will be indebted to CLEAR for the payment of Fees as described in clause 12 for the period that Registered User holds the gTickets Released pursuant to this clause 1.3(c) and must pay the said Fees to CLEAR within 5 Business Days of the notice of termination (unless CLEAR agrees otherwise). Pending payment of the said Fees, the relevant gTicket will be deemed Suspended; and
  - (v) the person will cease to be a Registered User.

### **1.4 Suspension of Registration**

- (a) The registration of a Registered User may be suspended by CLEAR at any time in its sole discretion without providing any reason or cause, and CLEAR shall inform the suspended Registered User by 5pm on the next Business Day.
- (b) The period of suspension under clause 1.4(a) is at CLEAR's discretion.
- (c) The suspension of registration ceases at 9am on the Business Day following the date CLEAR notifies the suspended Registered User to that effect in writing or through the CLEAR System.

## 2. Recording Grain Deposits on the CLEAR System

### 2.1 Depositing Grain

- (a) Where a Registered User wishes to record a Deposit of Grain into the CLEAR System and the Storage Provider with which the Registered User deposits the Grain requires the Registered User to make a nomination that the Grain be Deposited into the CLEAR System ("**Nominated Grain**"), the Registered User must at the time of making the deposit provide the Storage Provider with all information required by the Storage Provider (including the information required for the Storage Provider to complete the Deposit Information) and specify with the Storage Provider that the "Client" in respect of that Grain is CLEAR.
- (b) Where the terms of the Registered User's Storage Provider Agreement with the Storage Provider automatically nominate the particular type of Grain to be Deposited into the CLEAR System ("**Automatic Grain**"), the Registered User agrees and warrants that, unless the Registered User has withdrawn or cancelled that nomination by notice in writing to the Storage Provider prior to the deposit of that Grain, depositing that Grain with that Storage Provider constitutes a direction to that Storage Provider to nominate that Automatic Grain as being Deposited into the CLEAR System, in which case, the Registered User warrants and represents to CLEAR that it has granted the Storage Provider holding the Registered User's Automatic Grain the authority to act on behalf of the Registered User to nominate the Grain as Deposited in the CLEAR System.
- (c) A Deposit of Grain in the CLEAR System is not effective and the record of the Deposit of that Grain will not be accepted by CLEAR (and a gTicket will not be created in respect of that Grain) unless confirmation of the deposit of the Grain with the Storage Provider (including the User Details) is received by CLEAR in such form as CLEAR may from time to time require. This clause 2.1(c) does not apply to the Deposit of Grain in respect of a Replacement gTicket under clause 9.1(d).
- (d) With respect to Nominated Grain, CLEAR (as nominee of the Registered User who has nominated CLEAR as the "Client" in accordance with clause 2.1(a)) will hold on a bare trust the Registered User's entitlement to Nominated Grain which has been deposited with the Storage Provider. The Registered User will at all times remain the beneficial owner entitled to the Nominated Grain until contract settlement in accordance with clause 9. CLEAR will hold the entitlement to Outturn of the Nominated Grain on a bare trust for the Owner and CLEAR will not at any time have any beneficial interest in the Nominated Grain.
- (e) The Registered User (or the person [if any] on whose behalf the Registered User acts in accordance with the representation made under clause 2.6(a)(iii)) remains the legal and beneficial owner of the Automatic Grain Deposited into the CLEAR System until contract settlement in accordance with clause 9. CLEAR will not at any time have any interest in the Automatic Grain.
- (f) CLEAR may accept or decline a Deposit of Grain into the CLEAR System in its absolute discretion.

### 2.2 Integrated Storage Providers

- (a) The Registered User acknowledges that it is bound by, and will comply with, the Storage Provider Agreement of the Integrated Storage Provider in respect of any

Grain that is deposited with the Integrated Storage Provider and is Deposited on the CLEAR System.

- (b) The Registered User acknowledges further that it is not obliged to deposit any Grain with the Integrated Storage Provider.
- (c) The Registered User waives all rights it has or may have against CLEAR in respect of any claim resulting (whether directly or indirectly) from Grain deposited with an Integrated Storage Provider and in respect of any act or omission of an Integrated Storage Provider in respect of that Grain.

### 2.3 Creation of a gTicket

Once Grain has been Deposited into the CLEAR System by a Registered User in accordance with clause 2.1 and the Storage Provider has provided the Deposit Information to CLEAR:

- (a) CLEAR, on receipt of the Deposit Information, must create and issue a gTicket in respect of the Grain to the Registered User, who will then be the Owner of the gTicket and CLEAR will provide a copy of the gTicket to the Registered User;
- (b) CLEAR must cause the CLEAR System to record the Registered User as the Owner of the gTicket.

### 2.4 Confirmation or amendment of gTickets

- (a) Until a gTicket is confirmed, it cannot be dealt with in any way by any person as part of the CLEAR System. Once confirmed, the gTicket can only be dealt with in accordance with the Terms and Conditions.
- (b) gTickets created and issued pursuant to clause 2.3 with respect to:
  - (i) Nominated Grain will appear as unconfirmed on the CLEAR System; and
  - (ii) Automatic Grain is confirmed on creation and will appear as confirmed on the CLEAR System.
- (c) If a Registered User believes that the quantity and Specifications contained in an unconfirmed gTicket accurately describes the Grain Deposited, the Registered User must confirm the gTicket on the CLEAR System.
- (d) If a Registered User believes that the quantity or Specifications contained in an unconfirmed gTicket do not accurately describe the Grain Deposited, the Registered User must query the information using the CLEAR System. CLEAR will raise the query with the Storage Provider. If the Storage Provider amends the quantity or Specifications in response to the query, CLEAR will amend the gTicket to accord with the amendments required by the Registered User and distribute a copy of the amended gTicket to the Registered User. The amended gTicket must be confirmed by the Registered User on the CLEAR System before the gTicket will be valid or operable on the CLEAR System. If the query cannot be resolved between the Registered User and the Storage Provider, the gTicket must be Released to the Registered User, in accordance with clause 10.3.
- (e) If the Registered User fails to confirm a gTicket pursuant to clause 2.4(c) or seek to have the details of a gTicket corrected pursuant to clause 2.4(d) within five (5) Business Days of the date the gTicket is issued, the gTicket is deemed to be confirmed.
- (f) If a Registered User believes that the quantity or Specifications contained in a confirmed gTicket the subject of Automatic Grain do not accurately describe the Grain Deposited, the Registered User must query the information directly with the Storage Provider. If

the Storage Provider amends the quantity or Specifications in response to the query, CLEAR will amend the gTicket to accord with the amendments required by the Storage Provider. If the query cannot be resolved between the Registered User and the Storage Provider, the gTicket must be Released to the Registered User, in accordance with clause 10.3.

## **2.5 Amendment of gTickets by CLEAR**

- (a) Registered Users acknowledge that CLEAR may amend gTickets from time to time if the Storage Provider notifies CLEAR of changes in the location, Specification or other details of the Grain the subject of that gTicket.
- (b) While CLEAR will endeavour to update each gTicket in respect of location, Specification and other details of the Grain in accordance with clause 2.5(a), if CLEAR is advised by the Storage Provider that the Grain has been moved or reclassified by the Storage Provider, CLEAR does not guarantee that the:
  - (i) Grain will be physically located at the location specified in the gTicket; or
  - (ii) Grain available for Outturn will be of the same Specification specified in the gTicket.
- (c) The Registered User acknowledges that its sole rights in respect of any changes to the location or Specification of Grain represented on a gTicket is against its Storage Provider pursuant to, and limited by, the provisions of the Registered User's Storage Provider Agreement. The Registered User hereby waives all rights it has or may have against CLEAR in respect of any claims it has or may have regarding any changes to the location or Specification of Grain represented on a gTicket.

## **2.6 Registered User's Representations and warranties**

- (a) By Depositing Grain pursuant to clause 2.1, the Registered User represents and warrants that:
  - (i) the Registered User has the legal and beneficial ownership of the Grain (or the right to deal with the beneficial ownership of the Grain) and that the Registered User's ownership is Unencumbered; or
  - (ii) the Registered User has the legal and/or beneficial ownership of the Grain (or the right to deal with the beneficial ownership of the Grain) and that if the Registered User's ownership is Encumbered, the Registered User has the requisite authority from the third party holding the Encumbrance over the Grain to deal with the Grain in accordance with the Terms and Conditions; or
  - (iii) if the Registered User does not have the legal and beneficial ownership of the Grain (or the right to deal with the beneficial ownership of the Grain), it has the requisite authority from the legal owner of the Grain and/or any third party holding an Encumbrance over the Grain to deal with the Grain in accordance with the Terms and Conditions.
- (b) The Registered User represents and warrants to CLEAR that the Specifications contained in a gTicket are true and accurate by:
  - (i) confirming that gTicket pursuant to clauses 2.4(c) or 2.4(d); or
  - (ii) the gTicket being deemed confirmed pursuant to clause 2.4(e) as a result of failing to confirm that gTicket or seeking to have the details of the gTicket corrected.

## **3. Rights attaching to gTickets and dealings in gTickets**

### **3.1 Owner of a gTicket**

- (a) Subject to the Terms and Conditions, the Owner of a gTicket has the right in accordance with clause 10.2 to request the Release of the gTicket.
- (b) Subject to clause 3.2, the Owner of a gTicket is entitled to deal with the gTicket using the CLEAR System in accordance with the Terms and Conditions.

### **3.2 Suspended gTickets**

A Suspended gTicket cannot be subject to an Offer, a Bid or a direction to Release under clause 10.2.

### **3.3 Dealings outside the CLEAR System not permitted**

The Owner of a gTicket must not deal with a gTicket, or the corresponding Grain, other than in accordance with the CLEAR System and the Terms and Conditions. Any proposed change to the rights relating to a gTicket or the corresponding Grain is of no effect until Accepted on and processed through and in accordance with the CLEAR System.

### **3.4 Special Crossings**

The CLEAR System permits the fixing of a Bid with an Offer by way of a Special Crossing rather than being a Bid at large, capable of Acceptance by any matching gTicket. Special Crossings will be recorded by the CLEAR System and be subject to the same procedures as if Accepted on the CLEAR System, including the payment of all Fees.

### **3.5 Transaction Reversal and Cancellation**

Each Registered User irrevocably appoints CLEAR as its attorney with respect to authorising CLEAR, in its absolute discretion and, in addition to the operation of clause 4.4, to reverse a Sale Contract (not yet settled) or cancel a Bid or Offer where:

- (a) there is an error or default in the operation or continuity of the CLEAR System; or
- (b) CLEAR deems it necessary for the integrity of the CLEAR System or orderly transaction of business on the CLEAR System, in which case CLEAR may also suspend trading on the CLEAR System for such purposes.

### **3.6 Completing Transactions**

Each Registered User irrevocably appoints CLEAR as its attorney to do all acts and things necessary to complete the sale of Grain on the CLEAR System.

## **4. Making Bids and Offers**

### **4.1 Making Bids**

- (a) A Buyer makes a Bid to buy Grain using the CLEAR System in one of two ways:
  - (i) providing a Bid Sheet to CLEAR in accordance with clause 4.1(b); and
  - (ii) directly through the CLEAR System in accordance with clause 4.1(e).
- (b) A Buyer may make a Bid pursuant to clause 4.1(a)(i) by doing the following:
  - (i) completing a Bid Sheet with the relevant Bid Parameters;
  - (ii) providing that Bid Sheet to a Storage Provider, which, in its Storage Provider Agreement, is obliged to pass that Bid Sheet to CLEAR (subject to the Registered User directing the Storage Provider not to do so); and

- (iii) not indicating to the Storage Provider at or before providing that Bid Sheet that the Buyer does not wish to make a Bid on the CLEAR System in respect of the Grain.
  - (c) The Buyer agrees the following in respect of all Bids made pursuant to clause 4.1(b):
    - (i) the provision of a completed Bid Sheet in accordance with clause 4.1(b) constitutes the making of a Bid to buy Grain on the CLEAR System; and
    - (ii) the terms of the Bid, being the Bid Price, the maximum quantity of Grain to be bought, the Commencement Time of the Bid and the Expiry Time of the Bid, are as set out on the Bid Sheet or as determined as follows:
      - (A) the Bid Price is as calculated by the CLEAR System (on a Free-in-Store basis), based on the price set out on the Bid Sheet;
      - (B) the quantity of Grain to be bought is the quantity indicated by the Buyer to CLEAR or the Buyer's trading limit;
      - (C) the Commencement Time is Market Open on the date on which the Bid is received into the CLEAR System (or for the next Business Day, if the Bid Sheet is received after Market Close on any Business Day or on any day that is not a Business Day); and
      - (D) the Expiry Time is the time of the Market Close on the same date.
  - (d) The Buyer acknowledges that the CLEAR System will calculate the Bid for the purposes of clause 4.1(c)(ii):
    - (i) in multiples of minimum price increments of one (1) cent or any such other increments CLEAR publishes from time to time;
    - (ii) using the Bid Parameters set out in the Bid Sheet to adjust for Grain with different Specifications and to account for the Location Differentials; and
    - (iii) using or applying any further information provided by the Buyer and accepted by CLEAR (in its absolute discretion), including offsets and formulas.
  - (e) A Buyer may make a Bid pursuant to clause 4.1(a)(ii) by doing the following:
    - (i) access the CLEAR System;
    - (ii) specify a Bid for:
      - (A) a maximum quantity of Grain;
      - (B) a Commencement Time, which must not be any earlier than Market Open, which the Registered User should note must be on a Business Day; and
      - (C) an Expiry Time, which, if not specified, is the Market Close on the day the Bid is entered on CLEAR;
    - (iii) enter into, and/or review Bid Parameters, in the CLEAR System, which the CLEAR System will use to calculate a range of Bids, acknowledging that Bids are calculated by using the Bid Parameters to adjust for Grain with different Specifications and to account for the Location Differentials; and
    - (iv) agree that the Bid will be generated on, and in accordance with, the CLEAR System;
    - (v) acknowledge that the Bid Price will be calculated in multiples of minimum price increments of one (1) cent or any such other increments CLEAR publishes from time to time.
  - (f) The Registered User acknowledges that a Bid that is not Accepted on one Business (between Market Open and Market Close) is renewed on the same terms on each subsequent Business Day until it is cancelled under the terms of clause 4.4 or Accepted.
  - (g) By agreeing to generate a Bid, the Buyer is taken to have made all of the Bids which are calculated by the CLEAR System on the basis of the Bid Parameters.
- 4.2 Making Offers**
- (a) A Seller who is the Owner of a gTicket may make an Offer using the CLEAR System to sell the following:
    - (i) Automatic Grain in accordance with clause 4.2(b); and
    - (ii) Nominated Grain in accordance with clause 4.2(e), being the Grain which is represented by that gTicket. There is no minimum quantity of Grain that a Registered User is required to deposit at a Storage Provider in order to use the CLEAR System.
  - (b) A Seller makes an Offer to sell Automatic Grain using the CLEAR System by depositing the Grain with a Storage Provider in accordance with clause 2.1(b), in respect of which the Seller agrees to the following:
    - (i) the depositing of Automatic Grain with the Storage Provider in accordance with clause 2.1(b) constitutes the making of an Offer on the CLEAR System to sell Grain;
    - (ii) the terms of that Offer, being the Offer Price and the Specifications of the Grain (including locations and Storage Providers) are as set out on the gTicket and/or Offer Sheet;
    - (iii) in the case that the Offer Price is not determined in accordance with clause 4.2(b)(ii), the Offer Price is as calculated by the CLEAR System (on a Free-in-Store basis), based on the price set out on the Offer Sheet or otherwise as agreed between the Seller and CLEAR in writing; and
    - (iv) that Offer is made subject to the Terms and Conditions.
  - (c) The Seller acknowledges that the CLEAR System will calculate the Offer Price for the purposes of clause 4.2(b)(iii) in multiples of minimum price increments of one (1) cent or such other increments CLEAR publishes from time to time.
  - (d) The Seller acknowledges that the CLEAR System may calculate a number of Offers based on the Offer Parameters or otherwise in accordance with clauses 4.2(b) and 4.2(c) and the Seller agrees that each constitutes an Offer to sell Grain on the CLEAR System.
  - (e) A Seller makes an Offer to sell Nominated Grain using the CLEAR System by specifying a minimum Offer quantity equal to the single smallest relevant gTicket quantity (or the remaining gTicket quantity when a gTicket has been previously split to match a Bid or series of Bids) or with respect of minimum offer increments (if any) CLEAR will publish from time to time. For the avoidance of doubt, if not otherwise specified the minimum offer increment is equal to the single smallest relevant gTicket quantity, and:
    - (i) a maximum quantity of Grain;

- (ii) a Commencement Time, which must not be any earlier than Market Open on a particular Business Day; and
  - (iii) an Expiry Time, which if not specified is fourteen (14) days from the close of the Business Day the Offer is entered on the CLEAR System or as published by CLEAR from time to time.
- (f) An Offer made by a Seller in respect of Grain produced by or on a Share Farm is binding on all Sharers in that Share Farm and, further to which, each Sharer agrees as follows:
- (i) each other Sharer in the same Share Farm has the authority to Offer to sell on the CLEAR System all or any of the Grain produced by or on that Share Farm; and
  - (ii) CLEAR is not liable in respect of any costs or losses incurred (whether directly or indirectly) by the Sharer as a result of one of the other Sharers in the same Share Farm making an Offer on the CLEAR System to sell all or any of the Grain produced by or on that Share Farm and/or the sale of that Grain on the CLEAR System.

#### 4.3 Offer Price adjustment

- (a) This clause 4.3 will not apply to any Offer in respect of which the Seller provides notification to CLEAR to that effect. All such notifications must be provided using the CLEAR System.
- (b) The Seller acknowledges that the CLEAR System will remove each Offer from the CLEAR System (“**Affected Offers**”) at any time where all Bid Prices on the CLEAR System at that time exceed all Offer Prices for the same Specification Grain.
- (c) If clause 4.3(b) applies, the Seller agrees that its Affected Offers must be varied in accordance with clause 4.3(d) and re-entered as new Offers on the CLEAR System.
- (d) An Affected Offer may be varied in accordance with clause 4.3(c) by the Offer Price being made equal to the highest Bid Price available on the CLEAR System as at the time of the variation is effected.

#### 4.4 Cancellation of a Bid or Offer

- (a) A Buyer or Seller who has made a Bid or an Offer may cancel that Bid or Offer in accordance with clause 4.4(b) at any time before it is Accepted.
- (b) A Bid or Offer is cancelled if and only if the Buyer or Seller (as the case may be) makes the request for cancellation on the CLEAR System. The cancellation takes effect at the time the CLEAR System records the Bid or Offer as cancelled.
- (c) CLEAR may in its sole discretion cancel a Bid or Offer at any time before it is Accepted and the cancellation takes effect at the time the CLEAR System records the Bid or Offer as cancelled.
- (d) The cancellation of a Bid or Offer does not affect the validity of a Sale Contract which is created in accordance with clause 7 prior to cancellation.

### 5. Automatic Acceptance of Offers and Bids

#### 5.1 Automatic Acceptance

Subject to clause 5.3, the CLEAR System will at any time during its Business Hours match and deem Accepted an Offer to a Bid where:

- (a) the Offer has the same Specifications as the Bid;

- (b) the Offer location and Storage Provider is the same as the Bid location and Storage Provider;
- (c) the Offer Price matches the Bid Price recorded on the CLEAR System; and
- (d) the Offer Quantity matches the Bid Quantity consistently with clauses 5.2 and 5.3.

#### 5.2 Acceptance Conditions

- (a) The Sellers and Buyers acknowledge that:
  - (i) a Bid may be split and automatically matched and Accepted with more than one Offer; and
  - (ii) an Offer may be split and automatically matched and Accepted with more than one Bid,
 and that upon this basis:
  - (iii) where there is one Offer capable of being matched with and Accepted by more than one Bid (or a succession of Bids, each for a partial Acceptance of the Offer), the CLEAR System will automatically match the Offer with the Bid (or a succession of Bids) in the order in which the Bids were entered on the CLEAR System, from earliest entered to last; and
  - (iv) if there is more than one Offer capable of being matched with and Accepted by a Bid (or a succession of Offers, each for a partial Acceptance of the Bid), the CLEAR System will automatically match that Bid with the Offer (or a succession of Offers) in the order in which the Offers were entered on the CLEAR System, from earliest entered to last.
- (b) Sellers and Buyers acknowledge that CLEAR is not obliged to split Offers and/or Bids consistent with clause 5.2(a) and that, if not split, may not be Accepted.

#### 5.3 Excess Offer Quantity or Bid Quantity

- (a) Where the Sale Quantity of an Accepted Bid is less than the Offer Quantity of the Offer to which it is matched for the purposes of clause 5.1 (“**Matched Offer**”), the Seller is taken to make a new Offer on the same terms as the Matched Offer, save that the Offer Quantity will equal the unmatched quantity of the gTicket.
- (b) Where the Sale Quantity of an Accepted Offer exceeds the Bid Quantity of the Bid to which it is matched for the purposes of clause 5.1 (“**Matched Bid**”), the Buyer is taken to make a new Bid on the same terms as the Matched Bid, save that the Bid Quantity will equal the unmatched quantity requirement of the Matched Bid.
- (c) Where the Offer Quantity exceeds the Bid Quantity by no more than the Accepted Tolerance, the Bid and Offer may be matched in accordance with clause 5.1.

### 6. Validity of Bids and Offers

#### 6.1 Acceptance of Bids and Offers

A Bid or an Offer can only be Accepted if it is valid.

#### 6.2 Commencement and Expiry Times

A Bid or an Offer will not be valid:

- (a) before its Commencement Time; or
- (b) after its Expiry Time.

## 7. Creation of a binding contract

### 7.1 Creation

On the automatic Acceptance of a Bid or Offer in accordance with clause 5, a binding Sale Contract is deemed created between the Seller and the Buyer.

### 7.2 Terms of contract

A Sale Contract created by clause 7.1 is acknowledged as creating binding contractual obligations on the Buyer and Seller, including the requirement that the Buyer must buy the Sale Quantity of Sale Grain from the Seller for the Total Sale Price (on a Free-In-Store basis) and that the parties must comply with the Terms and Conditions.

### 7.3 Consequences of creation of Sale Contract

When a Sale Contract is created:

- (a) the gTicket corresponding to the Sale Grain will be Suspended;
- (b) an Offer is not able to be matched to another Bid for the Sale Grain while the gTicket remains Suspended;
- (c) the Seller will continue to be the Owner of the Suspended gTicket until the Settlement Date;
- (d) if the Sale Quantity is less than the quantity of Grain corresponding to the gTicket:
  - (i) a new gTicket will be created in respect of the Grain which is not Sale Grain;
  - (ii) the Seller will be the holder of that new gTicket;
  - (iii) that new gTicket will not be Suspended; and
- (e) any other Offers in respect of the Sale Grain will be cancelled.

### 7.4 Notification

- (a) As soon as reasonably practicable after the creation of a Sale Contract, CLEAR must:
  - (i) provide the Seller, Buyer and Custodian with details of the Sale Contract (including details of the Settlement Period) and the corresponding Trade Settlement Note; and
  - (ii) notify the Custodian of the identity and bank account details and User Details of the Seller.
- (b) Neither the Buyer nor the Seller needs to notify the other of the creation or settlement of a Sale Contract. The Seller does not need to provide the Buyer with weight, grade or other certificates issued by the Storage Provider.

### 7.5 Quantity

Except to the extent that the law requires otherwise, the Bid Quantity, Offer Quantity and Sale Quantity of Grain on the CLEAR System and all other amounts based on the quantity of Grain are calculated, taking into account any shrinkage, spillage, spoilage and other similar considerations in accordance with the relevant Storage Provider Agreement.

## 8. Contract Payment

### 8.1 Payment by Buyer

On or before the Settlement Expiry Date, the Buyer must pay to the Custodian the Total Sale Price in cleared funds without deduction. CLEAR at no time will hold funds due to either a Buyer or Seller.

## 8.2 Custodian

- (a) The Custodian will hold the money received from the Buyer under clause 8.1 in accordance with the terms of the Custody Agreement pending settlement of the Sale Contract, pursuant to clause 9.
- (b) Each Registered User irrevocably appoints CLEAR as their attorney in relation to providing the Custodian with instructions for holding any money received from a Buyer under clause 8.1.
- (c) Each Registered User acknowledges that any rights or entitlements it holds under these Terms and Conditions in relation to money received under clause 8.1 are held subject to the terms of the Custody Agreement.

## 9. Contract Settlement

### 9.1 On receipt of the Total Sale Price

- (a) When the Custodian receives payment in cleared funds of the Total Sale Price, the Custodian must do the following, which the Registered User hereby acknowledges:
  - (i) notify CLEAR that it has received the Total Sale Price and provide CLEAR on-line viewing access to the relevant bank account; and
  - (ii) subject to the terms of the Custody Agreement and any instructions to the contrary from CLEAR, from the Total Sale Price received:
    - (A) forward to CLEAR (or to any other person CLEAR nominates) the CLEAR Fee, any Storage Provider Fees, any Interest, any Fees and any amounts referred to in clause 9.1(a)(ii)(C);
    - (B) retain the Custody Fee; and
    - (C) pay to the Seller (or otherwise as instructed by the Seller) the Net Sale Proceeds less any other fees, levies, charges and/or other amounts owing by the Seller to CLEAR;
- (b) Where the Seller is a Sharer in a Share Farm, the amount paid to the Seller will be that Seller's share of the Net Sales Proceeds, in which case each of the other Sharers in the Share Farm will be paid their respective shares in the Net Sale Proceeds.
- (c) When the Custodian receives payment in cleared funds of the Total Sale Price and CLEAR receives notification to that effect from the Custodian in accordance with clause 9.1(a)(i), CLEAR must do the following:
  - (i) cancel the Suspended gTicket; and
  - (ii) create and issue to the Buyer a gTicket ("**Replacement gTicket**") in respect of the Sale Grain, who will then be the Owner of the Replacement gTicket.
- (d) The Sale Grain referred to in clause 9.1(c)(ii) is taken to be Deposited into the CLEAR System and, if requested by the Owner of the Replacement gTicket, CLEAR must Release the Replacement gTicket in accordance with clause 10;
- (e) CLEAR must forward the Storage Provider Fees, Interest and the Levies & Other Fees to the applicable recipients.

### 9.2 Total Sale Price not received

- (a) If, by the Settlement Expiry Date pursuant to clause 7.4(a)(i), the Custodian has not received the Total Sale Price in cleared funds from the Buyer, or if the Buyer is



deemed to be in breach of the Sale Contract under clause 1.3(c)(iii):

- (i) CLEAR must immediately advise the Seller of the failure by the Buyer to pay the Total Sale Price; and
- (ii) At the option of the Seller:
  - (A) the Settlement Period may be extended by the Seller giving written notice to CLEAR specifying the new Settlement Expiry Date and CLEAR must then notify the Buyer of the new Settlement Expiry Date; or
  - (B) the Sale Contract may be terminated by the Seller for breach by the Buyer, by the Seller giving written notice to CLEAR of the termination of the Sale Contract, in which case the Buyer will remain liable to the Seller for breach of the Sale Contract.
- (b) If the Seller provides notice to CLEAR of the termination of the Sale Contract:
  - (i) CLEAR must notify the Buyer;
  - (ii) if so directed by the Seller, CLEAR must reinstate the Seller's gTicket, so that it is no longer Suspended; and
  - (iii) the Custodian must hold any payment received from the Buyer in relation to the Sale Contract pending written direction from CLEAR (or the order of a Court) as to how those funds held are to be disbursed.
- (c) The rights of the Seller pursuant to this clause 9.2 shall be in addition to, and not in derogation of, any of the Seller's other rights and remedies under any Law in respect of the breach of the Sale Contract by the Buyer. Any limitations contained in the GTA Contract on the Seller's rights on default by the Buyer are expressly excluded.

## **10. Release of a gTicket**

### **10.1 Application of Clause**

The terms and conditions contained in this clause 10 apply to Nominated Grain only.

### **10.2 Voluntary Release**

The Owner of a gTicket which is not Suspended can, at any time, notify CLEAR (via the CLEAR System) that it wants the gTicket to be Released. On receipt of such notice, CLEAR must Release the gTicket in accordance with clause 10.5 within 7 Business Days.

### **10.3 Compulsory Release**

CLEAR must Release any gTicket in accordance with clause 10.5 if:

- (a) the person who Deposited the Grain the subject of the gTicket into the CLEAR System is not a Registered User;
- (b) the Owner of that gTicket has ceased to be a Registered User; or
- (c) there is an unresolved dispute as to the Deposit Information relevant to that gTicket, in accordance with clause 2.4(d) or 2.4(f).

### **10.4 Deemed Release**

Where an Insolvency Event occurs with respect to CLEAR and CLEAR is unable to remedy that Insolvency Event within 7 Business Days of its occurrence, the following are deemed to have occurred immediately prior to the happening of the Insolvency Event:

- (a) all gTickets are automatically Released to their respective Owners) in accordance with clause 10.5 (except that the approval by CLEAR of the terms of the Storage Provider Agreement is not required);
- (b) the Custodian is granted by CLEAR a royalty free perpetual licence to access, store and use all data stored or hosted on the CLEAR System relating to User Details, gTickets and the Grain corresponding to those gTickets to enable the Custodian to distribute such data as contemplated by the Terms and Conditions;
- (c) the Custodian is by the Terms and Conditions authorised and directed to promptly advise each Storage Provider with respect to Grain held by that Storage Provider and represented by gTickets:
  - (i) of the happening of the Insolvency Event and the inability of CLEAR to remedy that Insolvency Event,
  - (ii) the identity, User Details, Grain Specifications and all other details of the Owner corresponding to gTickets (as stored on the CLEAR System) representing Grain stored with that particular Storage Provider (each such gTicket being a relevant gTicket),
  - (iii) all details of any Sale Contracts for a relevant gTicket and the current status,
  - (iv) to register on the Storage Provider's records the Owner of the relevant gTicket as the Client of the Grain corresponding to the relevant gTicket, and
  - (v) the entitlement of the Storage Provider to use all information contained on the relevant gTicket for the purposes of updating the Storage Provider's records;
- (d) the Custodian is authorised and empowered to direct the Storage Provider to Release the Owner's Grain (as represented by a relevant gTicket) to the Owner once the Owner has entered into a Storage Provider Agreement (if required by the Storage Provider) and paid the Storage Provider Fees and Interest (if any);
- (e) the Custodian is authorised and empowered at the date of the Insolvency Event to complete its obligations regarding any Sales Contract that is pending completion as at that date; and
- (f) the Custodian will not be responsible or liable to a Registered User, a third party or CLEAR for any inaccurate information stored or uploaded in the CLEAR System by CLEAR from time to time or as required to be distributed from the CLEAR System by the Custodian under these Terms and Conditions.

### **10.5 Release**

- (a) In order to Release a gTicket, the Owner of the gTicket must first:
  - (i) confirm with CLEAR (to CLEAR's satisfaction) that the Owner has already entered a Storage Provider Agreement; and
  - (ii) have made arrangements satisfactory to CLEAR (which may include immediate payment to CLEAR) for the payment of the Storage Provider Fees and any Interest (not otherwise payable pursuant to a Sale Contract) and any CLEAR Release Fees,
- (b) Subject to clause 10.5(a) being satisfied, CLEAR must Release the relevant gTicket and, in this regard, do the following:
  - (i) cancel any Offers based on the relevant gTicket;

- (ii) notify the relevant Storage Provider that the Owner of the relevant gTicket is the Client in respect of the Grain corresponding to that gTicket and is to be registered as such on the records of the Storage Provider;
- (iii) cancel the relevant gTicket; and
- (iv) notify the Owner and the Custodian of the status of the relevant gTicket.

#### 10.6 CLEAR Discretionary Release

- (a) CLEAR can, in its absolute discretion, at any time and for any reason, with seven (7) Business Days prior notice (via the CLEAR System) notify the Owner of a gTicket that CLEAR is Releasing the gTicket to the Owner.
- (b) On receipt of a notice under clause 10.6(a), the Owner of the gTicket must make arrangements satisfactory to CLEAR (which may include immediate payment to CLEAR) for the payment of the Storage Provider Fees and any Interest (not otherwise payable pursuant to a Sale Contract) and any CLEAR Release Fees.
- (c) CLEAR must do the following on receipt of the amounts provided for in clause 10.6(b) in cleared funds (without set off):
  - (i) cancel any Offers which are based on the relevant gTicket; and
  - (ii) notify the Storage Provider that the Owner of the relevant gTicket is the Client in respect of the Grain corresponding to that gTicket and is to be registered as such on the records of the Storage Provider;
  - (iii) cancel the relevant gTicket; and
  - (iv) notify the Owner and the Custodian of the status of the relevant gTicket.

#### 11. Storage Provider Outturn

CLEAR is in no way responsible or liable for arranging the Outturn of any Grain by a Storage Provider. The Owner of a gTicket is entirely responsible for the Outturning of Grain by a Storage Provider.

#### 12. Fees

##### 12.1 CLEAR Fee

- (a) The Buyer agrees to pay the CLEAR Fee in respect of the following:
  - (i) all Grain purchased through the CLEAR System, which obligation is discharged in accordance with clause 9.1; and
  - (ii) any Sales Contract is terminated pursuant to Clause 9.2(b).
- (b) The Seller agrees to pay any CLEAR Fee (identified by CLEAR as being payable by Sellers) in respect of all Grain sold through the CLEAR System.
- (c) Subject to clause 12.1(d), all CLEAR Fees comprise the fee as published by CLEAR from time to time on the CLEAR Site.
- (d) The amount of any CLEAR Fee or the method of calculating it may be amended by CLEAR by providing twenty eight (28) days notice.

##### 12.2 Custodian Fee

- (a) Subject to clause 12.2(b), the Custodian Fee is \$0.10 per metric tonne of Grain traded on the CLEAR System and is deducted from the Total Sale Price.

- (b) The amount of the Custodian Fee or the method of calculating is determined by the Custodian and may be amended by the Custodian subject to CLEAR providing twenty eight (28) days notice of such change in accordance with the Terms and Conditions.

##### 12.3 Storage Provider Fees

- (a) Storage Provider Fees shall accrue with respect to Grain as from the date the Grain is deposited with the Storage Provider (or transferred into the CLEAR System) and, subject to clause 12.7 and this clause 12.3, are deducted from the Total Sale Price upon receipt of proceeds by the Custodian under the Sale Contract;
- (b) With respect to Nominated Grain, if CLEAR makes any payment of Fees on behalf of a Registered User, or is liable to make payment of Fees on behalf of a Registered User ("**Pre-paid Fees**"), CLEAR may render an invoice to the Registered User for such Pre-paid Fees and that Registered User is obliged to pay that invoice on the terms set out on that invoice.
- (c) Subject to this clause 12.3, the Storage Provider Fees and any Interest payable in accordance with clause 12.5 are to be deducted from the Total Sale Price and remitted to CLEAR (or at CLEAR's instruction, directly to the Storage Provider) by the Custodian in accordance with the Custody Agreement.
- (d) Unless the Storage Provider Fees are paid directly to the Storage Provider in accordance with clause 12.3(a), from the amount received by CLEAR in accordance with clause 12.3(a):
  - (i) CLEAR must forward all amounts received from the Custodian in respect of Storage Provider Fees to the appropriate Storage Provider (other than those fees received being reimbursement of Storage Provider Fees already paid to the Storage Provider); and
  - (ii) CLEAR may retain the Interest (if any) included in the amount remitted to CLEAR pursuant to clause 12.3(a) or otherwise and must forward all Storage Provider Fees (apportioned [if necessary] so as to correspond to the Grain applicable to the gTicket the subject of the Sale Contract) to the appropriate Storage Provider (other than those fees received being reimbursement of Storage Provider Fees already paid to that particular Storage Provider).

##### 12.4 Levies & Other Fees

Subject to CLEAR directing the Custodian to pay all amounts it receives in respect of Levies & Other Fees directly to the appropriate collecting authorities, CLEAR agrees to forward those amounts to the appropriate collecting authorities (other than those amounts received being reimbursement of Levies & Other Fees already paid to the appropriate recipient).

##### 12.5 Interest

Without limiting the fees payable as described in clause 12.3:

- (a) Interest shall accrue on a daily basis at the Interest Rate on the accrued unpaid Storage Provider Fees until the Grain is Released;
- (b) CLEAR is entitled and authorised by the Terms and Conditions to capitalise all accrued unpaid Storage Provider Fees every 30 days and include that amount in the total accrued Storage Provider Fees upon which Interest accrues pursuant to clause 12.7;
- (c) With respect to Nominated Grain, if CLEAR makes any payment of Pre-paid Fees, CLEAR may charge the

Registered User Interest the Pre-paid Fees, calculated from the date CLEAR pays the said amounts.

#### 12.6 Interim fees or levies

Where for any reason any fees or levies as outlined in this clause 12 (collectively, "Interim Fees") become due and payable prior to receipt of payment pursuant to a Sale Contract CLEAR may render an Owner of the applicable gTicket an invoice for payment of those Interim Fees by the Owner and until those Interim Fees are paid to CLEAR the gTicket may be Suspended by CLEAR. If the Owner fails to pay these Interim Fees within the 5 Business Days of the Owner receiving the applicable invoice CLEAR is authorised and empowered by the Terms and Conditions to sell on the CLEAR System sufficient of the Grain represented by the Owner's gTicket so that the Net Sale Proceeds equal the outstanding Interim Fees.

#### 12.7 Apportionment

The Buyer shall be liable for all Fees accruing as and from the Settlement Date and the Seller for all unpaid Fees as at the day prior to the Settlement Date.

#### 12.8 No Part payments

All payments to be made pursuant to the Terms and Conditions in respect of a Sale Contract must be made in full and no part payments will be accepted.

#### 12.9 CLEAR Not Liable for Determining Fees

Each Registered User agrees and acknowledges that:

- (a) The only Fees for which CLEAR is responsible for determining are the CLEAR Fee and the Interest Rate;
- (b) CLEAR is not responsible for, and plays no part in, determining, calculating or setting any of the following fees and levies ("Non CLEAR Fees"):
  - (i) Storage Provider Fees;
  - (ii) Levies & Other Fees;
  - (iii) Custodian Fee;
- (c) The relevant third party is responsible for determining, calculating and setting the Non CLEAR Fees;
- (d) CLEAR is not liable to a Registered User nor to any other person for any movement or increase in Non CLEAR Fees;
- (e) CLEAR is not liable to pay Non CLEAR Fees for or on behalf of any Registered User or any other person; and
- (f) Each Registered User indemnifies and must keep indemnified CLEAR against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against CLEAR or which CLEAR may pay, sustain or incur as a direct or indirect result of a Registered User failing and/or refusing to pay any Non CLEAR Fees payable by such Registered User in accordance with the Terms and Conditions.

### 13. Authorised Representatives

#### 13.1 Registered Users bound by acts of Representing Authorised Representative

- (a) A Registered User may appoint an Authorised Representative to act on that Registered User's behalf in respect of the trading in Grain on the CLEAR System.
- (b) Any Authorised Representative appointed pursuant to clause 13.1(a) must be a Registered User and must

remain a Registered User at all times it acts as an Authorised Representative.

- (c) Where a Registered User has appointed an Authorised Representative to act on that Registered User's behalf, the Registered User agrees to be bound by all acts of its Authorised Representative on the CLEAR System and agrees to complete all Sale Contracts which are created on its behalf as a result of those acts, regardless of whether the Authorised Representative has acted outside the scope of its authority, in breach of the Terms and Conditions, in breach of any agreement between the Registered User and the Authorised Representative, negligently or contrary to the Registered User's instructions or directions.
- (d) Where a Registered User has appointed an Authorised Representative, it must give its Authorised Representative written authority to do any and all of the acts which are permitted to be done by a Registered User under the Terms and Conditions (excluding the right to access or change a Registered User's password or cancel registration of a Registered User, which acts an Authorised Representative is expressly prohibited from doing).

#### 13.2 Change of Authorised Representative

- (a) If a Registered User terminates the appointment of an Authorised Representative appointed to act on that Registered User's behalf, the Registered User must notify CLEAR either via the CLEAR System or otherwise in writing of that termination, noting the date of termination.
- (b) If the Registered User changes its Authorised Representative, the Registered User must notify CLEAR via the CLEAR System of all relevant details of the replacement Authorised Representative, noting the date of appointment.
- (c) The appointment of an Authorised Representative remains effective for the purposes of these Terms and Conditions until CLEAR receives a notice from the Registered User pursuant to clauses 13.2(a) or 13.2(b) and, subject to the receipt of any such notice, CLEAR is entitled to rely upon any conduct of the existing Authorised Representative.

#### 13.3 Consequences of Authorised Representative ceasing to be a Registered User

If an Authorised Representative's registration as a Registered User is cancelled for any reason:

- (a) Without limiting the application of clause 13.3(c), the Authorised Representative must immediately cease acting as an Authorised Representative for the purposes of the CLEAR System;
- (b) CLEAR shall inform the Registered User for which the Authorised Representative acts of the cancellation; and
- (c) the Registered User must direct the Authorised Representative to cease acting on its behalf in respect of the trading in Grain on the CLEAR System.

### 14. Privacy

#### 14.1 Offers and Bids

By making an Offer or a Bid, the Registered User consents to the Offer or Bid being communicated to other Registered Users of the CLEAR System. However, the identity of the persons making the Offers and Bids will not be disclosed and the CLEAR System will not disclose the identity of a Registered User to any other Registered User, other than in accordance with the terms of these Terms and Conditions.

#### 14.2 Disclosure to Authorised Representatives

Where an Authorised Representative has been appointed to act on behalf of a Registered User, the CLEAR System will provide a mechanism for an Authorised Representative to access all of the information contained in the CLEAR System which relates to the Registered User(s) for whom the Authorised Representative is acting (other than details of the Registered User's password).

#### 14.3 Disclosure on breach of a binding contract

Where there is a breach of contract as outlined in clause 9.2, the Registered User consents to CLEAR notifying the Seller and the Buyer of their respective identity and providing details of the Bid and Offer giving rise to the breach.

#### 15. Use of Trade Information

- (a) All intellectual and industrial property rights associated with or otherwise incorporated in the following vests in CLEAR:
  - (i) any Document created by CLEAR or the CLEAR System on the basis of Trade Information; and
  - (ii) any Trade Information created by CLEAR or the CLEAR System.
- (b) To the extent that intellectual and industrial property rights associated with or otherwise incorporated in Trade Information is owned by the Registered User, the Registered User hereby grants CLEAR an irrevocable and perpetual (royalty free) licence to use that information for the purposes of the CLEAR System and any other purpose consistent with CLEAR's rights and obligations under these Terms and Conditions.
- (c) Without limiting the generality of clause 14, CLEAR may publish any Trade Information or cause any Trade Information to be published in accordance with this clause 15 in any manner and in any forum CLEAR considers appropriate.
- (d) CLEAR's rights under clause 15(c) are limited to the publication of information in a form such that the identity of any Registered User or that Registered User's Bids and/or Offers for the sale and/or purchase of Grain is not revealed and cannot be determined.
- (e) Notwithstanding anything to the contrary in this clause 15 or clause 14, CLEAR is permitted to disclose any Trading Information to any third party:
  - (i) for the purposes of processing that information and/or publishing that information in accordance with clause 15(c); or
  - (ii) if compelled to do so by law; or
  - (iii) if written permission is obtained from the Registered Users for which the Trading Information pertains.

For the sake of clarity, the information disclosed in accordance with this clause 15(e) need not be in a form that complies with clause 15(d).

- (f) The Registered User consents to CLEAR engaging in any conduct consistent with its powers under this clause 15.
- (g) The Registered User hereby waives all of its rights (whether vested or otherwise) and any rights it may have in future concerning any losses, costs, damages, fines and any other liabilities that the Registered User incurs or may incur, whether directly or indirectly, as a result of CLEAR acting in accordance with this clause 15.

- (h) The Registered User hereby consents to CLEAR using any Trade Information for the purposes of marketing the goods and services offered or that may be offered by CLEAR, including, and without limitation, corresponding directly with the Registered User.

- (i) CLEAR's rights in respect of the Trade Information under this clause 15 is perpetual and irrevocable.

#### 16. Representations and warranties

##### 16.1 General representations and warranties

Each Registered User represents and warrants that, as at the date it completes an Application Form and on each day on which the Registered User is a Registered User:

- (a) if it is a corporation, it is registered and validly existing under the laws of the jurisdiction in which it was incorporated;
- (b) it has full legal capacity and power to undertake to comply with the Terms and Conditions and to carry out the transactions that the Terms and Conditions contemplate;
- (c) all corporate action has been taken that is necessary or desirable to authorise its compliance with the Terms and Conditions and its carrying out of the transactions that the Terms and Conditions contemplate;
- (d) it holds each Authorisation that is necessary or desirable to:
  - (i) accept and comply with the Terms and Conditions and to carry out the transactions that the Terms and Conditions contemplate; and
  - (ii) ensure that the Terms and Conditions are legal, valid, binding and admissible in evidence, and it is complying with any conditions to which any of these Authorisations is subject;
- (e) the Terms and Conditions constitute legal, valid and binding obligations, enforceable against it in accordance with its terms, subject to any necessary stamping
- (f) neither its acceptance of the Terms and Conditions, nor the carrying out by it of the transactions that the Terms and Conditions contemplate, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any undertaking or instrument binding on it or any of its property; or
  - (iv) contravene its constitution;
- (g) there are no actions, claims, proceedings or investigations pending or threatened against it or by, against or before any person that may have a material effect on the subject matter of the Terms and Conditions;
- (h) it is not the subject of an Insolvency Event;
- (i) it is not agreeing to be bound by the Terms and Conditions as trustee of any trust or settlement unless otherwise approved by CLEAR;
- (j) all information supplied by the Registered User to CLEAR, in the Registered User's application or otherwise, is complete, correct and is not misleading;
- (k) the Registered User intends to complete and is capable of completing any Sale Contract which would

be created if any of the Registered User's Bids or Offers are Accepted;

- (l) it shall at all times comply with the provisions of the Terms and Conditions;
- (m) where the Registered User has appointed an Authorised Representative to act on its behalf:
  - (i) the Registered User has not terminated the appointment of the Authorised Representative;
  - (ii) the Registered User has given its Authorised Representative written authority to do any and all of the acts which are permitted to be done by a Registered User under the Terms and Conditions (excluding the right to access or change a Registered User's password or cancel registration of a Registered User).

#### **16.2 Warranty of authority for Authorised Representative to act**

Each Registered User and each Registered User's Authorised Representative represents and warrants that at all times whilst they remain Registered Users and the Registered User's Authorised Representative remains duly appointed by the Registered User:

- (a) the Authorised Representative has been duly authorised to act on behalf of the nominated Registered User;
- (b) the Authorised Representative and Registered User have given each other authority to do any and all acts permitted to be done by an Authorised Representative or Registered User (as the case may be) under the Terms and Conditions; and
- (c) the Authorised Representative acknowledges that it is bound by these Terms and Conditions and warrants that the capacity in which it is so bound is not as a trustee for any trust or settlement.

#### **16.3 Reliance on representations and warranties**

Each Registered User acknowledges that CLEAR has registered it and agreed to provide the CLEAR System and to facilitate the transactions contemplated by the Terms and Conditions in reliance on the representations and warranties that are made in this clause 16.

#### **16.4 Survival of clause**

Despite any other provision of the Terms and Conditions, this clause 16 survives the expiry or termination of the Terms and Conditions.

### **17. Limitation of liability**

#### **17.1 Limitation**

To the extent permitted by Law, neither CLEAR nor the Custodian is liable to a Registered User or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of an Authorised Representative appointed to act on behalf of a Registered User;
- (b) any error, omission or inaccuracy with respect to the Deposit Information, quantity of Grain, Grain information and/or Specifications in respect of a gTicket provided by and/or entered into the CLEAR System by any Storage Provider with respect to Grain;
- (c) any use by a Registered User or any other third party of a Storage Provider's website or any other third party website referred to in, or containing a link from, the CLEAR Site;

(d) any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination or any other cause, in connection with the furnishing, performance, operation, maintenance, use of or inability to use all or any part of the CLEAR System;

(e) any loss or damage of any kind that is directly or indirectly caused by or results from any errors or inaccuracies in information in the CLEAR System or any interruption to the CLEAR System;

(f) any loss or damage of any kind that is directly or indirectly caused by or results from any unauthorised access to or use of the CLEAR System;

(g) any loss or damage of any kind that is directly or indirectly caused by or results from the cancellation of a Registered User's registration;

(h) any loss or damage of any kind that is directly or indirectly caused by or results from the destruction or spoilage of Grain which has been Deposited into the CLEAR System while in the possession of a Storage Provider;

(i) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of CLEAR or any of its officers, employees, agents or contractors; or

(j) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:

(i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or

(ii) CLEAR or any other person was previously notified of the possibility of the loss or damage,

whether such a claim arises in contract, tort, negligence, strict liability, contribution or under statute or otherwise and whether the claim is brought directly or as a third party claim.

#### **17.2 Exclusion of warranties by CLEAR**

(a) To the maximum extent permitted by Law and subject to any rights imposed by Law that cannot be limited or excluded, any representation, warranty, condition or undertaking by CLEAR that would otherwise be implied in the Terms and Conditions is excluded.

(b) If implied warranties or conditions cannot be excluded, but limitation is permitted, CLEAR's liability is limited to the supply of the services again or the payment of the cost of having the service supplied again.

(c) Without limiting clause 17.2(a), CLEAR shall not be taken to have represented or warranted that:

(i) the Owner of a gTicket is the owner of or has any rights in respect of the corresponding Grain;

(ii) any particular Authorised Representative is authorised to act on behalf of any particular Registered User;

(iii) the Specifications in respect of a gTicket accurately describe the corresponding Grain;

(iv) a Buyer or Seller has the capacity to enter into or complete a Sale Contract;

(v) once CLEAR has provided the Custodian with instructions and/or notification in accordance with the Terms and Conditions, that the Custodian will

in fact perform any or all of its duties as described in the Terms and Conditions; or

- (vi) the CLEAR System will be available on any particular date or time.

### 17.3 Acknowledgments by Registered Users

Each Registered User agrees and acknowledges that:

- (a) CLEAR does not, by providing the CLEAR System or otherwise, provide advice or make recommendations and that it is the Registered User's responsibility, before making a Bid or Offer or accepting a Bid or Offer, to assess and evaluate these in light of the Registered User's financial situation and particular needs and CLEAR is not liable in any way for any loss or damage of any kind (including but not limited to consequential loss) suffered by a Registered User as a result of its decision to make a Bid or Offer or accept a Bid or Offer using the CLEAR System;
- (b) there may be a delay between the time a Registered User communicates an instruction to place, amend, cancel or accept a Bid or an Offer to CLEAR and the time when the CLEAR System gives effect to that instruction due to the outcome of the instruction being an automated process;
- (c) CLEAR is in no way liable to the Registered User in respect of losses and costs incurred or that may be incurred as a result (whether directly or indirectly) of the destruction or spoilage of the corresponding Grain;
- (d) it permits and authorises CLEAR to:
  - (i) use its User Details and its other details supplied to CLEAR by a Storage Provider, NGR or any other source to market to the Registered User;
  - (ii) share the User Details and its other details supplied to CLEAR by a Storage Provider with other organisations as is required or permitted by Law;
  - (iii) provide and share with the Custodian its User Details and its other details supplied to CLEAR by a Storage Provider for the purpose of enabling the Custodian to retain a secure record and back up of the Registered User's User Details and other details for use in accordance with the Terms and Conditions;
  - (iv) provide and share the User Details and its other details supplied to CLEAR by a Storage Provider, the Custodian or any third party with the User and the relevant Storage Provider, the Custodian and to companies who perform services for CLEAR, such as specialist information technology companies, mail houses or other contractors to CLEAR on the basis that CLEAR requires those companies to protect such personal information;
  - (v) publicise the fact that a Registered User is a Registered User of the CLEAR System;
- (e) it has permitted and authorised any Storage Provider with which it has a Storage Provider Agreement to provide and share with CLEAR its User Details and its other details submitted to the relevant Storage Provider;
- (f) CLEAR does not, at any stage, have ownership in any Grain or have any right to receive a quantity of Grain from a Storage Provider in respect of Grain which is Deposited into the CLEAR System; and
- (g) CLEAR does not, by providing a link to any Storage Provider's website or any other third party website referred to in, or containing a link from, the CLEAR Site and/or the Storage Provider's website and/or any

third party's website or otherwise ("Non CLEAR Site"), provide advice (including but not limited to financial advice) or make recommendations and that it is the Registered User's responsibility, before using any services offered through a Non CLEAR Site, to assess and evaluate these in light of the Registered User's financial situation and particular needs and CLEAR is not liable in any way for any loss or damage of any kind (including but not limited to consequential loss) suffered by a Registered User as a result of its decision to use any services offered through a Non CLEAR Site.

### 17.4 Survival of clause

Despite any other provision of the Terms and Conditions, this clause 17 survives the expiry or termination of the Terms and Conditions.

### 18. Indemnity

Each Registered User must keep indemnified CLEAR and its related bodies corporate (referred to collectively in this clause 18 as "CLEAR") against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against CLEAR or which CLEAR may pay, sustain or incur as a direct or indirect result of:

- (a) any breach or non-performance of the Terms and Conditions by that Registered User;
- (b) any breach or non-performance by that Registered User and/or any third party of the provisions of any other agreement (and/or agreements) contemplated by the Terms and Conditions to which that Registered User is a party;
- (c) any wrongful, wilful or negligent act or omission of that Registered User or any of its employees, agents or contractors; and/or
- (d) any one or more of any representations or warranties made or repeated by that Registered User being untrue or misleading in any material respect (including by omission) when made or repeated.

### 19. General

#### 19.1 Nature of obligations

- (a) Any provision in the Terms and Conditions which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by the Terms and Conditions in favour of another is a separate obligation.

#### 19.2 Time of the essence

In the Terms and Conditions, time is of the essence unless otherwise stipulated.

#### 19.3 Entire understanding

- (a) The Terms and Conditions contain the entire understanding between the Registered User and CLEAR concerning the CLEAR System and supersedes all prior agreements and communications between the parties.
- (b) The Registered User acknowledges that, except as expressly stated in the Terms and Conditions, the Registered User has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of the Terms and Conditions.

#### 19.4 No adverse construction

The Terms and Conditions are not to be construed to the disadvantage of CLEAR because CLEAR was responsible for its preparation.

#### 19.5 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to the Terms and Conditions.

#### 19.6 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on that party by the Terms and Conditions 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 the Terms and Conditions.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

#### 19.7 Severability

Any provision of the Terms and Conditions which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from the Terms and Conditions in any other case,

without invalidating or affecting the remaining provisions of the Terms and Conditions or the validity of that provision in any other jurisdiction.

#### 19.8 Successors and assigns

The Terms and Conditions bind and benefit the participating Registered Users (and their respective successors and permitted assigns under clause 19.9, if any).

#### 19.9 Assignment

- (a) A Registered User cannot assign the Registered User's registration or assign or otherwise transfer the benefit of the Terms and Conditions without the prior written consent of CLEAR.
- (b) CLEAR may assign all of its rights and obligations under these Terms and Conditions to any company and the Registered User consents to that assignment.
- (c) CLEAR will endeavour to notify the Registered User of any assignment.

#### 19.10 Consents and approvals

Where anything depends on the consent or approval of CLEAR, unless the Terms and Conditions provide otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of CLEAR.

#### 19.11 Variation

CLEAR may in its absolute discretion at any time and from time to time without notice to a Registered User amend or vary the Terms and Conditions by posting the amended or varied Terms and Conditions on the Site. The amended or varied Terms and Conditions will take effect fourteen (14) days after they are posted on the Site or such longer period as may otherwise be advised. The Terms and Conditions cannot be amended or varied by a Registered User. Any amendment or variation of the Terms and

Conditions will not adversely affect a Registered User with respect to a Sale Contract that has already been entered as at the time of the amendment or variation.

#### 19.12 Duty

- (a) Any duty (including related interest or penalties) payable in respect of the Terms and Conditions or any instrument created in connection with it must be paid by the Buyer.
- (b) The Buyer undertakes to keep the Seller, CLEAR and the Custodian indemnified against all liability relating to the duty, and any related interest and penalties.

#### 19.13 Governing law and jurisdiction

- (a) The Terms and Conditions is governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to the Terms and Conditions, its performance or subject matter.

#### 19.14 Notices

Any notice or other communication:

- (a) to a Registered User may be given by:
  - (i) posting the notice on the CLEAR Site in accordance with the time frame specified by a particular clause of the Terms and Conditions; and/or
  - (ii) email to the email address specified in the Application Form (or as subsequently advised in writing by the Registered User);
- (b) to CLEAR via the email link on the CLEAR System, and

where notice is given via an email it is deemed to be given by the sender and received by the addressee on the date and time the email was sent.

#### 19.15 Conflicting provisions

- (a) If there is any conflict between the main body of the Terms and Conditions and any schedules or annexures comprising it, then the provisions of the main body of the Terms and Conditions prevail.
- (b) If the event of any conflict between the Terms and Conditions and the terms and conditions of any other agreement (and/or agreements) contemplated by the Terms and Conditions with respect to the use of the CLEAR System by a Registered User, the Terms and Conditions prevail.

#### 19.16 Non merger

A term or condition of, or act done in connection with, the Terms and Conditions does not operate as a merger of any of the rights or remedies of the parties under the Terms and Conditions and those rights and remedies continue unchanged.

#### 19.17 Operation of indemnities

Unless the Terms and Conditions expressly provides otherwise:

- (a) each indemnity in the Terms and Conditions survives the expiry or termination of the Terms and Conditions; and
- (b) a party may recover a payment under an indemnity in the Terms and Conditions before it makes the payment in respect of which the indemnity is given.

### 19.18 No right of set-off

Unless the Terms and Conditions expressly provides otherwise, a Registered User has no right of set-off against a payment due to another Registered User.

### 19.19 Relationship of parties

Except to the extent the Terms and Conditions expressly provide otherwise, nothing in the Terms and Conditions may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

### 19.20 Custodian Disclaimer and Limitation of Liability

The Custodian's role is limited to holding the Custody Account and Beneficial Ownership File as agent of CLEAR. The Custodian has no supervisory role in relation to the operation of the CLEAR System and is not responsible for protecting the interests of any Registered User. The Custodian has no liability or responsibility to the Registered User for any act done or omission made (including for negligence or breach of Custody Agreement) in accordance with the terms of the Custody Agreement. The Custody Agreement that CLEAR has entered into with the Custodian includes terms that also limit the Custodian's liability.

## 20. Custodian Bank Accounts

- (a) Companies within the Perpetual Group between them hold a large number of bank accounts on behalf of their respective clients. Because of this and arrangements which the Perpetual Group has with some of its banks, the Custodian may be entitled to receive from the bank with which a bank account is held, a commission calculated by reference to the balance in the relevant bank account from time to time. This commission is separate from and in addition to the interest which otherwise could accrue on the bank account and will not appear on any bank statement. The Registered User acknowledges that neither it, CLEAR nor any third party will be entitled to any interest as the Account will be set by the bank as a non-interest bearing account.
- (b) The Registered User acknowledges that, by becoming a Registered User, it consents to the Custodian's receipt of the abovementioned commissions.

## 21. Definitions

In the Terms and Conditions:

**Accept** and **Accepted** means the acceptance of a Bid or an Offer by operation of the CLEAR System, in accordance with clause 5.

**Affected Offers** has the meaning ascribed to that term in clause 4.3(b).

**Accepted Tolerance** means the quantity of Grain in excess of the Bid Quantity that the Buyer will accept for the purposes of Clause 5.1(d), as set out as a variation in the Bid Parameters.

**Applicant** means a person seeking to be registered as a Registered User.

**Application Form** means a form prescribed by CLEAR to be used by an Applicant, which form will designate the information that is required for the capacity in which the Applicant is seeking registration.

**Authorisation** means:

- (a) an authorisation, consent, right, certificate, licence, permit, declaration, exemption, notarisation or waiver, however described (including any renewal or partial renewal); and

- (b) any authorisation or consent regarded as given by a Government Agency where, in relation to something that can be prohibited or restricted by law if the Government Agency takes action within a specified period, that period expires without that action being taken.

**Authorised Representative** means a person who acts on behalf of a Registered User for the purposes of these Terms and Conditions and includes (but is not limited to) any broker, industry adviser, consultant, accumulator, agent or other such representative or agent duly appointed and authorised to act on behalf of a Registered User.

**Automatic Grain** has the meaning ascribed to that term in clause 2.1(b).

**Beneficial Ownership File** means the file containing the details of the beneficial ownership of the Grain as forwarded to the Custodian by CLEAR.

**Bid** means a bid by a Buyer to buy Grain with particular Specifications, from a particular or any location, from a particular or any Storage Provider, for a Bid Price as recorded on the CLEAR System.

**Bid Sheet** means any document or any other repository of information (including computer or electronic file) on or in which the Buyer indicates its intention to purchase Grain.

**Bid Parameters** means:

- (a) a Price for Grain with particular Specifications;
- (b) variations from the above Price for Grain with different Specifications;
- (c) the locations and Storage Providers from which the Buyer is willing to buy Grain; and
- (d) any other variation which the Buyer specifies or agrees to.

**Bid Price** means the Price contained in a Bid on the CLEAR System.

**Bid Quantity** means the quantity of Grain the subject of a Bid.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.

**Business Hours** means the following hours for every Business Day:

- (a) opens at a computer generated random time between 10:00am and 10:15am (Sydney time); and
- (b) closes at a computer generated random time between 6:00pm and 6:15pm (Sydney time),

**Buyer** means a Registered User who is seeking to purchase a gTicket or part of a gTicket.

**CLEAR** means CLEAR Commodities Pty Ltd ACN 126 444 219.

**CLEAR Fee** means the amount charged by CLEAR to a Registered User as published from time to time on the CLEAR System.

**CLEAR Release Fee** means the fee payable to CLEAR and published by CLEAR (from time to time) with respect to the Release of a gTicket.

**CLEAR's Storage Provider Agreement** means the agreement between a particular Storage Provider (storing the Grain the subject of the relevant gTicket) and CLEAR concerning Grain the subject of a gTicket, the terms of which agreement (including terms relating to the storage, handling and dealing with the Grain) are accessible via the Site.



**CLEAR System** means the web based platform enabling users to deal in grain, including to record Bids and Offers for the purchase and sale of grain, through the Site.

**Client** means the person entitled to an Outturn of Grain corresponding to a gTicket, who may be described as the "client", "acquirer", "purchaser", "owner", "buyer", "trader", "grower" or any other term in a Storage Provider Agreement.

**Commencement Time** in respect of a Bid or an Offer means the date and time (being the commencement of the Business Hours for that date) on which the Bid or Offer commences.

**Controller** means, in relation to a person:

- (a) a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that person or that person's property; or
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that person's property to enforce an Encumbrance.

**Court** means a court of law having jurisdiction to make a determination in relation to matters arising connected to the Terms and Conditions or transactions contemplated by the Terms and Conditions.

**Custodian** means Perpetual Nominees Limited ABN 37 000 733 700.

**Custody Account** means the bank account nominated by the Custodian and communicated to the Buyers by CLEAR to pay all Fees and the Total Sale Price and any other amounts to be paid by the Buyer in accordance with these Terms and Conditions.

**Custody Agreement** means the Custody Agreement between CLEAR Commodities Pty Ltd and the Custodian dated 15th October 2008 as contained in Schedule 1 to the Terms and Conditions.

**Custody Fee** means the amount calculated in accordance with clause 12.2.

**Deposit** means the entry of Grain into the CLEAR System by any one of the following:

- (a) nomination pursuant to clause 2.1(a);
- (b) transfer; or
- (c) automatic operation pursuant to clause 2.1(b).

**Deposit Information** means:

- (a) the name, User Details and any other details of the person who Deposits the Grain into the CLEAR System or for whom the Grain is Deposited into the CLEAR System;
- (b) the quantity of Grain; and
- (c) the Specifications.

**Document** has the same meaning as the term, Work, in the *Copyright Act*.

**Encumbrance** means:

- (a) an interest or power reserved in or over an interest in an asset, including any retention of title;
- (b) an interest or power created or arising in or over an interest in an asset under a bill of sale, mortgage, charge, lien, pledge, trust or other similar instrument, device or power; or
- (c) any other adverse right, title or interest of any nature, by way of security for the payment of a debt or the performance of any other obligation,

and includes any agreement or arrangement (whether legally binding or not) to grant or create any of the above (and for clarity, **Encumbered** shall have a corresponding meaning).

**Expiry Time** in respect of a Bid or an Offer means the close of the Business Hours on the date on which the Bid or Offer expires.

**Fees** means collectively the Custody Fee, Storage Provider Fees and any Interest, Levies & Other Fees and the CLEAR Fee.

**Free-In-Store** has the meaning ascribed to that term in the GTA Contract, as amended from time to time, or as otherwise notified by CLEAR from time to time, and the term "Free in Store basis" has an equivalent meaning.

**Grain** means:

- (a) any commodity which can be deposited with a Storage Provider; and
- (b) any other products which CLEAR nominates as being able to be deposited in the CLEAR System.

**Grower** means the grower of Grain who as part of their farming business delivers Grain to a Storage Provider.

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental, local governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.

**GST** has the meaning as provided in clause 23.

**GTA Contract** means any relevant standard form contract of sale and the Trade Rules for the sale of Grain, as published from time to time by Grain Trade Australia (or such successor or replacement association or organisation) and, if the standard form contract and the Trade Rules are inconsistent, the Trade Rules prevail to the extent of the inconsistency.

**gTicket** means an electronic certificate in respect of a quantity, Storage Provider, bin grade and location of Grain which has been deposited into the CLEAR System.

**Insolvency Event** means, in relation to a Registered User or CLEAR, any one or more of the following events or circumstances:

- (a) being in liquidation or provision liquidation or under administration;
- (b) having a Controller or analogous person appointed to it or any of its property;
- (c) becoming an insolvent under administration, as defined in section 9 of the Corporations Act; or
- (d) entering into a formal compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by CLEAR.

**Integrated Storage Provider** means a Storage Provider that provides CLEAR with integrated access to its warehousing and/or storage and handling systems.

**Interest** means interest payable (if any) pursuant to any clause of the Terms and Conditions, such Interest which will:

- (a) have an annual interest rate equal to the Interest Rate;
- (b) be calculated daily;

- (c) compounded monthly; and
- (d) with respect to a Registered User's Grain, shall accrue from the date of any invoice issued by or to CLEAR.

**Interest Rate** means the rate published and updated on the CLEAR Site from time to time.

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth, a State a Territory or a Government Agency; and
- (c) requirements and approvals (including conditions of the Commonwealth, a State, a Territory or a Government Agency that have the force of law.

**Levies & Other Fees** includes all:

- (a) Australian Federal and State government and instrumentality taxes, fees, duties, levies and charges;
- (b) non-government industry fees, duties, levies and charges;
- (c) industry membership fees and levies;
- (d) intellectual property royalties;
- (e) any other fees, levies and/or charges agreed by a Registered User to be the responsibility of the Registered User,

applicable to a transaction contemplated by the Terms and Conditions (including GST).

**Location Differentials** has the meaning ascribed to that term in the GTA Contract, as amended from time to time, or as otherwise notified by CLEAR from time to time.

**Market Close** means the time at which the CLEAR System ceases matching Bids and Offers on each Business Day.

**Market Open** means the time at which the CLEAR System commences matching Bids and Offers on each Business Day.

**Matched Bid** has the meaning ascribed to that term in clause 5.3(b).

**Matched Offer** has the meaning ascribed to that term in clause 5.3(a).

**Net Sale Proceeds** means the Total Sale Price less the applicable Fees.

**National Grower Registry** or **NGR** means the National Grower Registry Pty Limited CAN 095 857 266 and any successor or assign or any other entity that performs the same or similar function.

**Nominated Grain** has the meaning ascribed to that term in clause 2.1(a).

**Non CLEAR Fees** has the meaning ascribed to that term in clause 12.9(b).

**Non CLEAR Site** has the meaning ascribed to that term in clause 17.3(g).

**Offer** means an offer by a Seller to sell a quantity of Grain with particular Specifications, from a particular location, from a particular Storage Provider, for a particular Price as recorded on the CLEAR System.

**Offer Parameters** means:

- (a) a Price for Grain and its Specifications; and

- (b) the locations and Storage Providers to which the Seller is willing to sell Grain;

**Offer Price** means the Price contained in an Offer on the CLEAR System.

**Offer Quantity** means the quantity of Grain the subject of an Offer.

**Offer Sheet** means any document or any other repository of information (including computer or electronic file) on or in which the Seller indicates its intention to sell Grain.

**Outturn** means the physical removal of Grain from a Storage Provider storage facility.

**Owner** in respect of a gTicket means the owner of the gTicket.

**Perpetual Group** means Perpetual Limited and its related bodies corporate, including the Custodian.

**Pre-paid Fees** has the meaning ascribed to that term in clause 12.3(b).

**Price** means a price per metric tonne that is expressed GST exclusive.

**Registered User** means a person who is registered to use the CLEAR System in accordance with clause 1.2, whose registration has not subsequently been cancelled.

**Release** means the cancellation of a gTicket and the removal of the Grain the subject of that gTicket from the CLEAR System, preventing either the gTicket or the said Grain from being subject to an Offer or a Bid.

**Replacement gTicket** has the meaning ascribed to that term in clause 9.1(c)(ii).

**Sale Contract** means the contract which comes into force between a Buyer and a Seller pursuant to clause 7, which contract incorporates all relevant parts of the Terms and Conditions, the details of the Settlement Period and, by reference, the provisions of the GTA Contract, in respect of which:

- (a) where the Sale Contract is between a Seller (who is not a Grower) and a Buyer, the GTA Contract terms designated by GTA for use by Sellers other than Growers (bulk basis) shall apply; and
- (b) in no case may the provisions of the GTA Contract forming part of the Sale Contract include those provisions in the GTA Contract that relate to title transfer and retention, price determination, mediation or arbitration (including the GTA Dispute Resolution Rules),

and if the Terms and Conditions and the provisions of the GTA Contract are inconsistent, the Terms and Conditions prevail to the extent of the inconsistency.

**Sale Grain** means the Grain which is the subject of a Sale Contract.

**Sale Price** means the Price contained in the relevant Sale Contract.

**Sale Quantity** means the quantity of Grain which is the subject of a Sale Contract.

**Seller** means a Registered User who is seeking to sell the Grain represented by a gTicket or part of a gTicket.

**Settlement Date** means the date upon which the Custodian provides notification that it has received payment in cleared funds of the Total Sale Price and the Custodian and CLEAR complete the events outlined in clause 9.1.

**Settlement Expiry Date** means 5pm (Sydney time) on the day being the last day of the Settlement Period.

**Settlement Period** means five (5) Business Days after the creation of a Sale Contract (excluding the day the Sale Contract is created) or such shorter or longer period as notified CLEAR in accordance with the terms and conditions from time to time.

**Share Farm** means any farm or other agricultural enterprise in respect of which two or more Registered Users are entitled either to the Grain produced on or by that enterprise or the proceeds from the sale of that Grain.

**Sharer** means a Registered User that is a party to or otherwise involved in a Share Farm.

**Site** means the website located at [www.cleargrain.com.au](http://www.cleargrain.com.au) which provides access to the CLEAR System, or any other website (if any) as advised by CLEAR.

**Specification** means the information that describes Grain, being information that would ordinarily be included in a warehouse receipt, weighbridge notice or any other "ticket", "receipt", "docket" or similar document issued by a Storage Provider to a person depositing Grain with a Storage Provider and which includes the commodity, type, protein content, bin grade, and moisture content of the Grain.

**Special Crossing** means a Bid and Offer which has been fixed by the relevant parties and specified as a special crossing or a pool transfer on the CLEAR System.

**Storage Provider** means a bulk handling company which stores Grain on behalf of the grain industry participants and with whom CLEAR has entered into an agreement to participate in the CLEAR System.

**Storage Provider Agreement** means the agreement between the Storage Provider (storing the Grain the subject of the relevant gTicket) and the Owner entitled to the Outturn of that Grain (including terms relating to the storage, handling and dealing with the Grain), including, but not limited to, warehousing agreement and storage and handling agreement.

**Storage Provider Fees** means the receipt, storage, handling and other fees charged by or payable to a Storage Provider with respect to Grain corresponding to a gTicket, accruing as from the time the Grain is deposited with the Storage Provider until the day the Grain is Released.

**Suspended gTicket** means a gTicket as described in clause 7.3(a), and "**Suspended**" has a corresponding meaning.

**Terms and Conditions** means these terms and conditions, including the background, any schedules and any annexures and all amendments and changes thereto from time to time.

**Total Sale Price** means the Sale Price multiplied by the Sale Quantity plus the CLEAR Fee.

**Trade Information** means any information (including statistics), in whatsoever form, concerning the following:

- (a) the Bids and Offers on, or otherwise generated by, the CLEAR System;
- (b) gTickets;
- (c) Registered Users, insofar as it is relevant to the Bids and Offers on, or otherwise generated by, the CLEAR System or to gTickets;
- (d) the Grain that corresponds to any gTicket; and
- (e) any other trading activity on the CLEAR System or otherwise facilitated by CLEAR in respect of Grain,

which includes (and without limitation) the following:

- (f) the daily cash price for Grain;

- (g) Grower payments for Grain on the CLEAR System;
- (h) Share Farm splits;
- (i) freight rates relevant to the transport of Grain on the CLEAR System;
- (j) Grower Information;
- (k) Specifications;
- (l) Deposit Information; and
- (m) traded prices for Grain.

**Trade Rules** means the document entitled "Grain Trade Australia (GTA) Trade Rules, published from time to time by Grain Trade Australia (or its successor) or any other document of any other name that addresses the same issues as the said Trade Rules.

**Trade Settlement Note** means summary of an Acceptance of a Bid or Offer and at the discretion of CLEAR may include applicable invoices, details of one or more of the gTicket, User Details, Sale Price, Sale Quantity, Fees, applicable Levies & Other Fees, Total Sale Price and the applicable Settlement Date.

**Unencumbered** means not subject to an Encumbrance.

**User Details** means the document issued by a Storage Provider to the Client when the Client deposits grain with that Storage Provider and also includes the personal identification details of the Client, the Specifications, the relevant banking details of the Client and the terms of any Storage Provider Agreement (entered into by the Client and the Storage Provider) or CLEAR's Storage Provider Agreement (entered into by CLEAR and the Storage Provider) and may include information from NGR and/or from Storage Providers and if NGR and/or any particular Storage Provider cease to exist or fail or refuse to provide access to CLEAR to an information system that will capture and transmit data such as described above, "User Details" means similar information provided by another source, such source as determined by CLEAR in its discretion.

## 22. Interpretation

In the Terms and Conditions, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of the Terms and Conditions;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (g) the word "month" means calendar month and the word "year" means 12 months;
- (h) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (i) a reference to a thing includes a part of that thing;
- (j) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;

- (k) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (l) money amounts are stated in Australian currency unless otherwise specified; and
- (m) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body which performs most closely the functions of the defunct body.

## 23. GST

### 23.1 Definitions

In this clause 23:

- (a) the expressions Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act); and
- (b) Supplier means any party treated by the GST Act as making a Supply under the Terms and Conditions.

### 23.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with the Terms and Conditions are exclusive of GST.

### 23.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with the Terms and Conditions, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with the Terms and Conditions.

### 23.4 Reimbursement of expenses

If the Terms and Conditions requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (Net Amount); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

# Custody Agreement

with Perpetual Nominees Limited  
ABN 37 000 733 700

15th October 2008



Dated 15th October 2008

**CLEAR COMMODITIES PTY LTD**  
**(ABN 50 126 444 219)**

**PERPETUAL NOMINEES LIMITED**  
**(ABN 37 000 733 700)**

Perpetual Nominees Limited, acts as an Authorised Representative of Perpetual Trustee Company Limited (PTCL), under PTCL's Australian Financial Services Licence number 236643 (Authorised Representative number 266798)

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**CUSTODY AGREEMENT**

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**PERPETUAL LEGAL SERVICES**  
**LEVEL 12, 123 PITT STREET**  
**SYDNEY**  
**PH: 02 9229 9723**  
**FAX: 02 9229 7688**  
**Ref: JBH:XDOC16982**

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## CUSTODY AGREEMENT

AGREEMENT dated October 2008

### BETWEEN

**CLEAR COMMODITIES PTY LTD** ABN 50 126 444 219 of Level 1, 616 St Kilda Road, Melbourne Victoria (“Client”)

### AND

**PERPETUAL NOMINEES LIMITED** ABN 37 000 733 700 of Level 12, 123 Pitt Street, Sydney, New South Wales (‘Custodian’)

### RECITALS

- A. The Client is the developer, owner and operator of the CLEAR System.
- B. The Client has requested that the Custodian provide, and the Custodian has agreed to provide, custodian services to the Client in relation to the Assets on the terms and conditions of this Agreement.

## 1 DEFINITIONS AND INTERPRETATION

---

### 1.1 Definitions

In this Agreement the following words and phrases have the meanings as set out below unless a contrary intention appears:

‘**Account**’ means, in respect of the CLEAR Business, the bank account opened with National Australia Bank (or such other bank as the Custodian may choose from time to time) by the Custodian.

‘**AML Compliance Programme**’ means the Anti-Money Laundering and Counter-Terrorism Financing Programme established by the Custodian for the purposes of Part 7 of the AML Legislation.

‘**AML Legislation**’ means the *Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth)* and any regulations, rules or other instruments made under that Act.

‘**ASIC**’ means the Australian Securities and Investments Commission and any Authority which replaces it.

‘**Assets**’ means, in respect of the CLEAR Business, such of the assets that are transferred or delivered to the Custodian and accepted by the Custodian to be held in accordance with the terms of this Agreement.

‘**AUSTRAC**’ means the Australian Transaction Reports and Analysis Centre and any other government or statutory authority that holds responsibility for administering the whole or any part of the AML Legislation.

‘**Authorised Signatory**’ means a person appointed by the Client and specified in Schedule C (as varied from time to time) for the purpose of giving Proper Instructions.

‘**Authority**’ includes any government or semi-government, statutory, public or other authority or body having jurisdiction over the Client, any Asset or any matter or thing in relation to any of them.

‘**BHC**’ means a bulk handling company which stores grain on behalf of the grain industry participants and with whom the Client has entered into an agreement to participate in the CLEAR System.

‘**Business Day**’ means a day on which the Custodian is open for business in Sydney other than a Sunday, Saturday, public holiday or bank holiday in New South Wales.

‘**CLEAR Business**’ means:

- (a) CLEAR acting as nominee and holding the entitlement to grain deposited with a BHC, on bare trust for a grain participant.
- (b) The development and on-going maintenance of the CLEAR System; and
- (c) The role and responsibilities of CLEAR under the Terms and Conditions.

‘**CLEAR System**’ means the web based platform developed and operated by CLEAR, enabling users to deal in grain.

‘**Client**’ includes, where the context permits, an agent of the Client.

‘**Confidential Information**’ means the databases, computer programs, screen formats, screen designs, report formats, interactive design techniques, and other related information furnished to a party by the other party, for the purposes of this Agreement.

‘**Corporations Act**’ means the *Corporations Act 2001* (Cth) and any regulations or instruments made under that Act, as amended from time to time.

‘**Custodian**’ includes, where the context permits, any Sub-Custodian or any nominee, delegate or agent that the Custodian appoints in accordance with clause 9.1(a) this Agreement.

‘**Customer Identification Procedure**’ means the applicable customer identification procedure as required under the AML Compliance Programme, including the collection and verification of information for the purpose of identifying each Customer (as defined in the AML Legislation) .

‘**dollars**’ or ‘**\$**’ in this Agreement means Australian dollars unless otherwise expressly stated.

‘**Effective Date**’ means the date of this Agreement.

‘**Liabilities**’ include:

- (a) Taxes, costs, expenses, liabilities, fees or any other amount incurred or payable by the Custodian under or pursuant to this Agreement excluding bank charges relating to payments made by the Custodian pursuant to a Proper Instruction;
- (b) the Custodian's fees payable under clause 15;
- (c) any sum or amount in respect of which the Custodian is indemnified under clause 11; and
- (d) any amount the Custodian is entitled to be paid or reimbursed under clause 11.

**'Perpetual Group'** means Perpetual Limited and its related bodies corporate, including the Custodian.

**'Personal Information'** has the same meaning as in the *Privacy Act 1988* (Cth).

**'Proper Instruction'** means an instruction provided by the Client to the Custodian that is either:

- (a) in writing and
  - (i) signed by two Authorised Signatories and dated;
  - (ii) is complete, clear and unambiguous ;
  - (iii) is sent or delivered in accordance with this Agreement; and
  - (iv) relates to Assets; or
- (b) an electronic file in csv format delivered to the Custodian via a secure FTP server or other electronic method as agreed in writing between the Client and the Custodian.

**'Relevant Notice'** means any notice issued in relation to an Asset and includes a notice:

- (a) in relation to a rights issue, a takeover offer, voting at a general meeting, insurance, tenancies, environmental matters, litigation, disputes, Taxes, or Liabilities; or
- (b) from any Authority,

which relates to one or more Assets.

**'Requirements'** means any requirements, notices, orders or directions received from or given by any Authority, addressed to or imposed on the Client or the Custodian or both, whether directly or indirectly.

**'Securities System'** means any common system or registry for holding securities such as marketable and other securities, units, managed investments, deposits, bonds, notes, debentures, commercial paper and other equity, fixed interest or discount securities or derivatives of them.

‘**Statutes**’ means the requirements of, and prohibitions in, all statutes, rules, regulations, proclamations, ordinances or by-laws present or future, with which the Client or the Custodian or both are obliged to comply.

‘**Sub-Custodian**’ means any sub-custodian appointed by the Custodian under clause 9.1(a).

‘**Taxes**’ includes any tax, surcharge, superannuation surcharge, duty (including stamp duty and financial institutions duty), capital gains tax, goods and services tax, value added tax, debits tax, impost, withholding tax or similar tax or any fine, penalty or late payment interest incurred or payable or expected to be incurred or payable in respect of, or in relation to, the Assets by the Custodian or any other person.

‘**Terms and Conditions**’ means the CLEAR Terms and Conditions binding on the Client and the users of the CLEAR System as attached at Schedule F as amended from time to time with the written consent of the Custodian, such written consent to be limited to references specific to the Custodian.

## **1.2 Interpretation**

In this Agreement unless the context otherwise requires:

- (a) headings have been inserted only for convenience and do not affect the interpretation of this Agreement;
- (b) a reference to any document includes reference to that document’s attachments and schedules and the document as amended from time to time;
- (c) a reference to a statute, ordinance, code or other law includes reference to the corresponding regulations, instruments, class orders and policy statements in all instances as amended, consolidated, re-enacted, replaced or re-written;
- (d) a reference to the parties, where relevant, includes their respective successors or permitted assigns;
- (e) the singular includes the plural and vice-versa;
- (f) words and expressions importing one gender include all other genders;
- (g) ‘include’ and any variation of it means including without limitation and does not exclude a reference to other items, whether of the same class or genus or not.
- (h) ‘quarter’ and any variation of it means a calendar quarter (whether or not beginning on the first day of the quarter);
- (i) ‘person’ includes a natural person, a firm, a body corporate, an unincorporated association or an authority and vice versa;

- (j) unless application is specifically included or mandatory by law, any statute, proclamation, order, regulation, or moratorium whether Federal or State, present or future shall not apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers or remedies given to or accruing to the parties to this Agreement; and
- (k) if under this Agreement the day on or by which any act, matter or thing is required to be done is a day other than a Business Day, such act, matter or thing must be done on the next succeeding Business Day.

## **2 APPOINTMENT OF CUSTODIAN**

---

- 2.1** On and from the Effective Date, the Client appoints the Custodian as custodian of the Assets on the terms and conditions of this Agreement. The Custodian accepts that appointment.
- 2.2** The Client undertakes, represents and warrants that all Assets will be located in Australia and will not include assets other than:
  - (a) bank deposits;
  - (b) a file containing the beneficial ownership details of the grain deposited at a BHC as provided to the Custodian by the Client.
  - (c) such other types of assets as the parties agree in writing.

## **3 CUSTODIAN'S GENERAL DUTIES AND OBLIGATIONS**

---

The Custodian must:

- (a) hold the Assets on the terms and conditions of this Agreement;
- (b) ensure that the Assets are clearly identified in its records;
- (c) provide the reports specified in Schedule A;
- (d) act honestly;
- (e) exercise the degree of care, diligence and skill that a reasonable person would exercise if they were in the Custodian's position and, if relevant, based on the standards applying in the relevant markets for the Assets held;
- (f) keep proper records in respect of the Assets;
- (g) on a timely basis:

- (i) receive all income and other payments due in respect of Assets; and
- (ii) credit such income and payments to the relevant Account;
- (h) subject to this Agreement, act in accordance with Proper Instructions; and
- (i) fulfil the Custodian's functions as outlined in the Terms and Conditions.

#### **4 CLIENT'S GENERAL DUTIES AND OBLIGATIONS**

---

The Client must:

- (a) if required by the Custodian, include in all documents statements to the effect that the Custodian is an agent of the Client, it may only act in accordance with the terms of this Agreement and has no liability (including for negligence or breach of trust) or responsibility to any user of the Clear System for any act or omission in accordance with Proper Instructions of the Client or otherwise in accordance with the terms of this Agreement;
- (b) ensure that all instructions the Client, its officers, employees and agents provide to the Custodian are Proper Instructions;
- (c) ensure that all Proper Instructions are in accordance with the relevant law and any Requirements; and
- (d) ensure that the Custodian is provided with such legal or other advice or assistance as the Custodian reasonably requires to comply with its obligations, at no cost to the Custodian.

#### **5 PROPER INSTRUCTIONS**

---

##### **5.1 Custodian may act only on Proper Instructions**

Where the Custodian is required under this Agreement to act on Proper Instructions, the Custodian must only do so upon receipt of such Proper Instructions.

##### **5.2 Proper Instructions binding**

Any Proper Instructions given to the Custodian are deemed to have been given by the Client and bind the Client.

##### **5.3 Custodian entitled to assume**

In acting on any Proper Instructions the Custodian is entitled to assume that the Client has complied with all of the Client's legal and commercial obligations (whether under this Agreement or otherwise).



#### **5.4 Receipt of communications**

Any communication between the parties (including Proper Instructions) received:

- (a) by or at 3.30 PM Australian Eastern Standard Time on a Business Day is deemed to have been received on that Business Day;
- (b) after 3.30 PM Australian Eastern Standard Time on a Business Day is deemed to have been received on the next Business Day; or
- (c) on a day that is not a Business Day will be deemed to have been received on the next Business Day.

#### **5.5 Custodian not required to act**

The Custodian is not required to act on any instructions which the Custodian reasonably believes not to be Proper Instructions or which are, in the opinion of the Custodian, illegal, inconsistent with market practice, incomplete, ambiguous, unclear or would expose the Custodian to personal loss or liability.

#### **5.6 Proper Instruction continues**

Unless otherwise provided in this Agreement, a Proper Instruction continues in full force and effect until cancelled or superseded by a subsequent Proper Instruction.

#### **5.7 Conflicting Proper Instructions**

If the Custodian:

- (a) receives a Proper Instruction;
- (b) has not acted on the Proper Instruction; and
- (c) subsequently receives a further Proper Instruction which conflicts with the earlier Proper Instruction,

the Custodian may at its discretion do any of the following:

- (d) follow the later Proper Instruction; or
- (e) notify the Client of the conflict and attempt to resolve the conflict prior to acting.

### **6 CUSTODIAN'S GENERAL POWERS WITHOUT PROPER INSTRUCTIONS**

The Custodian has power to do any of the following on an ongoing basis without Proper Instructions:

- (a) open and maintain Accounts in respect of the Assets;
- (b) seek and act upon the advice of barristers, solicitors and other experts on any matters in connection with the observance of its obligations under this Agreement;
- (c) realise sufficient property held in the Account to satisfy any Liabilities payable to the Custodian in accordance with clause 16;
- (d) make deductions from the Assets from time to time for the purposes of satisfying any obligation entered into in accordance with a Proper Instruction;
- (e) receive and hold, or procure the receipt and holding of, the Assets and, register the Assets in the name of the Custodian;

## **7 CUSTODIAN'S GENERAL POWERS WITH PROPER INSTRUCTIONS**

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### **7.1 Acts the Custodian may do on receipt of Proper Instructions**

Without limiting clause 6, the Custodian may do any of the following upon receipt of Proper Instructions:

- (a) acquire or dispose of Assets;
- (b) pay, or cause to be paid, moneys out of the Assets as directed by the Client;
- (c) any other act specified in a Proper Instruction.

### **7.2 Legal proceedings**

The Custodian is not obliged to institute or defend legal proceedings unless the Client requests it to do so and indemnifies the Custodian to the Custodian's reasonable satisfaction.

### **7.3 No knowledge of constituent documents**

The Custodian expressly disclaims any knowledge of any constituent documents governing the CLEAR Business, except for references to the Custodian under the Terms and Conditions as approved by the Custodian. The Client accepts and acknowledges this disclaimer.

### **7.4 Custodian not obliged to take action**

The Custodian is not obliged to take action to recover any income or payment due by a third party or to compensate or reimburse the Client for such non-payment.

## **7.5 Right to not act if liability not limited**

Despite any other clause in this Agreement, the Custodian is not obliged to do or refrain from doing anything under this Agreement or in relation to any Asset unless the Custodian's liability is limited to its reasonable satisfaction. [this clause is an industry standard clause for custodians].

## **8 AUTHORISED SIGNATORIES**

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### **8.1 Authorised Signatories**

The Client acknowledges and agrees that Authorised Signatories are authorised to give instructions to the Custodian on behalf of the Client for the purposes of this Agreement and to sign on behalf of the Client all notices, certificates, communications, instructions confirmations and other documents required by or contemplated under this Agreement.

### **8.2 Custodian entitled to rely**

The Custodian is entitled to rely on the authenticity of any signatures and instructions which the Custodian reasonably believes to have been given by the Client's Authorised Signatories and the Custodian is not liable for any claim, damage, expense, loss or liability arising from such reliance.

### **8.3 Additions and deletions to list**

The Client must advise the Custodian of any variation by addition to, or deletion from, Schedule C by written notice signed by:

- a) two Authorised Signatories who are not the subject of the variation; or
- b) two directors of the Client; or
- c) a director and company secretary of the Client.

### **8.4 Date variation takes effect**

Schedule C will be taken to be amended with effect from the date that the Custodian provides written acknowledgment of receipt of the relevant variation notice given under clause 8.3.

## **9 USE OF AGENTS AND SUB-CUSTODIANS**

---

### **9.1 Use of agents**

The Custodian may in its discretion appoint and use the services of:

- (a) any other person (whether or not related to or associated with the Custodian) as sub-custodian, nominee, agent, broker, delegate or adviser; or
- (b) any recognised depository, securities system or clearing system

where considered by the Custodian to be necessary or expedient and to delegate to such person any of the powers conferred on the Custodian under this Agreement as may be necessary for that purpose.

## **9.2 Liability for Sub-Custodians**

The Custodian will be liable for the acts of a Sub-Custodian as if they were the Custodian's own acts.

## **9.3 Appointment in writing**

Any appointment of a Sub-Custodian must be in writing between the Custodian and the Sub-Custodian on terms not inconsistent with this Agreement.

## **9.4 Custodian to monitor agents**

The Custodian must monitor persons appointed under clause 9.1(a) with respect to the performance of their obligations arising under this Agreement and must from time to time make reasonable enquiries to ensure that they continue to perform their obligations in relation to this Agreement.

## **9.5 Agent's fees**

Subject to this Agreement, the fees and expenses of any person appointed under clause 9.1(a) must be paid by the Custodian.

# **10 CLIENT ACKNOWLEDGMENTS**

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## **10.1 Risks**

The Client acknowledges and agrees that holding property in local or foreign jurisdictions may involve the risk of loss, or other risks, and that, subject to clause 11.4, the Custodian accepts no liability whatsoever (including liability for negligence) and is not liable in any circumstances for any loss which results from investing or holding property in Australia or any other country. Such loss includes loss arising from:

- (a) the general risks of investing;
- (b) nationalisation, expropriation or other governmental actions; regulations of the banking or securities industries, including changes in laws or market rules; currency restrictions, devaluations or fluctuations; or market conditions affecting the orderly execution of securities transactions or affecting the value of assets;
- (c) loss due to forces beyond the Custodian's control, including, but not limited to, strikes by any person, work stoppages by any person, acts of war or terrorism, insurrection, revolution, nuclear fusion, fission or radiation or acts of God;

- (d) the fraud, negligence or default of the Client or any of their employees, agents, advisers, contractors or directors;
- (e) the act of any Australian or foreign government, municipal or state body, office, department or agency or delegate, employee or agent of them;
- (f) the fraud, negligence or default of any Authorised Signatory or former Authorised Signatory; and
- (g) changes in any laws or the imposition of new laws or Taxes.

## **10.2 Authorised investments**

The Custodian is not aware of the investments that the Client is authorised to invest in and is entitled to assume that all Assets are authorised investments. The Custodian is not obliged to monitor, enquire or ensure that any Asset is an authorised investment of the Client, including for the purposes of the Client's lending covenants, according to its Constitution or otherwise.

## **10.3 Custodian's services not exclusive**

The services of the Custodian under this Agreement are not exclusive. The Custodian is free to provide similar services to others, and is not obliged to disclose to the Client anything which comes to its notice in the course of providing services to others, in its general business operations or otherwise than in the performance of this Agreement.

## **10.4 AML Legislation**

The Client acknowledges that the Custodian is bound by the AML Legislation, and agrees to:

- (a) provide the custodian with any documents, information or assistance that may be reasonably requested by the Custodian, to ensure the Custodian's Compliance with the AML Legislation and the AML Compliance Programme, as soon as practicable after that request is made;
- (b) on request, provide the Custodian with Customer Identification Records and deliver all such Customer Identification Records to the Custodian;
- (c) undertake any activities and provide any information which the Custodian reasonably requests and which are required by the AML Compliance Programme; and
- (d) permit the Custodian and any regulatory body (including AUSTRAC) and their respective representatives, agents and auditors access to any place of business of the Client during normal business hours and at other reasonable times to inspect, examine, audit, review and take copies of documents or extracts of documents in relation to any issue, matter or thing relating to its obligations under this clause.

## **11 INDEMNITY AND LIABILITY**

---

### **11.1 Indemnity**

Subject to clause 11.3, the Client indemnifies, and must keep indemnified, the Custodian, its officers, employees, agents and representatives against all proceedings, claims, demands, damages, actions, reasonable amounts paid in settlement, reasonable costs and expenses, losses and liabilities of whatever nature (whether actual or contingent) suffered or incurred by or sustained or threatened against, the Custodian (including interest and legal fees and expenses on a full indemnity basis) arising out of, or in connection with:

- (a) the Custodian's observance of this Agreement, and out of the Custodian holding any of the Assets in its name or the name of any Sub-Custodian;
- (b) any transaction in relation to an Asset or the ownership or holding of any Asset;
- (c) there being insufficient funds available to the Custodian to meet the payment obligations of the Custodian under a Proper Instruction;
- (d) any Tax, brokerage, commissions, acquisition price and costs, penalties and other expenses arising out of any acquisition, holding or disposal of an Asset under this Agreement or the performance of its obligations under this Agreement and all costs and expenses incidental to any of the foregoing;
- (e) the Custodian acting or omitting to act in accordance with a Proper Instruction;
- (f) certification and reporting requirements, claims for exemption or refund, additions for late payment, interest, penalties and other expenses (including legal expenses) that may be assessed against the Custodian on account of the Client or any Asset;
- (g) any breach of this Agreement by the Client or its officers, agents, employees, including without limitation any breach in connection with the Custodian's Confidential Information and any breach of a warranty, covenant, or obligation under this Agreement;
- (h) any actions, suits, proceedings, claims and demands which may be brought or threatened against or suffered or sustained by the Custodian by a user of the CLEAR System or any third party in connection with the CLEAR Business; or
- (i) any overdraft incurred on the Account as a result of the Custodian acting on a Proper Instruction.
- (j) inaccurate gticket information either forwarded to the Custodian by the Client;
- (j) any changes to the Custodian's functions under the Terms and Conditions that have not been approved by the Custodian.
- (k) any wrongful, wilful or negligent acts, or any breach by the Client of the Terms and Conditions.

### **11.2 Enforcing right of indemnity**

The Custodian need not incur expenses or make payment before enforcing a right of indemnity under this Agreement.

### **11.3 Client not liable**

The Client will not be liable to the Custodian to the extent to which damage or loss results from or is caused by:

- (a) any breach of this Agreement by the Custodian or failure by the Custodian to perform the Custodian's functions outlined in the Terms and Conditions; or
- (b) the fraud, wilful default or gross negligence of the Custodian or a Sub-Custodian.

### **11.4 Liability of Custodian**

The Custodian indemnifies the Client for any claim, damage, expense, loss or liability arising in any way out of or in connection with this Agreement to the extent that it directly results from the fraud, wilful default or gross negligence of the Custodian or a Sub-Custodian or from any material breach of this Agreement or failure to perform the Custodian's functions as outlined in the Terms and Conditions.

### **11.5 Liability limited**

The liability of the Custodian in connection with clause 11.4 will not exceed A\$7 million (seven million Australian dollars).

### **11.6 No liability for indirect loss**

In no event is the Custodian liable to the Client or any other person for indirect, special or consequential damages.

### **11.7 No liability to agents**

The Custodian is not liable to an agent of the Client in any circumstances.

### **11.8 No liability to users of the CLEAR system**

The Custodian is not liable in any way to any user of the CLEAR System or any third party in connection with the CLEAR Business.

### **11.9 Custodian not responsible for validity of title**

The Custodian is not liable to the Client for the title, validity, genuineness, good deliverable form, or freedom from mortgage, charge or lien, of any Asset, information or title to any Asset received, acquired or delivered by the Custodian under this Agreement and is not required to undertake enquiries or searches in respect of such matters.

**11.10 No liability if acting on notices believed to be genuine**

The Custodian will not be liable to the Client and will be held harmless by the Client in acting upon any Proper Instructions.

**11.11 Custodian not liable for any property not received by the Custodian or its Sub-Custodian**

The Client agrees that the Custodian is not responsible or liable for any property held or received by the Client or any other person and not delivered to the Custodian, its Sub-Custodian or nominees.

**11.12 Custodian's disclaimer**

The Custodian expressly disclaims any knowledge of the existence or contents of any documentation governing the CLEAR System and the CLEAR Business other than references to the Custodian under the Terms and Conditions ("**Matters**"). The Client, and not the Custodian, is required to ensure that the requirements or terms of any Matters are met. The Custodian will not be responsible:

- (a) to ensure that the requirements or terms of any Matter are met; and
- (b) if the requirements or terms of any Matter are not met or available wholly or partly because the Custodian is holding any property.

**11.13 No obligation to advise**

The Custodian is not responsible for reviewing, monitoring or advising the Client on the Assets or any part of them.

**11.14 Not responsible for accuracy**

The Custodian is not responsible for the accuracy or completeness of any information received from the Client or third parties including where such information is passed to or accessed by the Client or third party.

**11.15 Custodian's state of mind**

Subject to the provisions related to deemed receipt of notices and other communications under this Agreement, the Custodian will only be considered to have a particular state of mind if the officers of the Custodian having day to day responsibility for the administration or management of the Custodian's obligations under this Agreement actually have that state of mind.

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**12 NO OBLIGATION TO ENQUIRE ABOUT COMPLIANCE**

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The Custodian is not obliged to make any enquiry or request any proof or evidence from the Client in respect of satisfaction by the Client of the Client's obligations under any



documentation governing the CLEAR System or the CLEAR Business, the Corporations Act, , or any other legal or commercial obligations. The Client acknowledges and agrees that the Custodian is not liable to the Client or any third parties in relation to these matters.

## **13 CONFIDENTIALITY**

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### **13.1 Confidential Information**

Each of the Client and the Custodian:

- (a) acknowledges the Confidential Information is passed to and received by it in the strictest confidence;
- (b) must use the Confidential Information only for the purposes set out in this Agreement;
- (c) must not disclose the Confidential Information to any person except as permitted by this Agreement;
- (d) must take reasonable efforts to ensure that any person who has access to Confidential Information does not make any unauthorised use, modification, reproduction or disclosure of that information and that Confidential Information is protected against loss;
- (e) must notify the other as soon as practicable after it becomes aware of a breach by it or its representatives of its obligations under this clause 13; and
- (g) must co-operate with the other in any reasonable action which it may take to protect the confidentiality of its Confidential Information.

### **13.2 Permitted disclosures**

Each of the Client and Custodian may disclose Confidential Information:

- (a) on a need to know basis to any of its representatives or agents (including legal advisers) for the purposes of this Agreement if:
  - (i) the representative or agent owes it a legally enforceable duty of confidentiality; or
  - (ii) it obtains a written undertaking from the representative in a form acceptable to the other, imposing substantially the same obligations on the representative as those imposed on it by this Agreement;
- (b) to the extent specifically required by law and must immediately notify the other if it becomes aware that such disclosure may be required;

- (c) with the prior written consent of the other provided that the person to whom the Confidential Information is to be disclosed, releases and indemnifies the other from all claims, actions, loss or liability arising out of or in connection with such disclosure or with the use by that person of that Confidential Information.

### **13.3 Return of Confidential Information**

At any time at the request of a party (the 'first mentioned party'), the other party (the 'second mentioned party') must at its own expense:

- (i) deliver to the first mentioned party, or with the first mentioned party's prior written consent, destroy or erase, all documents and media in which any Confidential Information is recorded or from which it may be reproduced (including any copies) and which are in the possession, power, custody or control of the second mentioned party or its representative; and
- (ii) certify in writing to the first mentioned party that to the best of its information and belief and after making enquires, there is no longer any Confidential Information in the possession, power, custody or control of the second mentioned party or any representative of the second mentioned party.

### **13.4 No Release**

Return of the material forms of Confidential Information under clause 13.3 to a party does not release the other party or its representatives from obligations under this clause 13.

## **14 INSPECTION OF CUSTODIAN RECORDS**

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The Client can, at all reasonable times and upon reasonable notice, inspect and audit the Custodian's records relating to the Client and the Assets.

## **15 FEES**

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### **15.1 Amount of fees**

The Custodian is entitled to the fees set out in Schedule D. These fees are payable by the Client in the manner set out in clause 15.6.

### **15.2 Method of invoicing**

The Custodian must advise the Client in writing of the amount of fees payable for each trade.

### **15.3 Fees**

Fees payable to the Custodian are calculated in accordance with Schedule D and are payable upon receipt of funds from each trade.

#### **15.4 Variation of fees**

Subject to clause 15.7, any variation of fees must be agreed to by the parties to this Agreement in writing and will not take effect less than 30 days (or such other period as agreed between the parties) after such agreement.

#### **15.5 Review by Custodian**

The parties agree to review the Custodian's fees:

- (a) following the first three months after the Effective Date.
- (b) at the request of the Custodian, if there are any material changes in the activities required to be performed by the Custodian or the obligations imposed on the Custodian in respect of the Assets.

#### **15.6 Manner of payment**

Upon providing notice to the Client in accordance with clause 15.2, the Custodian is authorised to deduct the amount specified in such notice from the Assets.

#### **15.7 GST**

- (a) The fees set out in Schedule D are exclusive of goods and services tax ("GST").
- (b) The Custodian may vary its fee to take account of any change in the GST law, including any change in the GST rate and any amendment to the *A New Tax System (Goods and Services Tax) Act 1999* and regulations.

### **16 PAYMENT OF LIABILITIES**

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#### **16.1 The Client must pay or reimburse the Custodian**

The Client must pay or reimburse the Custodian for all Liabilities which are payable or expected to be incurred or payable by the Custodian in relation to the Assets or under this Agreement.

#### **16.2 Notice of payment required**

The Custodian must advise the Client by written notice of the amount required to satisfy any:

- (a) Liabilities which are due or are expected to be due; and
- (b) Liabilities incurred by the Custodian in respect of the Assets.

**16.3 Insufficient funds**

If the Client has not satisfied a Liability and there are insufficient funds held in the Assets to satisfy Liabilities payable to the Custodian, then the Client must on demand pay to the Custodian the amount outstanding. To the extent that such outstanding amount is not paid, the parties acknowledge that such outstanding amount shall be a debt owing by the Client to the Custodian.

**17 TAXES**

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**17.1 Client agrees to bear any Taxes**

The Client agrees to bear any Taxes payable or assessed in connection with this Agreement including the delivery or transfer of the Assets to the Custodian to form part of the Assets or from the Custodian to any other person in accordance with this Agreement.

**17.2 Client must advise Custodian as to the amount of Taxes payable**

The Client must advise the Custodian as to the amount of any Taxes payable under clause 17.1 and is responsible for the correctness and accuracy of such advice.

**18 TERMINATION**

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**18.1 Time of Termination**

Either party may terminate this Agreement by giving at least 60 days' notice (or such other period as the parties agree) in writing.

**18.2 Transfer of Assets**

Upon termination by:

- (a) the Client, the Client must provide full details during the notice period of the person to whom the Custodian must transfer the Assets; or
- (b) the Custodian, the Client must within 60 days (or such other period as the parties agree) notify the Custodian of details of the new custodian.

If such details are not provided during the notice period, the Custodian may elect either to retain the Assets on the terms and conditions of this Agreement until it receives such details, or to deliver the Assets to the Client.

**18.3 Deduct any amounts owing**

Upon termination the Custodian is entitled, and is authorised, to deduct from the Assets any amounts owing to it prior to the delivery of the Assets.

#### **18.4 Return of Assets**

Subject to the Custodian being paid all outstanding fees and being reimbursed for all outstanding Liabilities, as soon as possible after receiving Proper Instructions requiring it to do so or within 10 Business Days of this Agreement being terminated, the Custodian must transfer the Assets to the person nominated by the Client.

#### **18.5 Survival**

Clauses 1, 11, 13, 18, 24, 25, 26, 27 and 28 survive termination of this Agreement.

### **19 CUSTODIAN REPRESENTATIONS AND WARRANTIES**

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#### **19.1 Representations and warranties**

The Custodian represents and warrants to the Client as at the date of this Agreement and during the term of this Agreement that:

- (a) it has the power, skill, facilities and financial ability to enter into and perform its obligations under this Agreement and the Custodian's functions as described in the Terms and Conditions, and has duly executed this Agreement so as to constitute the valid and binding obligations of the Custodian;
- (b) it holds such licences and authorities as are necessary to lawfully perform its obligations under this Agreement;
- (c) it will procure on or prior to the date of this Agreement, and maintain at all times during the term of this Agreement policies of fidelity insurance and professional indemnity insurance (either in its own name or ensure that it is covered under a company group insurance arrangement) which are appropriate for a prudent company engaged in a similar business to that of the Custodian; and
- (d) it is a body corporate as defined under the Corporations Act.

### **20 CLIENT REPRESENTATIONS AND WARRANTIES**

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The Client represents and warrants to the Custodian as at the date of this Agreement and during the term of this Agreement that:

- (a) it has all the power to enter into and perform this Agreement and has obtained all necessary consents and corporate authorisations to enable it to do so;
- (b) the entry into and performance of this Agreement by the Client does not constitute a breach of a term of any obligation or default under any agreement or undertaking by which the Client is bound;

- (c) it has power to enter into, perform and comply with all its obligations under this Agreement;
- (d) all consents, approvals, authorisations and conditions required to be obtained by it to permit the execution, validity, performance or enforceability of this Agreement have been obtained and are subsisting;
- (e) it has not breached any material term of CLEAR Business documentation or committed any breach of duty;
- (f) its entry into this Agreement is for the benefit of, and in the interests of, the CLEAR System users;
- (g) in connection with any financial services or financial products to be provided by the Custodian in connection with this Agreement, the Client is a wholesale client as defined under the Corporations Act;
- (h) it will not cause the Custodian to breach the provisions of the Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002 (Cth) in performing the Custodian's duties and obligations under this Agreement;
- (i) the proper performance of any Proper Instructions or other obligations of the Custodian will not cause the Client or Custodian to breach any law;
- (j) in acting on a Proper Instruction, the Custodian is acting as agent of the Client;
- (k) It will have in place and maintain at all times business recovery procedures appropriate to the CLEAR Business and the CLEAR System; and
- (l) All information and details required to be distributed by the Custodian under clause 10.3 of the Terms and Conditions is located in the CLEAR System.

## **21 CUSTODIAN PERFORMANCE**

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The Custodian acknowledges that the Client will assess the Custodian's performance on a regular basis in accordance with the methods and standards set out in Schedule B.

## **22 CLIENT UNDERTAKINGS**

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The Client undertakes to the Custodian:

- (a) to notify the Custodian of the obligations imposed on the Custodian by the taxation law of the jurisdictions in which any property included in the Assets at any time is held by the Custodian pursuant to this Agreement;

- (b) to provide the Custodian on request with any documents, information or instructions reasonably required by the Custodian to enable it to perform its obligations under this Agreement or imposed by law, and to ensure that any such information will be accurate;
- (c) to notify the Custodian in writing as soon as practicable after it becomes aware of the occurrence of any circumstances which would give rise to the winding up of the CLEAR System or CLEAR Business;
- (d) to immediately notify the Custodian in writing if it ceases or proposes to cease for any reason or at any time to be the owner and operator of the CLEAR System and will procure that any new owner or operator of the CLEAR System executes in favour of the Custodian such covenants, deeds and other instruments which the Custodian reasonably requires provided that these are not more onerous than those required or obtained by the Custodian under or in relation to this Agreement;
- (e) to immediately notify the Custodian in writing if the CLEAR System or CLEAR Business for any reason ceases to exist;
- (f) duly and punctually perform and observe its obligations and duties under this Agreement;
- (g) notify the Custodian of any fact or circumstance within its knowledge which has given rise, or with the effluxion of time would give rise, to a breach by the Client of any material representation, undertaking or other provision contained in this Agreement;
- (h) where the Client is to have access to the records of the Custodian the Client shall execute such copyright or restriction agreement as is reasonably required by the Custodian or the supplier of the Custodian's record system;
- (i) to comply with all Statutes and Requirements relating to:
  - (i) any of the Assets or anything or anyone in or on any of them; or
  - (ii) anything done or to be done or not to be done in, on or with any of the Assets or anything in or on any of them; and
- (j) to obtain its prior written consent to the use of the name and logo of the Perpetual Group.

**23 AMENDMENT**

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This Agreement cannot be amended except in writing executed by each party.

## **24 DISPUTE RESOLUTION**

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### **24.1 Resolve disputes by meeting**

Any dispute in relation to this Agreement must be sought to be resolved by meeting between officers of the Client and Custodian who have appropriate powers to deal with the dispute.

### **24.2 Either party may request meeting**

A meeting may be requested by either party and must be attended by the other at a mutually agreed time within two weeks of the initial request for the meeting.

### **24.3 Senior management involvement**

In the absence of a resolution at the meeting or if there is a failure to arrange or have the meeting, then either party may request that more senior management deal with the dispute.

### **24.4 Resolution binding**

A resolution of a dispute in accordance with this clause is (in the absence of manifest error) conclusive and binding on both parties.

## **25 PRIVACY**

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- (a) Each party acknowledges that Personal Information may be exchanged between the parties pursuant to the terms of this Agreement.
- (b) If Personal Information is exchanged between the parties, the party which provides the Personal Information must ensure that it obtains such consents as are required by the Privacy Act 1988 in relation to the collection, use or disclosure of the Personal Information.
- (c) Each party undertakes to use its best endeavors to ensure that at all times during the term of the Agreement:
  - (i) Personal Information provided to it (the receiving party) by another party (the providing party):
    - (A) unless otherwise required by law, will be used only for the purpose of fulfilling the receiving party's obligations under the Agreement; and
    - (B) except as expressly provided in clauses 25(a) or 13.2, will not be disclosed to any third party unless express consent in writing is obtained from the providing party; and
  - (ii) in addition to the obligation under clause 25(b) above, it will comply with the Privacy Act 1988 and all applicable regulations, principles, standards, codes of



conduct or guidelines concerning the handling of Personal Information under that Act or with any request or direction arising directly from or in connection with the proper exercise of the functions of the Privacy Commissioner.

- (d) If a party becomes aware that a breach of clause 25(b) or 25(c) has occurred, or if it becomes aware that the law may require disclosure, it must immediately notify the providing party in writing.

## **26 NOTICES**

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### **26.1 Address**

All notices, correspondence, communications (including Proper Instructions) sent or delivered under this Agreement shall be sent or delivered to the street or postal addresses or facsimile number of the recipient specified in Schedule E or such other address or number that the recipient party has previously notified to the sending party.

### **26.2 Effective time**

A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

### **26.3 When received**

A letter or facsimile is taken to be received:

- (a) in the case of a posted letter, on the third (or seventh, if posted to or from a place outside Australia) day after posting;
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

## **27 CUSTODIAN BANK ACCOUNTS**

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Companies within the Perpetual Group between them hold a large number of bank accounts on behalf of their respective clients. Because of this and arrangements which the Perpetual Group has with some of its banks, the Custodian may be entitled to receive from the bank with which a bank account is held, a commission calculated by reference to the balance in the relevant bank account from time to time. This commission is separate from and in addition to the interest which otherwise could accrue on the bank account and will not appear on any bank statement. The Client acknowledges that neither it nor any third party will be entitled to any interest as the Account will be set by the bank as a non interest bearing account. However, upon request by the Client, the Custodian will provide the Client with information regarding any commissions the Custodian has received in relation to the bank account.

The Client acknowledges that by entering into this Agreement they consent to the Custodian's receipt of the abovementioned commissions.

**28 SEVERABILITY**

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Each part of this Agreement is severable from the balance of this Agreement and if any part of this Agreement is illegal, void, invalid or unenforceable, then that will not effect the legality, effectiveness, validity or enforceability of the balance of this Agreement.

**29 GOVERNING LAW**

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This Agreement shall be governed by and construed in accordance with the laws of New South Wales. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales.

**30 ENTIRE AGREEMENT**

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This Agreement constitutes the complete and exclusive agreement between the parties.

**31 COUNTERPARTS**

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If this Agreement is executed in counterparts, then each is deemed an original and together they constitute the one document.

**EXECUTED** as an agreement.

**EXECUTED** for and on behalf of **CLEAR** )  
**COMMODITIES PTY LTD** ABN 50 126 )  
444 219 by its duly authorised officers )

\_\_\_\_\_  
Signature of Secretary/Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Signed in my presence for and on behalf **PERPETUAL NOMINEES LIMITED** ABN 37 000 733 700 by its attorneys ..... and ..... and who are personally known to me and each of whom declares that he/she has been duly appointed by the Board of Directors of that company as an attorney of the company for the purposes of the Power of Attorney dated 12 March 2002 (Registration Number Book 4342 Number 443) and that he/she has no notice of the revocation of his/her powers thereunder.

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Full name of Witness

.....  
Signature of Attorney

**SCHEDULE A**

**REPORTS**

<b>Report:</b>	<b>Description:</b>	<b>Frequency:</b>	<b>Deadline:</b>
<b>Transactions Report</b>	Report listing the inflow and outflow of funds from the scheme bank account.	Monthly	5 Business Days after month end

**SCHEDULE B**

**METHODS AND STANDARDS FOR ASSESSING CUSTODIAN PERFORMANCE**

<b>Function</b>	<b>Transaction</b>	<b>Timeframe</b>
<b>Bank account custody</b>	Process all payment files (supported by a Proper Instruction)	Within 1 business day of receipt of the file provided the file is issued to the Custodian by 2 pm on a Business Day.
<b>Other</b>	The timeliness of notification to the Client of corporate actions including subpoenas, writs	Within 2 Business Days of receipt by Custodian
	Response to enquiries from the Client	Within 1 Business Day or as otherwise agreed depending on the nature of the enquiry.

**SCHEDULE C**

**AUTHORISED SIGNATORIES**

The Client confirms that the persons specified below are authorised signatories for the purposes of the Custody Agreement dated \_\_\_\_\_ day of \_\_\_\_\_ 2008 between Perpetual Nominees Limited ABN 37 000 733 700 and Clear Commodities Pty Ltd ABN 50 126 444 219.

<b>Name</b>	<b>Title</b>	<b>Specimen Signature</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**SCHEDULE D**

**FEES**

<b>Custody services</b>	\$0.10 per tonne.
<b>Conditions</b>	The above fee structure is conditional upon: <ul style="list-style-type: none"><li>• Disbursements will be processed 1 Business Day after receipt of instruction;</li><li>• No interest will be credited to the bank account held in Perpetual's name pursuant to the Custody Agreement.</li></ul>
<b>Out of pocket expenses</b>	Out of pocket expenses and costs such as legal costs would be passed through at cost, inclusive of GST, where applicable.
<b>Material Changes</b>	The fees quoted above are offered contingent upon the information provided to us and assume that actual experience would not be materially different from projected structure or activity. In the event of material departure at anytime, from the information provided we reserve the right to review and revise these fee arrangements.
<b>CPI adjustment</b>	The above fee is subject to an annual adjustment in line with the Consumer Price Index.

The fees set out above are GST exclusive.

**SCHEDULE E**

**ADDRESS OF PARTIES**

**CUSTODIAN:**

Attention: Vicki Riggio  
Business Unit Manager, Fund Services

Address: Level 12, 123 Pitt Street, Sydney NSW 2000

Facsimile No: 02 8256 1402

Telephone: 02 9229 8654

Email: vicki.riggio@perpetual.com.au

**CLIENT:**

Attention: Mr Bob McKay  
General Manager - Commodities

Address: Level 1, 616 St Kilda Road, Melbourne, Victoria, 3004

Facsimile No: 03 9521 5600

Telephone: 03 9514 9000

Email: bob.mckay@clearholdings.com.au



**SCHEDULE F**

**TERMS AND CONDITIONS**