

**The Named Officer  
(Officer)**

and

**Grain Trade Australia Limited  
(Company)**

**DEED OF ACCESS,  
INDEMNITY AND INSURANCE**

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## DEED OF ACCESS, INDEMNITY AND INSURANCE

DEED dated

### PARTIES

1. **THE PERSON** whose name and address is set out in the Schedule ("**Officer**")
2. **GRAIN TRADE AUSTRALIA LIMITED ACN 979 095 411** of Level 7, 12 O'Connell Street, Sydney NSW 2000 (**Company**)

### RECITALS

- A. The Officer is or is to become an officer of the Company.
- B. The Company wishes to ensure that the Officer acts or continues to act in such office.
- C. The Company has agreed to grant the Officer rights of access to its Records.
- D. The Company has agreed to indemnify the Officer against liabilities incurred as an officer of the Company.
- E. The Company has agreed to use its best endeavours to take out and maintain an insurance policy in favour of the Officer.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Meanings shall apply to capitalised terms used in this Deed as specified in this and the other provisions of this Deed, unless the context otherwise requires:

**Access Period** or **Coverage Period** means the period during which the Officer is an officer of the Company and for the longer of:

- (a) the period of 7 years after he ceases to be an officer of the Company; and
- (b) during the currency of any threatened or commenced investigation conducted by a body with statutory powers to do so, or administrative or legal proceedings relating to an Officer (whether or not consequential on such investigation), which investigation or proceedings are commenced whilst the Officer is an officer of the Company or during the period of 7 years after which he ceases to be an officer of the Company.

**ASIC** means the Australian Securities & Investments Commission.

**Board** means the Board of directors of the Company as constituted from time to time.

**Confidential Information** includes Privileged Documents and also means information contained in Records which, at the time of disclosure or communication to, or acquisition by the Officer or the Company, was:

- (a) clearly labelled as confidential;

- (b) communicated to the Officer in circumstances giving rise to an obligation of confidence between the Company and the Officer; or
- (c) communicated to the Company in circumstances giving rise to an obligation of confidence between a third party and the Company.

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

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Privileged Documents** means documents over which the Company claims or is entitled to claim client legal privilege.

**Records** means all the books and records of the Company (where procuring access is within the power of the Company), and includes, without limitation, all Board papers, submissions, minutes, correspondence, agreements, memoranda which directly or indirectly relate to the affairs of the Company during the period in which the Officer is an officer of the Company, whether kept in physical, electronic or any other form.

**related body corporate** has the same meaning given in the Corporations Act.

## 1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) a reference to a clause, party or schedule is a reference to a clause, party or schedule to this Deed;
- (e) a reference to a person includes a natural person or corporation;
- (f) a reference to legislation includes all legislation varying, consolidating or replacing that legislation and a reference to legislation includes all delegated legislation made under that legislation;
- (g) a reference to Court and law is a reference to the appropriate courts and law, respectively, applicable in the circumstances to the Company;
- (h) words defined in the GST Act have the same meaning given to them in that Act when used in clauses concerning GST

## 2. ACCESS TO RECORDS

### 2.1 Maintenance and Storage of Records

The Company shall to maintain during the Access Period a complete set of Records and ensure the safe keeping and custody of the Records during the Access Period.

### 2.2 Rights of Access to Records

Subject to the provisions of this Deed, the Company shall enable the Officer (and if deceased, mentally ill or bankrupt, his legal representative and also his authorised representatives who need access to provide advice or assistance to him) to inspect the Records at the registered office of the Company (or some other reasonably accessible place), if a request is made in writing addressed to the company secretary of the Company during the Access Period.

### **2.3 Right to make or receive copies**

Subject to clause 4.3, the Officer shall be entitled, at the cost of the Company, to make or receive copies and/or extracts of the Records to which he is entitled to access under clause 2.2.

### **2.4 Cumulative Rights**

The rights of the Officer pursuant to clause 2.2 do not exclude, limit or restrict any right, power or remedy available to the Officer by virtue of his position as an officer or former officer of the Company provided by law or contract independently of this Deed.

## **3. PERMITTED PURPOSE OF ACCESS**

### **3.1 Permitted Purpose**

The Company will give access to the Records in accordance with clause 2.2 only for purposes which are properly referable to the Officer's present or former office as an officer of the Company, including but not limited to responding to investigations conducted by bodies with statutory powers to do so, and the defence or prosecution of administrative or legal proceedings involving the Officer, and/or the Company.

### **3.2 Officer's Covenants**

In consideration of the Company giving the Officer access to the Records in accordance with clause 2.2 and for the purposes stated in clause 3.1, the Officer shall not disclose to a person (other than to an officer of the Company or the Officer's legal, financial or other professional adviser) any information contained in the Records except to the extent:

- (a) the information is already in the public domain (other than as a result of disclosure by the Officer in breach of this Deed); or
- (b) the Officer is compelled by law to do so (including in responding to investigations conducted by bodies with statutory powers to do so, and in legal or administrative proceedings of any nature threatened or brought against the Officer).

### **3.3 Cumulative Obligations of Officer**

The obligations of the Officer pursuant to clause 3.2 do not exclude, limit or restrict any obligations imposed on the Officer by virtue of his position as an officer or former officer of the Company provided by law independently of this Deed.

## **4. CONFIDENTIAL INFORMATION**

### **4.1 Access to Confidential Information**

The Company shall give the Officer access to Records that contain Confidential Information, in accordance with clause 2.2 and for the purposes stated in clause 3.1, but subject to this clause 4.

#### **4.2 Officer's Undertaking as to Confidentiality**

In consideration of the Company giving the Officer access to the Confidential Information, the Officer shall treat the Confidential Information as confidential and shall not disclose, publish or communicate or permit the disclosure, publication or communication of the Confidential Information to or by any person except:

- (a) with the prior written consent of the Company;
- (b) as required by law, including in responding to investigations conducted by bodies with statutory powers to do so, and in legal or administrative proceedings brought against the Officer; or
- (c) to the Officer's legal, financial or other professional adviser, provided that such advisers agree to maintain the Confidential Information as confidential on similar terms to this clause.

#### **4.3 Copying Confidential Information**

The Officer may only make copies of Records containing Confidential Information with the prior written consent of the Company (such consent not to be unreasonably withheld) or for the purposes of responding to investigations conducted by bodies with statutory powers to do so, and legal or administrative proceedings:

- (a) to which the Officer is a party;
- (b) that the Officer proposes in good faith to bring; or
- (c) that the Officer has reason to believe will be brought against him.

### **5. PRIVILEGED DOCUMENTS**

#### **5.1 Access to Privileged Documents**

The Company shall give the Officer access to Records that contain Privileged Documents in accordance with clause 2.2 and for the purposes stated in clause 3.1, but subject to this clause 5.

#### **5.2 Non-Waiver of Privilege**

The Company and the Officer acknowledge that the granting of access to the Officer by the Company to Privileged Documents does not amount to an express or implied waiver by the Company of its claim to client legal privilege.

#### **5.3 Joint Privilege**

Where the Records consist of documents that entitle the Officer and the Company to claim joint client legal privilege, the Officer shall not waive, either by express or implied conduct, the joint client legal privilege, except in proceedings to which the Company is not a party.

#### **5.4 Restriction on access to Privileged Documents**

Except to the extent required by law, the Company shall not be required to give the Officer access to Privileged Documents that relate to legal proceedings:

- (a) brought by the Company against the Officer; or
- (b) brought by the Officer against the Company.

## **6. OFFICER'S INDEMNITY AND DEFENCE COSTS**

### **6.1 Indemnity – other than for legal costs**

To the maximum extent permitted by law, the Company indemnifies the Officer out of the property of the Company, to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified, against any loss or liability (except for legal costs) incurred either before or after the date of this Deed, by the Officer, as an officer of the Company, to another person.

### **6.2 Indemnity for legal costs**

To the maximum extent permitted by law, the Company indemnifies the Officer out of the property of the Company, to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified, against any liability for legal costs incurred by the Officer in responding to an investigation conducted by a body with statutory powers to do so and in defending an action for a loss or liability incurred as an officer of the Company.

### **6.3 Advance for legal costs**

- (a) To the extent that the Officer is not presently entitled to be indemnified against a liability for legal costs pursuant to clause 6.2 (each a **Liability**) and is not actually indemnified, the Company shall, upon written request from the Officer, advance to the Officer amounts expended or to be expended by the Officer in relation to that Liability provided:
- (i) that the Officer's request is supported by a written opinion from Queen's or Senior Counsel that the Officer has good prospects of being entitled to an indemnity for such costs pursuant to clause 6.2; and
  - (ii) at the absolute discretion of the Company, the Officer grants the Company a mortgage, charge or other encumbrance over property or rights agreed between the Officer and the Company to fully secure all such advances, together with interest and enforcement and other costs.
- (b) Each advance under this clause 6.3 shall accrue daily interest, which shall be capitalised, at the rate 5 per cent per annum, but which shall be waived if the advance shall be used to satisfy a Liability in respect of which the indemnity under clause 6.2 shall operate.
- (c) Within 30 days of written demand from the Company, the Officer shall repay to the Company any amount advanced to the Officer under this clause 6.3 in relation to a Liability:
- (i) which is not used by the Officer to satisfy that Liability; or
  - (ii) in respect of which the Officer has not become entitled to be indemnified under clause 6.2, having exhausted or abandoned all rights of appeal in respect of the relevant proceedings.

### **6.4 Payment by the Company where Officer entitled to indemnity**

- (a) Subject to clause 6.5(a), if the Officer becomes liable to pay any amount in respect of which the Officer is entitled to be indemnified under this Deed, the Company must indemnify the Officer by paying that amount to the person to which the amount is due within 30 days from the date that the Officer provides satisfactory evidence to the Company that the Officer is liable to pay the amount.
- (b) It is not necessary for the Officer to incur expense or make payment before enforcing the Officer's right of indemnity under this Deed.

#### **6.5 Application of indemnities**

- (a) Clauses 6.1, 6.2 and 6.3 have effect only to the extent their provisions are not avoided by law.
- (b) Subject to paragraph (a) of this clause, the indemnities provided by clause 6.1, 6.2 and 6.3:
  - (i) are irrevocable;
  - (ii) are in addition to any indemnity contained in the Company's Constitution;
  - (iii) continue irrespective of one or more previous applications of the clause; and
  - (iv) continue in full force and effect without limit in relation to any claim in respect of the matters the subject of this indemnity whether arising during or after the period which the Officer was acting as an officer of the Company.

#### **6.6 Relief from duty to indemnify and advance money**

- (a) It is not necessary for the Officer to disprove any claimed application of the exception in clause 6.5(a) in order to enforce immediately any indemnity given by this Deed.
- (b) If it is established in relation to a claim that the Officer is not entitled to be indemnified under clause 6.1 or 6.2, or to be advanced moneys under clause 6.3 because of the operation of clause 6.5(a):
  - (i) the Company is relieved to that extent from each and every obligation under clauses 6.1, 6.2 and 6.3 (as the case may be) in respect of that claim; and
  - (ii) the Officer must refund to the Company all, or the relevant part of, amounts (as applicable) incurred by the Company under this Deed in respect of that claim within 30 days of the Company providing to the Officer details of such amounts.
- (c) If the Company has pursuant to clause 6.1 or 6.2 paid a liability incurred by the Officer and the Officer is not subsequently entitled to an indemnity in relation to that liability, or is indemnified or otherwise made good by a third party (including by an insurer) the Officer must pay the Company an amount equal to the liability paid by the Company, the payment to be made within 30 days of demand by the Company.



## **6.7 Indemnity not affected**

Subject to clause 6.5(a), the liability of the Company under this clause 6 and the rights of the Officer under this clause 6 shall not be affected by any of the following:

- (a) any amendment to the Constitution of the Company;
- (b) any intermediate payments, settlement of accounts or payments;
- (c) laches, acquiescence or delays on the part of the Officer;
- (d) the death, bankruptcy, insolvency or liquidation of any person or corporation; or
- (e) any other act, matter or thing which might otherwise affect this clause 6 whether at law or in equity.

## **7. OFFICER'S INSURANCE**

### **7.1 Ongoing Insurance**

- (a) To the maximum extent permitted by law, during the Coverage Period the Company will use its best endeavours to take out and maintain an insurance policy in favour of the Officer with a reputable insurance company to cover any liability incurred by the Officer as an officer of the Company for such sum and on such terms as the directors of the Company shall determine from time to time as being reasonable.
- (b) Where permitted by law, the Company shall use its best endeavours to ensure that any insurance policy taken out pursuant to clause 7.1(a) covers any liability for legal costs and expenses incurred by the Officer in defending proceedings, whether civil or criminal and whatever the outcome.
- (c) Where permitted by law, the Company shall use its best endeavours to ensure that any insurance policy taken out pursuant to clause 7.1(a) is on terms no less favourable to the Officer than any similar insurance policy taken out by the Company at the time immediately before the Officer ceased to be an officer of the Company.
- (d) Where an insurance policy has been taken out pursuant to clause 7.1(a), and the Company determines not to renew or to cancel such policy, it shall notify the Officer in writing of its determination prior to such cancellation or non-renewal.

### **7.2 Payment of Insurance Premium**

The Company shall, as appropriate, pay on or before the date when due each premium payable on each insurance policy referred to in clause 7.1.

### **7.3 Renewal of Insurance**

The Company shall, if requested, provide the Officer with a copy of the certificate of currency and any renewal thereof as soon as each insurance policy is renewed each year during the Coverage Period.

## **8. GST**

### **8.1 GST exclusive**

Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

### **8.2 Taxable Supply**

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply); and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

### **8.3 Reimbursement or indemnity**

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

## **9. GOVERNING LAW AND JURISDICTION**

### **9.1 Law**

This Agreement shall be governed by and construed under the law of the State of New South Wales.

### **9.2 Jurisdiction**

Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

### **9.3 Submission**

Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

## **10. GENERAL**

### **10.1 Counterparts**

This Deed may be executed in a number of counterparts and, if so executed, the counterparts taken together constitute one Deed.

### **10.2 Stamp Duty**

The Company will pay any stamp duty payable in connection with this Deed.

### **10.3 Variation**

A variation of any term of this Deed must be in writing and signed by the parties.

**10.4 Assignment**

No party may transfer any of its rights and/or obligations under this Deed except with the prior written consent of all other parties.

**10.5 Entire Deed**

This Deed supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

**10.6 Severability**

In the event of any provision or part of any provision of this Deed being invalid, unenforceable or illegal for any reason, then such provision or part thereof will be deemed to be deleted from this Deed and this Deed will otherwise remain in full force and effect.

**10.7 Cumulative Rights**

The rights and powers of a party under this Deed do not exclude any right, power or remedy provided by law independently of this Deed.

**10.8 Further Assurances**

The Company will do all things, including execute all further documents necessary to give full effect to the terms of this Deed.

11. SCHEDULE

(Officer)

Name:

Address:

**EXECUTED** as a deed

**SIGNED** by the said **OFFICER** in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[ Date ]

\_\_\_\_\_  
Name (please print)

**EXECUTED** by **GRAIN TRADE AUSTRALIA** )  
**LIMITED ACN 979 095 411** pursuant to )  
section 127 of the *Corporations Act 2001* (Cth) )  
in the presence of: )

\_\_\_\_\_  
Signed - Director/Secretary

\_\_\_\_\_  
Director/Secretary  
Name (please print)