

Dated as of the      20th      day of      November      2020

**GRAIN BULK HANDLERS LIMITED**

(as the Company)

- to -

**ONE ACRE FUND**

(as the Customer)

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**AGREEMENT FOR THE PROVISION OF CERTAIN SERVICES**

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This Agreement (the “**Agreement**”) is made on this 24th day of November, 2020

by and between:

- (1) **Grain Bulk Handlers Limited**, (Company Number C.18094), of Beira Road, Shimanzi, P.O Box 80469-80100, Mombasa, (hereinafter called the “Company” which expression shall where the context so permits, include the Company’s permitted successors in title and assigns); and
- (2) **ONE ACRE FUND**, a not-for-profit corporation registered in the US and duly registered in Kenya as an INGO with its registered offices at 81 Prospect St., Brooklyn, NY, 11201, USA and P. O. Box 659-50100 Jesus Junction , Kakamega, Kenya and registered in Kenya as the branch of a foreign company pursuant to section 975 of the Companies Act 2015 (No. 17 of 2015), Certificate of Compliance No. 52/2007 (hereinafter called the “Customer” which expression shall where the context so permits, include the Customer’s permitted successors in title and assigns);

Each a “**Party**” and together the “**Parties**”.

**WHEREAS:**

- (A) The Company owns and operates bulk grain & fertilizer handling terminals at Mombasa and Nairobi and provides associated services for the handling and transportation of grain & fertilizer within the East Africa region.
- (B) The Customer is desirous of procuring the Services (as hereinafter defined) from the Company, as an independent contractor.
- (C) Subject to the terms and conditions of this Agreement, the Company shall provide the Services (as hereinafter defined) for the Goods (hereinafter defined), subject to berth and capacity availability in accordance with the terms and conditions set out herein.

**I DEFINITIONS AND INTERPRETATION**

- I.1 In this Agreement, including the Recitals above, the following expressions shall have the following meanings except where the context requires otherwise:

“**Confidential Information**” has the meaning set forth in Clause 9.1;

“**Effective Date**” means the date on which this Agreement is duly executed by the Parties;

“**Event of Default**” shall have the meaning given to it in Clause 14.1;

“**Goods**” means approved types of fertilizer;

**"Insolvency Event"** means, in relation to the Customer, any of the following events:

- (a) the Customer is unable or admits its inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) the value of the assets of the Customer is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness of the Customer;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - i. the suspension of payments, a moratorium on indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Customer;
  - ii. a composition, compromise, assignment or arrangement with any creditor of the Customer;
  - iii. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Customer; or
  - iv. enforcement of any security interest over any assets of the Customer; or
  - v. any analogous procedure or step is taken in any jurisdiction respect of such Customer;
- (e) any judgment or order made against the Customer for an amount in excess of US\$500,000 is not complied within 21 days; and
- (f) any expropriation, attachment, sequestration, distress or execution affects any assets or assets of the Customer;

**"losses"** means all damages, fees, penalties, fines, losses and expenses (including without limitation, reasonable lawyer's costs, court fees, fees of experts and the litigation costs or costs of other proceedings and taxation) in respect of a claim, default or assessment;

**"Material Adverse Change"** means any change which, in the reasonable opinion of the one Party, may be expected to adversely affect the other Party's ability to perform any of its obligations under



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the Agreement including but not limited to any change in: (a) the credit worthiness and/or credit rating of the other Party; or (b) the ability of the other Party to perform any payment obligations under this Agreement; or (c) the ownership or control of the other Party;

**"Mombasa Terminal"** means the terminal owned and operated by the Company at Mombasa, Kenya;

**"Nairobi Terminal"** means the terminal being constructed and to be operated by the Company at Athi River in Nairobi, Kenya;

**"Personnel"** means a Party's directors, employees, officers, agents and/or subcontractors;

**"Service Order Form"** means the form set out in Schedule II to be filled out by the Customer in accordance with the provisions of clause 2.1;

**"Services"** means all the services set out in Schedule I, Part A, Part B, Part C and Part D and such other services that the Company may, at its sole and absolute discretion, offer to its customers from time to time ;

**"STCs"** means the Company's standard terms and conditions for the handling of fertilizer (version October 2020) as may be amended from time to time, a copy of which is annexed hereto as Schedule IV;

**"Terminals"** mean together the Mombasa Terminal and the Nairobi Terminal and Terminal shall mean either of them, as may be applicable;

1.2. In this Agreement, a reference to:

- (a) a "Party" includes a reference to that Party's successors and permitted assigns;
- (b) a Clause, Recital or Appendix, unless the context otherwise requires, is a reference to a clause or recital of, or appendix to, this Agreement and the recitals and appendices form an integral part of this Agreement and shall be construed and shall have the same full force and effect as if expressly set out in the body of this Agreement;
- (c) any document or agreement includes a reference to that document or agreement as varied, amended, supplemented, substituted, novated or assigned, from time to time; and
- (d) reference to times of the day is to Mombasa/Nairobi, Kenya time.

1.3 The words "other", "include" and "including" do not connote limitation in any way.



- 1.4 The headings in this Agreement do not affect its interpretation.
- 1.5 Any substantive provision conferring rights or imposing obligations on any Party in the Recitals to this Agreement shall be given effect to as if it were a substantive provision in the body of this Agreement.
- 1.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.7 Any reference to a calendar month shall be construed as meaning one of the twelve months into which the year is divided according to the calendar (that is, January, February, etc).
- 1.8 Any reference to a calendar year shall mean a period of twelve consecutive calendar months commencing with January.
- 1.9 No provision herein shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision and the *contra proferentem* rule shall thus not apply.
- 1.10 The *ejusdem generis* rule shall not apply and whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 1.11 Unless specifically otherwise provided, all amounts in this Agreement are exclusive of value added tax ("VAT") and the Party liable to pay any amount shall also be liable to pay such VAT if payment thereof is required in terms of the laws of the Republic of Kenya.
- 1.12 This Agreement incorporates the Schedule/s to this Agreement which Schedule/s has the same force and effect as if set out in the body of this Agreement.
- 1.13 In the event of any conflict between this Agreement and any Schedule, the terms of this Agreement will prevail. In such event, the validity of the Schedule shall not be affected. In this Agreement the words "clause" or "clauses" and "Schedule" refer respectively to clauses, and Schedule/s, of this Agreement.
- 1.14 Any reference to a business day shall be construed as meaning a day other than a Saturday, Sunday or public holiday in the Republic of Kenya and for this purpose "public holiday", in relation to any obligation, shall mean a public holiday for the time being established or proclaimed as such in accordance with the provisions of the relevant legislation applicable at the place for performance of such obligation.

- 1.15 Any reference to a day shall be construed as a period of 24 (twenty-four) hours from midnight to midnight, and any reference to a period reckoned as a number of days, shall be calculated by excluding the first day, and including the last day. Provided that if the last day of such period would not be a business day then such period shall extend to, and shall include, the first business day thereafter.
- 1.16 Where the day upon or by which any act is required to be performed is not a business day, the Parties shall be deemed to have intended such act to be performed on the following business day.

## 2 SCOPE AND STATUS

- 2.1 The Customer shall be entitled to give instructions in respect of the Services to the Company issuing the Company with the Service Order Form seven (7) days prior to the date of vessel arrival. For clarification and for the avoidance of doubt, the Parties agree that:
  - (a) Except as otherwise provided herein, the Terminals are not intended to serve as a storage facility for the Customer's Goods either on a permanent or temporary basis except at the rate and for the duration as mutually agreed in writing by the parties, but are merely intended to serve as a conduit for such Goods from time to time and subject to the terms and conditions set out in this Agreement;
  - (b) no provisions of this Agreement shall be deemed to be a warranty, guarantee or any other form of representation or undertaking by the Company to the Customer that there shall be any capacity at any time during the course of this Agreement and accordingly, each instruction shall be considered on a case by case basis by the Company in accordance with the provisions of this Agreement;
  - (c) The Company shall not be under any obligation to provide any of the Services unless the Service Order Form has been duly filled out, submitted to and accepted by the Company and the provision of all Services set out in Part A, B and C of Schedule I are subject to the STC's.
- 2.2 Nothing in this Agreement will constitute or be deemed to constitute either a partnership or joint venture between the Parties or the appointment of one Party, or any of its Personnel, as agent for any other. No Party (including none of the Parties' Personnel) has (nor may they represent, whether in an express or implied manner, to any person) that they hold any authority to bind, execute transactions on behalf of, engage in solicitation of business for, disperse or receive funds for or engage in conduct unauthorized by this Agreement on behalf of any other Party.

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### **3 COMMENCEMENT AND DURATION**

- 3.1 This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of 12 (twelve) months, unless terminated earlier by either Party in accordance with this Agreement.

### **4 SERVICES**

- 4.1 The Company hereby agrees to render the Services to the Customer in accordance with the provisions of this Agreement and subject always to, with regards to the services set out in Part A, B and C of Schedule I, the provisions of the STCs. By signing this Agreement, the Customer acknowledges that it has read and understood the terms and conditions of the STCs in place as at the Effective Date.
- 4.2 The parties agree that if there is a conflict between any term or provision of this Agreement and the STCs then the latter shall prevail except as set out hereunder:
- a) The limit set out in clause 8.6 of the STCs shall be amended to a minimum amount of USD 2,000 per claim and a maximum limited to the actual value of the Goods declared on the Bill of Lading subject always to the provisions of clause 5 of this Agreement.
  - b) The payment terms in clause 4.1 of the STCs shall be amended to the following: The Customer shall pay one hundred (100%) percent upfront for 3rd party government and statutory charges and fifty (50%) percent upfront for Terminal Service (TS) and Warehouse charges as detailed in the Service order within 14 days upon the execution of this Agreement and the Purchase Order by the last Party signing. The Balance for Terminal Service (TS) charges including any storage at the terminal will be paid within 14 days after vessel completion of discharge and final discharge outturn report is shared with any necessary credit notes or additional amounts if any invoiced. For Warehousing services (WS) as listed on the Service order, balances will be paid in forty five (45) days after invoice date and all invoices and receipts pertaining to the order have been provided to the Customer upon dispatch of the last bagged Product from the Company's warehouse to Customer trucks and final invoices for re-bagging and handling will be raised and due for payment. The Company shall provide receipts of 3rd party services and shall provide credit notes for any savings made from the original invoiced amount for this service. The Customer will inform the Company of any issues arising from the conditions listed above and any refund due to the Customer will be deducted from the final payment once all deliveries are confirmed. Any incurred storage charges shall be invoiced monthly with 100% payment due within 30 days of invoice date.
  - c) The Company shall be held accountable to the discharge, rebagging and loading rates and conditions as specified in clauses 6.2, 6.3 and 6.6 of this Agreement.

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- 4.3 Notwithstanding the Effective Date, the parties hereby agree that the Company's obligations to provide the Services under this Agreement shall commence on the date the Company receives the duly filled out Service Order Form.

## 5 THE CUSTOMERS' OBLIGATIONS

- 5.1 The Customer warrants to and in favour of the Company that it is and will at all times or, as the case may be, that it shall at all times ensure that it or its customers while utilising the Services be in compliance with all laws, regulations, guidelines and policies applicable to the importation and distribution of the Goods, having in place all of the relevant licenses, permits and other consents and approvals required from time to time in order to import and distribute the Goods.
- 5.2 In addition, the Customer indemnifies and holds the Company harmless against any claims of any nature whatsoever (whether arising in contract, tort, from statute or strict liability) arising out of or in connection with non-compliance by the Customer with the provisions of clause 5.1, including but not limited to claims for damages, loss, costs (including legal costs on the attorney and own client scale and on a full indemnity basis), fines, interest and penalties.
- 5.3 The Customer must at all times adhere to the Company's safety, health, environmental and quality rules, guidelines and policies, as such rules, guidelines and policies may be amended or replaced by the Company from time to time by written notice to the Customer. By signing this Agreement, the Customer acknowledges that it has read and understood the version of such rules, guidelines and policies which are in place as at the Effective Date.
- 5.4 The Customer shall submit the relevant quality certificate and certificate of conformity prepared at the point of loading the Goods into the relevant vessel. The Customer shall also ensure all approvals / permit required prior to the discharge of the applicable Goods into the Mombasa Terminal are obtained.
- 5.5 The Customer shall, at all times and at its sole cost and expense, maintain with financially sound and reputable insurer insurance (including, but not limited to marine insurance) against any loss or damage whatsoever and howsoever occasioned in respect of the Goods whilst in the Company's Terminal or warehouse (as the case may be). The Customer shall provide to the Company the relevant certificates of insurance and the relevant policies on or within three (3) days of the date of the Service Order Form.



## **6 COMPANY'S OBLIGATIONS IN RELATION TO SERVICES SET OUT IN PART D OF SCHEDULE I**

- 6.1 The Company shall as soon as is reasonably possible clear the Goods prior to or after berthing the vessel at port of Mombasa as required by the regulatory bodies and determined on the bill of lading subject to receipt of full set of shipping documents seven (7) working days before vessel arrival.
- 6.2 The Company will endeavor to discharge the Goods from the vessel at a minimum rate of 2400MT per day (on a SHINC PWWD basis) subject to a minimum 3 working vessel hatches for that day and provided that no other receivers are discharging cargo on that day.
- 6.3 The Company shall endeavor to load a minimum of 20 trucks x 28MT (560MT) of trucks per day of the Goods onto the Customer's trucks (or if such service is requested, onto the Company's trucks). The Company will at all times grant sufficient access for the Customer's trucks to load upon arrival at the Terminal(s) provided always that the Customer shall have provided the Company with prior notice (of not less than 24 hours).
- 6.4 The Company shall ensure that every truck loaded at the Mombasa Terminal passes through a weighbridge before leaving the Mombasa Terminal.
- 6.5 The Company shall, if so instructed by the Customer, securely transport the Goods for warehousing, bagging or re-bagging into 12.5kg, 10kg, 6.25kg, and 5kg bags from the Mombasa Terminal to the Company's warehouse or other warehouse as agreed in writing by the Customer. The Customer shall notify the Company (in writing and not less than 48 hours prior to collection) the quantity it requires to be re-bagged in the respective bag sizes. The Customer shall ensure that weights for re-bagged cargo loaded onto trucks is within tolerance of +/-0.1 kg per bag.
- 6.6 The Company shall re-bag the Goods at the rate per day specified below provided that a written request by the Customer is issued to the Company no less than 48 hours in advance. The rate per day may vary depending on the nature of the fertilizer and the free-flowing conditions.

<b>Bag Size</b>	<b>Bagging Rate (MT)/day</b>
12.5 KG, 10KG into 50kg overbags	420
, 6.25 KG, 5KG into 50kg overbags	200

- 6.7 In the event that the Customer requires the re-bagged cargo to be stacked in the Company's warehouse then the Company will endeavor that such bags are stacked no higher than 40 bags in a stack height for 50 KG bags, 80 bags in a stack height for 25 KG bags. The said re-bagged cargo

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shall be stored on treated pallets/treated mangrove poles covered with PP sheets. The Agent shall ensure that the storage conditions are well maintained.

- 6.8 The Company shall ensure that the terminal loss when re-bagging the Goods at the warehouse (as per Customer's instructions) is no more than 0.15% of the total re-bagged quantity.
- 6.9 The Company shall provide the Customer with twenty-eight (28) free days of storage at the warehouse beginning on the last day the full quantity of the Goods is received from the Mombasa Terminal into the Company's warehouse and will charge the Customer's on declining balance during the loading out period. Company shall provide storage at no additional cost to Customer if the Company does not meet the re-bagging timeline and requirements as set forth on this section.

## **7 PRICE OF SERVICES AND TERMS OF PAYMENT**

- 7.1 Subject to terms of this Agreement, the Customer shall pay the Company the charges as set out in Schedule III.
- 7.2 The Customer shall be allowed a period of free storage of up to seven (7) days in the case of storage in the Mombasa Terminal. The said period of free storage at the relevant Terminal(s) shall be counted from the first day after completion of vessel operations. Further storage of Goods in excess of such stated periods shall be charged in accordance with the rates set out in Schedule III.
- 7.3 Any payment of charges shall be effected by the Customer in US Dollars (unless otherwise agreed).
- 7.4 Should any payment under or arising from this Agreement fail to be made on the due date therefor then, without prejudice to such other rights as may accrue to the Company consequent upon such failure, such overdue amounts will bear interest at a rate of nine (9%) per annum, from the due date for payment to the date of actual payment, both dates inclusive.
- 7.5 The Customer will pay the Company by way of an electronic bank transfer into a bank account as may be nominated by the Company under Section 12 hereof or in such other manner as the Parties may agree in writing.
- 7.6 In terms of the laws in force as at the Effective Date, the Customer (being the importer on record), will be liable to pay to the relevant authorities the customs duty in respect of the Goods on importation into the Terminals. The Customer will also be liable to pay any levies applicable to the

Goods. When the Customer reacquires possession of its Goods from the Company at the Terminals, the Customer will be liable to pay duties and levies to the Company (if any).

- 7.7 Save to the extent prohibited by law, the Customer hereby indemnifies the Company and holds it harmless against any financial losses, damages or expenses that the Company may incur from any recoveries by the responsible competent government authority or its collecting agencies of outstanding taxes, duties and/or levies attributable to the activities of the Company, and which taxes or levies would ordinarily have to be recovered from the Customer.
- 7.8 The Parties record that should any other taxes and/or levies be levied by any competent authority that increases the cost at which the Company provides the Services to the Customer in terms of this Agreement then the Company shall be entitled to increase the rates set out in Schedule III payable by the Customer to the Company in terms of this Agreement to place the Company in the same financial position it would have been in had it not been for such increase in taxes and/or levies.

## 8 TERM AND TERMINATION

- 8.1 Should a Party ("**Defaulting Party**") commit a breach of any of the terms of this Agreement which can be remedied, and remain in default after receipt by the Defaulting Party of written notice from the other Party ("**Aggrieved Party**") calling for such breach to be remedied within fourteen (14) business days after the Aggrieved Party delivered such notice, such Aggrieved Party will be entitled, without prejudice to any other rights it may have hereunder or in law, to terminate this Agreement with immediate effect and by written notice to that effect given to the Defaulting Party. In the event that any breach cannot be remedied within the aforesaid period or at all, the Aggrieved Party shall be entitled, without prejudice to any rights it may have in law or in this Agreement, to summarily terminate this Agreement.
- 8.2 In addition to the termination of this Agreement as contemplated in clause 8.1 each Party shall be entitled to terminate this Agreement at any time by giving the other Party 30 (thirty) days' prior written notice of termination (the Parties hereby acknowledging that this is a reasonable period).

## 9 ANTI-BRIBERY

- 9.1 The Parties each agree and undertake to each other that in connection with this Agreement, they will comply with all applicable laws and regulations relating to anti-bribery.
- 9.2 Each Party represents, warrants and undertakes that it shall not, directly or indirectly, pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to; (i) a government official or an officer or employee of a government or any department, agency or instrumentality of any government; (ii) an officer or employee of a public international organization; (iii) any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization; (iv) any

political party or official thereof, or any candidate for political office; (v) or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or (vi) engage in other acts or transactions, in each case if this is in violation of or inconsistent with any applicable anti-bribery or anti-money laundering regulations of any relevant government.

- 9.3 A Party may terminate this Agreement, without liability, at any time, upon written Notice to the other relevant Parties, if there is a breach of any of the above representations, warranties or undertakings, with all costs and liability associated with such breach being for defaulting Party's account.

## 10 CONFIDENTIALITY

- 10.1 The existence and the provisions of this Agreement, and any documents or information about the Parties, the Terminals, the Goods, distributors or other customers, or any other non-public information, written or oral, with respect to the Agreement ("Confidential Information") shall be kept confidential and shall not be disclosed, in whole or in part, to any person other than subcontractors, officers, directors, employees, or representatives of a Party (collectively, "Representatives") who have a reasonable need to know such Confidential Information for the purpose of negotiating, executing and implementing this Agreement and such Confidential Information shall not be used for any other purpose. Each Party agrees to inform each of its Representatives of the confidential nature of the Confidential Information and to direct such persons to treat such Confidential Information in accordance with the terms of this Clause 9. Nothing herein shall prevent a Party from disclosing Confidential Information: (i) if required by law or (ii) upon the order of any court or administrative agency, (iii) upon the request or demand of, or pursuant to any law or regulation of any regulatory agency or authority, (iv) to the extent reasonably required in connection with the exercise of any remedy hereunder, (v) to a Party's legal counsel or independent auditors, (vi) to any permitted assignee hereunder, provided that such assignee agrees in writing to be bound by the provisions of this Clause.

## 11 NOTICES

- 11.1 A notice or other communication connected with this Agreement (a "Notice") has no legal effect unless it is in writing.
- 11.2 In addition to any other method of service provided by law, the Notice may be:
- sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified;
  - sent by email to the email address of the addressee; or
  - delivered by hand at the address of the addressee set out in this Agreement or subsequently notified.

11.3 If the Notice is sent or delivered in a manner provided by clause 11.2, it must be treated as given to and received by the Party to which it is addressed:

- (a) if sent by post, on the 5<sup>th</sup> Business Day (at the address to which it is posted) after posting;
- (b) if sent by email at the time it was sent if sent between 09:00 hours and 17:00 hours on a Business Day, or otherwise if sent outside of these times at 09:00 hours on the next Business Day provided always that a delivery receipt has been received by the sender; or
- (c) if otherwise delivered before 17:00 hours on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

11.4 The Company's address for service of Notices is:

Name: Grain Bulk Handlers Limited  
Attention: Jared Locklear/ Roger Mattar  
Address: P.O. Box 80469-80100  
Telephone: +254 700 203 131  
E-mail: [jared@mjgroup.co.ke](mailto:jared@mjgroup.co.ke); [roger@grainbulk.com](mailto:roger@grainbulk.com)

11.5 The Customer's addresses for service of Notices is:

Name : One Acre Fund  
Attention : David Buruchara  
Address : 4th Floor, Priory Place,  
Argwings Kodhek Rd, Nairobi  
P. O. Box 28777 - 00100 Nairobi  
Telephone : +254 742 144 697  
E-mail : [david.buruchara@oneacrefund.org](mailto:david.buruchara@oneacrefund.org)

## 12 BANK DETAILS

12.1 The bank details of each Party for executing any payments under this Agreement are as set out in this Clause 12.

12.2 The Company's bank details are as follows:

Beneficiary: GRAIN BULK HANDLERS LIMITED  
Bank: Equity Bank Limited  
Branch: Mombasa Supreme Centre Branch  
Account Number: USD 1560262049972  
Bank Code: 068  
Branch Code: 0156  
Swift Code: EQBLKENA

12.3 The Customers bank details are as follows:

Beneficiary: ONE ACRE FUND  
Bank: Citi Bank N.A.  
Branch: Upper Hill  
Account Number: USD 0104552028  
Bank Code: XXX  
Branch Code: XXX  
Swift Code: CITIKENA

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### 13 MISCELLANEOUS

- 13.1 This Agreement is made by the Parties with full understanding of the subject matter thereof and shall supersede all previous negotiations, warranties and agreements, irrespective of their form, made by the Parties prior to the conclusion of this Agreement.
- 13.2 Any and all amendments and supplements to this Agreement, if any, shall be binding upon the Parties strictly upon the condition of their execution in writing upon signing by the duly authorized representatives of the Parties.
- 13.3 If any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, then such invalidity, illegality or unenforceability will not affect: (i) any other provision of this Agreement, and this Agreement will be construed under the applicable law of such jurisdiction as if such invalid, illegal or unenforceable provision had never been set forth herein, and will be carried out as nearly as possible according to its original terms and intent; and (ii) the validity, legality and enforceability of such provisions under the applicable law of any other jurisdiction.
- 13.4 No Party may assign any of its rights under this Agreement without the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed.

- 13.5 This Agreement is made for the benefit of the Parties, and permitted assigns and, save as provided otherwise in this Agreement, a person who is not a Party will have no right under this Agreement, or otherwise to enforce any of its terms.
- 13.6 No failure to exercise, nor any delay in exercising, on the part of either Party, any right or remedy under or in connection with this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of either Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement and each related document are cumulative and not exclusive of any rights or remedies provided by law.
- 13.7 Any interest accruing under this Agreement will accrue day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.
- 13.8 This Agreement may be executed in counterparts and will be effective when each Party has executed a counterpart. Each counterpart will constitute an original of this Agreement, but all the counterparts will together constitute one and the same instrument.
- 12.9 The Parties shall not be liable for any failure to perform under this Agreement (save for payment obligations) where and to the extent performance is prevented or seriously delayed by any event of Force Majeure. The Party affected by Force Majeure shall notify the other Party without undue delay and latest within seven (7) working days following the commencement of the Force Majeure event setting out the nature and extent of the Force Majeure, and shall similarly notify the other Party within seven (7) working days following the end of the Force Majeure event. The affected Party is not required to perform any of its obligations which are prevented or materially delayed by the event of Force Majeure for as long as such event continues and disable the affected Party, using all reasonable efforts, to recommence its affected performance. The affected Party must, if possible, use all reasonable endeavours to bring the Force Majeure event to an end. For the purpose of this Agreement, "Force Majeure" means any event beyond the reasonable control of the Party claiming to be affected thereby including without limitation acts of God, storms, war, fire, lawful strikes, lockouts acts of the public enemy, insurrections, riots or acts of terrorism and outbreaks. Lack of funds shall not be regarded as an event of Force Majeure.

## 14 EVENTS OF DEFAULT

- 14.1 Either Party shall be entitled, but not obliged, to terminate this Agreement at any time in the event that one of the following events occurs (each an "**Event of Default**"):
- (a) an Insolvency Event occurs in respect of the other Party;

- (b) either Party fails to make any payment to the other Party when due and such failure is not remedied within 5 (five) Business Days of Notice in writing to do so by the other Party;
  - (c) the other Party commits a breach of any material provision of this Agreement and such breach is not capable of remedy or if the said Party fails to remedy such breach within fourteen (14) calendar days of Notice in writing to do so; and/or
  - (d) either Party is subject to a Material Adverse Change.
- 14.2 Upon the occurrence of an Event of Default, the Party not in default shall be entitled to give notice to the defaulting Party terminating the Agreement with immediate effect, save that neither Party shall be relieved or otherwise absolved from its liabilities, duties and obligations accrued to the date of the termination until such liabilities, duties and obligations and the accounts and payments relating thereto shall have been fully settled and discharged.

## 15 GOVERNING LAW

15.1 This Agreement shall be governed by Kenyan law.

## 16 LIMITATION OF LIABILITY

15.1 The Company shall not be liable to the Customer for:

- (a) any loss of profit, anticipated profit or revenue, or business interruption, or loss of goodwill or reputation; or
- (b) for any indirect or consequential loss,

howsoever caused, arising out of, or in connection with, this Agreement and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

15.2 The Customer shall defend, indemnify and hold harmless the Company, its directors, officers, employees and agents from and against any loss, damage, claim, suit, liability, judgment and expense (including attorneys fees and other costs of litigation) arising out of injury, disease or death of any persons, damage to or loss of any property or fines or penalties howsoever arising in respect of this Agreement to the extent that the same is attributable to the Customer, its partners and/or directors or agents and/or attributable to the Goods provided that such no such liability shall attach where injury, death, damage to or loss of property is caused by or results from negligence on the part of the Company, its employees or agents.

*\*the rest of this page is left blank intentionally\**

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**EXECUTION**

Sealed with the Common Seal of  
**GRAIN BULK HANDLERS LIMITED**

In the Presence of )

DIRECTOR )

DIRECTOR )

Sealed with the common Seal of  
**ONE ACRE FUND**

In the Presence of )

Charlotte Lammetry )

DIRECTOR )

Global Sourcing )

**ONE ACRE FUND**)

DIRECTOR )

P. O. Box 2877-00100, )

NAIROBI )

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## **1. SCHEDULE I – SERVICES**

### **(A) Handling Services**

The Company shall provide the Customer with the following services as requested by the Customer and in accordance with the instructions of the Customer:

- receiving and unloading the Goods from the Customer's nominated vessel at the available berth and providing all related stevedoring and handling services;
- weighing Goods unloaded from the vessel on the Company's certified weighing equipment and promptly providing a vessel outturn report to the Customer;
- documenting scarcity, surpluses, overweights and cargo damages identified during the unloading of the vessel;
- where requested by the Customer, bagging of the Goods into bags (as provided for in the tariff sheet set out in Part A of Schedule III).
- delivery of the Goods (either bagged or in bulk) from the Mombasa Terminal to the Customer.

### **(B) Logistics Services**

As and when the Nairobi Terminal is ready and operational, the Company shall provide the Customer with the following services where requested to do so in writing by the Customer and in accordance with the instructions of the Customer:

- transport the Goods by rail from the Mombasa Terminal to the Nairobi Terminal on the standard gauge railway subject to any terms and conditions of the Kenya Railways corporation or its successor in title;
- unload the Goods at the receiving Terminal;
- co-ordinate booking and movement of trucks or rail cars for loading the Goods from and to the relevant Terminal(s);
- load the Goods from the relevant Terminal in which they are stored onto the Customer trucks or rail cars as applicable;
- if required, and subject to further agreement, transport the Goods as requested and in accordance with the instructions of the Customer.

### **(C) Storage**

The Company at its discretion may accept storing the Goods in Bulk within the Mombasa Terminal and in any other Terminal in accordance with the Customer's requests, from time to time, in

Company Shed in such volumes and for such periods as the Customers may require and before the Goods are loaded onto trucks or rail cars.

(D) **Additional Services**

The Company shall provide the Customer with the following services as requested by the Customer and in accordance with the instructions of the Customer:

- Customs clearance, the Company shall outsource this service with reliable service providers and obtain consent of the Customer on the chosen contractor. This service include checking the shipping documents till obtaining the customs release of the Goods. It can also include paying duties and taxes as per the customs declaration, port and shipping line charges as outlined in schedule III.
- Shunting, this is the service of transporting the Goods in Bags or Bulk form from the Mombasa or Nairobi Terminal to a warehouse as approved and agreed by the Customer.
- Warehousing, this service includes the handling in and out, tally in and out, submitting warehouse reports, stacking the Goods as per the client requirements, and storage.
- Re-bagging and bagging, for smaller bag size other than 25 KG and 50 KG the bagging from Bulk or re-bagging from 50 KG bags shall be done according to the Customer written instructions.



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## 2. SCHEDULE II – SERVICE ORDER FORM

One Acre Fund Service Order (SO)							ONE ACRE FUND
SO #: Fertilizer Type Expected Tonnage Vessel name (if Known) Expected Vessel arrival date Requested daily discharge rate SO / PO Date:							
Type	Item Description	Service required Yes/No	If YES indicate the UoM	If YES indicate QTY (MT)	Particular condition	QTY	UOM
TS	Customs Clearance		MT	0	Documents to be provided 5 working days before vessel arrival		
3P	Payment of KRA - IDF Fees (3.5% CIF)		MT	0	At Cost		
3P	Payment of KRA - MSS Levy		MT	0	At Cost		
3P	Payment of KRA - RDL (2% CIF)		MT	0	At Cost		
3P	Payment of KPA - Radiation		MT	0	At Cost		
3P	Payment of KPA - Wharfage		MT	0	At Cost		
3P	Payment of KPA - Stevedoring		MT	0	At Cost		
3P	Payment of Shipping Line Charges/BL		BL	1	At Cost, indicate quantity of Bill of lading		
3P	KEBS Rebagging Permit Fee (if expired)		Insert type of Fertilizer	1	At Cost		
TS	Vessel Discharge		MT	0	At GBHL terminal		
TS	Terminal Handling		MT	0	At GBHL terminal		
TS	Delivery (to Customer on truck or Rail, Bulk or Bagged)		MT	0	At GBHL terminal		
TS	Bagging Fees (all bags must be provided by client) 25kg (charge is in addition to normal delivery charge)		MT		At GBHL terminal		
TS	Bagging Fees (all bags must be provided by client) 50kg (charge is in addition to normal delivery charge)		MT		At GBHL terminal		
TS	Storage in Bulk at the terminal (if more than 7 days from last sling)		MT		At GBHL terminal, pls indicate on the right expected number of days		Days
WS	Transport to warehouse (25kg)		MT		Transport in Bags to warehouse subject to early confirmation to reserve space		
WS	Transport to warehouse (50kg)		MT		Transport in Bags to warehouse subject to early confirmation to reserve space		
WS	Transport to warehouse for bagging into smaller bags		MT		Transport in Bulk or Bagged subject to early planning and approval	0.00	OK
WS	Handling In/Out		MT	0	Apply to the tonnage transferred to warehouse	0.00	OK
WS	Rebagging into 12.5kg bags		MT		Net weight and double stitching		
WS	Rebagging into 10kg bags		MT		Net weight and double stitching		
WS	Rebagging into 6.25kg bags		MT		Net weight and double stitching		
WS	Rebagging into 5kg bags		MT	0	Net weight and double stitching		
WS	Storage bagged in the warehouse		MT	0	Pls indicate the expected duration in days after the 28 free days		Days
3P: 100% 3rd party taxes/fees upfront TS: 50% Terminal Service lines upfront, balance of 50% to be paid 14 days upon completion of The Vessel discharge. WS: 50% WS upfront Balance forty-five (45) days after completion WS: Storage charges invoiced monthly and paid 30 days from invoice date							
SO Prepared By:				Supplier Contact:			
SO Authorized By:				Authorized By:			
Sign/Stamp:				Sign/Stamp:			
Date		00-Jan		Date:			

### 3. SCHEDULE III – RATES

- Tariff in respect of Services set out in Part A, B and C of Schedule I;



GBHL Fertilizer Tariff - Effective from October 2020				
All Charges are in \$ USD Unless Otherwise Stated				
<b>GBHL Mombasa</b>	<b>Rate Per Metric Tonne</b>			
Vessel Discharge	\$	7.80		
Terminal Handling	\$	4.90		
Delivery (to Customer on truck or Rail)	\$	2.95		
Bagging Fees (all bags must be provided by client) 25kg (charge is in addition to normal delivery charge)	\$	3.50		
Bagging Fees (all bags must be provided by client) 50kg (charge is in addition to normal delivery charge)	\$	3.00		
Free Storage Period For Mombasa (Days After "Last Sling")	7 Days			
<b>KPA Charges (Payable Directly to KPA by Client via Vessel Agent)</b>				
Stevedoring (KPA Tariff Section II)	\$	1.65		
Wharfage (KPA Tariff Section III)	\$	2.20		
<b>Supplementary Charges Applicable Per Site Per Metric Tonne</b>				
Storage Rate Per Day (after Free Storage Period has ended)	\$	0.30		
Un-Entered Charges (First 30 Days) (all KRA Regulations Applicable)	\$	2.00		
Un-Entered Charges (Subsequent 30 Day Periods)	\$	1.00		
UnReleased Charges or Cargo under waiver of Lein (Per Ton first 30 days)	\$	1.50		
UnReleased Charges or Cargo under waiver of Lein (Per Ton subsequent 30 day periods)	\$	1.00		
Surcharge for handling of cargo with high volume of caked cargo that is non-free flowing.	\$	2.00		
Surcharge for Truck Towing or due to Truck Blocking Facility and Operations (per incident)	KES	20,000.00		
Warehousing of Cargo	On Application			
Sorting, sieving, reconstitution of Cargo	On Application			
**All charges are shown exclusive of VAT, which will be charged where applicable				
*** The GBHL Standard Terms and Conditions will apply to all consignments				
Grain House, Beira Road, Shimanzhi.				
P. O. Box 80469 - 80100 Mombasa, KENYA				
Tel: +254 (0) 703 017 000				

E-Mail: [info@grainbulk.com](mailto:info@grainbulk.com)

Website: [www.grainbulk.com](http://www.grainbulk.com)



\*\*High volume of caked cargo is determined if on the second day of discharge the cargo requires breaking by mechanical equipment inside the vessel hold before discharge can continue.

2. Rates in respect of Services set out in Part D of Schedule I

Pricing Schedule		
<b>Customs clearance</b>		
<b>Duties &amp; Taxes</b>	<b>UoM</b>	<b>Unit Cost (USD)</b>
KRA - IDF Fees (3.5% CIF)*	3.5% CIF	3.5% of CIF
KRA - RDL (2% CIF)*	2% CIF	2.0% of CIF
KRA - MSS Levy/MT*	MT	0.50
KEBS ISM Charges*	MT	0.09
Radiation*	MT	0.10
KPA Port Health*	BL	10.00
<b>Port Charges &amp; Clearance</b>		
Shipping Line Charges/BL*	BL	90.00
Agency Fee (Clearing)	MT	0.50
<b>Shunting to warehouse</b>		
Bulk transfer to warehouse (for bagging in smaller size bags 5, 6.25, 10, 12.50 Kg)	MT	4.50
Bagged cargo, GBHL to Warehouse Transport	MT	4.50
<b>Warehousing services</b>		
Handling In/Out at warehouse (Bagged and Bulk)	MT	7.00
Storage after 28 days from last In at the warehouse	MT	0.45 per MT/Week declining balance
<b>Bagging or Re-bagging into small size bags</b>		
KEBS Re-bagging Permit Fee/BL* (if applicable)	BL	300.00
Bagging or Re-bagging into 12.5kg bags	MT	9.60
Bagging or Re-bagging into 10kg bags into 50kg overbags	MT	10.00
Bagging or Re-bagging into 6.25kg bags	MT	15.00
Bagging or Re-bagging into 5kg bags into 50kg overbags	MT	16.00



## Standard Terms and Conditions - Fertilizer

Version: October, 2020

### 1. Definitions and Interpretations

- 1.1. "Applicable Laws" means all laws, statutes, common law, regulations, ordinances, rules, guidelines, orders, permits and approvals, of any Competent Authority that apply to the parties;
- 1.2. "Business Hours" means 0900hrs to 1700hrs on a Business Day;
- 1.3. "Business Day" means any day excluding Saturday and Sunday and any other gazetted public holiday in the Republic of Kenya;
- 1.4. "Bill of Lading" means the document issued by the carrier to the shipper or the consignee indicating the Commodities being shipped;
- 1.5. "Bill of Lading Holder" means the person or entity in whose name the Bill of Lading is issued;
- 1.6. "Cargo" means Commodities imported by the Customer and in respect of which the Customer is desirous of procuring some or all of the Services;
- 1.7. "Charges" means all charges due and payable by the Customer in respect of all or part of the Services computed in accordance with these Terms and Conditions and the Tariff;
- 1.8. "Commodities" means fertilizer;
- 1.9. "Competent Authority" means the Government of the Republic of Kenya, county governments, municipal or other local authorities, agencies, state corporations, state agencies and other bodies having statutory or regulatory competence to promulgate rules and regulations having the force of law touching and concerning the parties or the business each party is engaged in and the Services;
- 1.10. "Customer" means the entity or person contracting GBHL for all or part of the Services or the Bill of Lading Holder and includes the Customer's agents, representatives, employees, assigns and/or successors in title;
- 1.11. "Delivery Outturn Report" means the report generated by GBHL at the time of completion of the delivery of the Cargo by GBHL to a Customer;
- 1.12. "Force Majeure Event" includes, but is not limited to, an act of God, accident, war, acts of war, invasion, acts of public enemies, hostilities (whether war is declared or not), restrictions on trade or other activities imposed by any sovereign nation or state, embargoes, blockades, revolutions, riots, civil commotions, acts of terrorism, sabotage, strikes and/or other industrial, labour or employer employee disputes, fires, explosions, earthquakes or any other natural disasters, expropriation of facilities or goods, epidemics or pandemics, public health emergencies, system breakdown or malfunction including, but not limited to, cyber-attack or malware and any similar cause or event that is beyond the reasonable control of GBHL and which interferes with the delivery of Services by GBHL;
- 1.13. "GBHL" means Grain Bulk Handlers Limited;
- 1.14. "Handling Services" means all services set out in Annexure 3 hereto provided by GBHL;
- 1.15. "Kenya Railways" means a statutory corporation constituted under Section 3 of the Kenya Railway Corporation Act (Cap 397, Laws of Kenya) of P. O. Box 30121-00100, Nairobi or its successor in title;
- 1.16. "Kenya Railways STCs" means the standard terms and conditions of Kenya Railways for the provision of the rail transfer services either by the standard gauge railway or the meter gauge railway, such Kenya Railways STCs being those that are in force at the point of contracting GBHL for the Services;
- 1.17. "KPA" means the Kenya Ports Authority, a statutory corporation constituted under the Kenya Ports Authority Act (Cap 391, Laws of Kenya) or its successor in title;
- 1.18. "Portal" means the digital platform provided by GBHL to its customers to upload/input all information and/or instructions relating to the Cargo;
- 1.19. "Sanctioned Person" means, at any time, any person listed in any Sanctions-related list of designated persons maintained by a Sanctions Authority;
- 1.20. "Sanctions" means economic or financial sanctions administered, enacted, imposed or enforced from time to time by any Sanctions Authority, including without limitation any restriction on the Customer or any of its affiliate's ability to conduct business with any

- person in any country relevant to the transaction, and "Sanctioned" shall be construed accordingly;
- 1.21. "Sanctions Authority" means the United Nations or its institutions, agencies and subdivisions;
- 1.22. "Services" means the Handling Services, the Transfer Services and any other services provided by or on behalf of GBHL to the Customer as set out in Annexure 3 (as may be amended from time to time);
- 1.23. "Tariff" means the applicable tariff published or produced by GBHL, as amended from time to time, for the provision of the Services as more particularly set out in Annexure 1;
- 1.24. "Terminals" means collectively GBHL cargo handling terminals which said terminals are used for the provision of some or all of the Services and which said terminals are more particularly set out in Part I Annexure 2 and the term "Terminal" shall mean any one of the Terminals, as the case may be and shall include any other Terminals established by GBHL from time to time;
- 1.25. "Terminal Tolerance" means the allowable losses including, but not limited to, extraction of dust, spillages and/or sweepings in respect of the Cargo as a result of the provision of the Services. Terminal Tolerance is determined in accordance with the method of computation or percentage (as the case may be) set out in Part II of Annexure 2 but would exclude losses of product that occur during sieving, sorting and reconstitution;
- 1.26. "Terms and Conditions" means the terms and conditions outlined in this document and which shall be revised and/or amended by GBHL from time to time in its sole and absolute discretion;
- 1.27. "Transfer Services" means the transfer of Cargo between Terminals by the Standard Gauge Railway;
- 1.28. "United States Dollars" or "USD" means the currency of the United States of America;
- 1.29. "Vessel Outturn Report" means the report generated by GBHL at the time of completion of the discharge of the Cargo from the vessel to the Terminal;
- 1.30. Where the context so admits or requires, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.31. Clause headings and sub-headings are for ease of reference and do not form part of or affect the interpretation of these Terms and Conditions.
- 1.32. Annexures, Schedules and/or Appendices are part of these Terms and Conditions and are incorporated herein as an integral part as may be amended by GBHL from time to time.
- 1.33. References to a "party" or "parties" shall mean GBHL and the Customer (as the case may be) and reference to each party herein includes references to its successors in title and permitted assignees and novates.
- 1.34. Any phrase introduced by the terms "including", "include", "in particular", or any similar expression are to be construed as illustrative and do not limit the sense of the words proceeding those terms.
- 1.35. Any reference to "person" includes any natural person, company, body corporate or unincorporated, or other judicial person, partnership, firm, joint venture or trust.
- 1.36. References to any statute or statutory provision are to be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced except to the extent that any amendment, consolidation, modification, extension, re-enactment or replacement after the date the parties entered into a relationship would extend or increase GBHL's liability. In the event that any liability or duty arising hereunder attaches to more than one Customer, such liability or duty is joint and several.

## 2. Application of Terms and Conditions

- 2.1. Save as otherwise specifically provided, the Terms and Conditions apply:
- 2.1.1. from the date the Customer issues instructions to GBHL via the Portal or manually;
  - 2.1.2. to all Services provided by GBHL whether directly or indirectly within the Terminals with effect from the date of input by the Customer of information and instructions onto the Portal; and
  - 2.1.3. to all other relationships, whether contractual or otherwise and whether created between the Customer and GBHL with or without the agreement of GBHL.



- 2.2. Each Customer is required to sign and return to GBHL the Terms and Conditions within fourteen (14) days of receipt and in failing to do so, the Customer shall be deemed to have automatically accepted the Terms and Conditions.
- 2.3. Issuance of instructions in respect of and/or accepting the Services by a Customer whether manually or via the Portal shall be construed as acknowledgement and acceptance of these Terms and Conditions by the Customer.
- 2.4. By accepting these Terms and Conditions, the parties agree that these Terms and Conditions supersede and expressly exclude all and any other terms and conditions including any contradictory and/or supplementary general terms and conditions (if any) of the Customer.

### 3. Provision of Services

- 3.1. GBHL will provide the Services as it, in its reasonable discretion, considers appropriate.
- 3.2. The provision of the Services shall be subject to the Customer paying for the Charges in accordance with these Terms and Conditions. For clarification and for the avoidance of doubt, the parties agree that:
- 3.2.1. the Terminals are not intended to serve as a storage facility for the Cargo but are merely intended to serve as a conduit for such Cargo from time to time unless specifically requested by the Customer and/or in the event that GBHL is forced to store the Cargo due to a delay in collection of the same by the Customer such storage shall at all times be subject to these Terms and Conditions; and
- 3.2.2. no provisions of these Terms and Conditions shall be deemed to be a warranty, guarantee or any other form of representation or undertaking by GBHL to the Customer that there shall be any capacity at any time and accordingly, each said request/notice shall be considered on a case by case basis by GBHL in accordance with the provisions of these Terms and Conditions.
- 3.3. The Customer shall issue instructions in respect of the Services to GBHL through the Portal and shall provide to GBHL all necessary documentation at least seventy two (72) hours prior to the vessel arrival at the Mombasa Terminal (as defined in Part I of Annexure 2). Vessel arrival shall have the same meaning as in the Kenya Ports Authority Tariff book, 2012.
- 3.4. The Services provided by GBHL shall be on a twenty-four (24) hour basis on all days other than:
- 3.4.1. on a gazetted Kenyan public holiday;
- 3.4.2. if GBHL is instructed by KPA or any other relevant Competent Authority to cease provision of services or related operations which hamper provision of the Services;
- 3.4.3. if GBHL is unable to provide the Services due to the occurrence of a Force Majeure event; and/or
- 3.4.4. when GBHL does not have capacity to provide the Services due to the increase in volume of vessels arriving at the berth or for any similar reason that would, in GBHL's sole and absolute opinion, delay or severely impact the delivery of the Services.
- 3.5. The Handling Services shall be subject to:
- 3.5.1. the availability of the berth;
- 3.5.2. the Customer making all berthing arrangements with KPA and informing GBHL of the vessels expected, dates and time of arrival at the Port of Mombasa;
- 3.5.3. the Customer providing GBHL with all necessary documentation required/requested by GBHL including, but not limited to, the stowage plan, cargo manifest, customs entries, Kenya Plants and Inspectorate Services (KEPHIS) certificate and Kenya Bureau of Standards (KEBS) certificate (if applicable), lab analysis certificate and/or any other relevant document and Bills of Lading not later than seventy two (72) hours prior to the vessel's date of arrival. Without prejudice to the foregoing, the Customer shall promptly notify GBHL of any changes that may occur in respect to the vessel's time of arrival; and
- 3.5.4. the Customer supplying or providing good quality bags, in conformity with the relevant laws in place at the time in respect of the nature, quality and/or size of the bags, in the event that the Customer requires the Cargo bagged (provided always that such Cargo can be bagged).
- 3.6. The Transfer Services shall be subject to the Kenya Railways STC's as may be amended and/or revised from time to time. The Customer can obtain a copy of the said

Kenya Railways STC's from the Kenya Railways offices or alternatively, may request for a copy and GBHL shall endeavour to provide the most up to date version of the same.

- 3.7. The parties agree that GBHL shall be entitled to cease and/or terminate and/or decline to provide all or part of the Services if:
  - 3.7.1. in the opinion of GBHL, the Cargo is considered to be dangerous, hazardous or poisonous in nature;
  - 3.7.2. in the opinion of GBHL, the Cargo is found by or on behalf of GBHL to be unsuitable to be handled or transferred;
  - 3.7.3. if a Competent Authority finds the Cargo dangerous, hazardous, poisonous or unsuitable or in contravention of the provisions of the Fertilizers and Animal Foodstuffs Act (cap. 345, laws of Kenya);
  - 3.7.4. the Customer has not paid the Charges or has not cleared and settled any outstanding invoices with GBHL;
  - 3.7.5. in the opinion of GBHL, any of the warranties contained in clauses 5, 14 and 16 are untrue, incorrect or misleading; and/or
  - 3.7.6. the bags or containers in which the Cargo is to be packed, if such Service is required by the Customer, provided by the Customer are not in compliance with the provisions of clause 5.1.10.2 below;
  - 3.7.7. an order is issued by a Competent Authority to cease and/or decline and/or terminate the provision of all or part of the Services for any reason whatsoever.
- 3.8. The Customer acknowledges and agrees that GBHL shall at all material times in performing the Services have the right to:
  - 3.8.1. subject to the relevant customs' clearances and documentation in place, transfer the Customer's cargo to any other suitable location as it deems fit;
  - 3.8.2. solely determine the type of plant and equipment to be used in rendering any and/or all Services;
  - 3.8.3. reject vessels at berth and request KPA to remove the said vessel from the berth at once if there is an inherent default in the vessel and/or the Cargo;
  - 3.8.4. detain, remove and refuse or deny entry into the Terminal to Customer's transporter vehicle or representatives, agents deemed unsuitable;
  - 3.8.5. in mitigation of any losses caused by delay, to tow any Customer's transporter vehicle that has stalled in the Terminal to a designated area in the Terminal and charge the Customer for such towing. Any such Customer's transporter vehicle determined to have frequent breakdowns shall be denied entry into the Terminal permanently;
  - 3.8.6. carry out security searches of the Customer's transporter vehicle upon entry and exit at its Terminal;
  - 3.8.7. ensure and enforce the strict observance of its security, health and safety policies by the Customer; and/or
  - 3.8.8. dispose of the Cargo, after having given the Customer a seven (7) day notice and complying with the relevant law (if applicable), if:
    - 3.8.8.1. GBHL finds that the Cargo is not fit for handling and/or storage purposes;
    - 3.8.8.2. Any Competent Authority instructs GBHL to do so;
    - 3.8.8.3. the Customer fails to take delivery of the Cargo on the date agreed upon by the Customer and GBHL or if some or all of the Cargo remains in GBHL custody ninety (90) days after the arrival of a vessel; and/or
    - 3.8.8.4. the Customer fails to pay any charges (including the Charges) due and owing to GBHL from time to time.

#### 4. Payment of Charges

- 4.1. Unless otherwise agreed in writing, all Charges must be paid within seven (7) days from the date of the invoice.
- 4.2. The Customer must pay or must procure that any other person liable for the Charges (including, where applicable, agents) pays to GBHL by bank transfer to an account specified by GBHL, or as otherwise agreed in writing, all sums immediately when due without counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law, or due to overpayment by the Customer or an undisputed credit owed by GBHL to the Customer.
- 4.3. Notwithstanding any agreement by GBHL to collect the Charges from any person other than the Customer, the Customer remains liable to GBHL for payment of all Charges when due.
- 4.4. Unless otherwise agreed, all payments hereunder must be in USD.
- 4.5. Interest is payable upon all sums payable by the Customer which remain unpaid after the due date at a rate of one per cent (1%) percent per month until amounts unpaid together with interest are paid in full.
- 4.6. In the event that any payment is not made as provided herein, then GBHL is entitled to immediately recover from the Customer or other person liable for the Charges all sums then due to or levied by GBHL (including any accrued interest and other charges properly levied in accordance with these Terms and Conditions together with the associated costs of recovery) and all losses arising to GBHL as a result of such non-payment.
- 4.7. All sums payable under these Terms and Conditions are exclusive of value added tax and any other duty or tax, which is (if and to the extent applicable) payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 4.8. If the Customer ceases to trade (either in whole, or as to any part or division involved in the performance of these Terms and Conditions), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed over the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or, where the

Customer is an individual, the Customer becomes bankrupt or makes any composition or arrangement with its creditors, or anything analogous happens in any jurisdiction, then:

- 4.8.1. GBHL is entitled to immediately recover from the Customer or any other person liable for the Charges (notwithstanding that the periods stated above or any period of credit extended to the Customer may not have expired) all sums then due to GBHL (including any accrued interest and other charges properly levied in accordance with these Terms and Conditions) and all losses arising to GBHL as a result of such circumstances arising; and
- 4.8.2. GBHL may, without prejudice to any other remedy or right available to it, delay, withhold or refuse to provide any Services.
- 4.9. All amounts due and payable by the Customer shall be paid promptly and in the manner set out in the Terms and Conditions in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 5. Customer Warranties

- 5.1. Each Customer which avails itself of any Services provided by GBHL in respect of any Cargo warrants to GBHL that:
  - 5.1.1. it has the authority of all owners having any title to or interest in the Cargo to accept these Terms and Conditions on their behalf as well as on its own behalf as principal and has specifically notified these Terms and Conditions to such persons;
  - 5.1.2. all such owners, including finance companies, lessors and others having or claiming to have title to or an interest in the Cargo are advised that unless GBHL is notified in writing of their title or interest in any particular Cargo prior to the commencement of any relationship between GBHL and the Customer, these Terms and Conditions are deemed to have been accepted with the authority of such persons. Such persons' rights over and in respect of the Cargo are subordinated to the rights of GBHL hereunder;
  - 5.1.3. it shall procure that the rights, exceptions, defences and limits available to the Customer as regards third parties, either by statute or by

- contractual terms, are extended to GBHL in so far as lawfully possible in relation to those third parties;
- 5.1.4. its employees (and those of any agents or contractors it may engage including without limitation hauliers) are properly trained and competent to carry out the tasks at any time assigned to them including in relation to the giving of any instructions to GBHL or the inputting of any information into the Portal or any electronic service or system operated or managed by or on behalf of GBHL whether such instruction or input of information is given in writing, orally, electronically or by any other means. The Customer further and separately warrants that such persons have the full authority to give such instructions or input such information;
- 5.1.5. all information and documentation provided to GBHL by the Customer or its authorised representative/agent whether via the Portal or howsoever otherwise in respect of the Cargo or the vessel containing the Cargo is true and correct and the Customer acknowledges that GBHL shall be relying on such information and documentation when providing the Services;
- 5.1.6. it has obtained or will obtain and maintain at its own expense, all necessary licences and authorisations including but not limited to customs' entries and transit release orders and has complied or will comply with all Applicable Laws relating to the carriage, handling, storage and movement of Cargo;
- 5.1.7. it has obtained an adequate insurance cover(s) in respect of its obligations and risks under these Terms and Conditions and in respect of the Services with a reputable insurance company and that it shall pay the insurance premiums (or any increase thereof) relating to such insurance policies as and when the same are due;
- 5.1.8. its drivers and vehicles accessing GBHL premises and Terminals shall comply with all Applicable Laws and that the vehicles are in good and serviceable condition to the extent that the same shall not stall or break down in the cause of the Customer receiving the Services;
- 5.1.9. it has obtained the express consent of all persons in respect of whom the Customer has and/or may have provided and/or continues to provide to GBHL information that is subject to the Data Protection Act, 2019 (Laws of Kenya) and has in place adequate mechanisms to protect and safeguard such information; and
- 5.1.10. any Cargo for which the Customer is desirous of obtaining the Services:
- 5.1.10.1. is approved by the relevant authorities in accordance with the Fertilizers and Animal Foodstuffs Act (cap. 345, laws of Kenya);
  - 5.1.10.2. shall be packed in weather-proof containers or bags of 25kg or more (to be provided by the Customer) which are of sufficient strength and sufficiently sealed and which are made of a sufficiently strong material which will withstand reasonable handling without tearing, bursting or falling open and which containers or bags are in accordance with the regulations and/or provisions of the Fertilizers and Animal Foodstuffs Act (cap. 345, laws of Kenya);
  - 5.1.10.3. is not dangerous or hazardous to health, property or the environment or poisonous, flammable or liable to become so in the form in which they are delivered and/or in which they are to remain while on or within the Terminal or if being transported, while in transit;
  - 5.1.10.4. is not toxic or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation;
  - 5.1.10.5. is not infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Terminal or if being transported, while in transit;
  - 5.1.10.6. is not over-heated or under-heated or liable to become so while on the

Terminal or if being transported, while in transit;

- 5.1.10.7. will not contaminate or cause danger, injury, pollution or damage to any person or any other cargo or the Terminal or the environment adjacent thereto;
- 5.1.10.8. is in a fit and proper condition to be handled or otherwise dealt with by GBHL, its equipment and its employees, agents and contractors.

## 6. Terminal Tolerance

- 6.1. GBHL is exempt from all liability whatsoever in the event that the weight of the Cargo immediately prior to delivery to the Customer (as recorded in the Delivery Outturn Report) is less than the weight of the Cargo following discharge of the cargo from the vessel (as recorded in the Vessel Outturn Report) due to Terminal Tolerance.
- 6.2. The parties hereby agree that the readings recorded by GBHL weighing scales in the presence of the Customer's representative (if the Customer so elects) or for which weighing scales latest calibrations certificates have been issued to the Customers and as indicated on the Vessel Outturn Report and the Delivery Outturn Report shall be final and binding on the parties. Save for a manifest error and/or any other factor that in GBHL's sole opinion vitiates the readings recorded, in the event of a dispute or discrepancy between the weight recorded on the Bill of Lading and the Vessel Outturn Report, the weight recorded on the Vessel Outturn Report shall prevail.

## 7. Disposal of Cargo

- 7.1. In addition to the provisions of clause 3.8.8, GBHL shall be entitled to move, relocate or dispose of the Cargo (as the case may be) in the following circumstances:
  - 7.1.1. if in its sole and absolute discretion, GBHL determines that the Cargo needs to moved/relocated for efficiency purposes. In such an event, GBHL shall upon due notification to the Customer in writing, move, transfer or relocate the Cargo to a warehouse or other destination as agreed by the Parties;
  - 7.1.2. in the event that GBHL is required to sort, sieve or reconstitute the Cargo. All charges relating to the transfer of Cargo to any warehouse and/or other

storage location shall be on account of the Customer and in accordance with the Tariff; or

- 7.1.3. in the event that the Customer is unable to collect the Cargo within the free storage period relevant to a Terminal as indicated in the Tariff. All storage charges and any charges relating to the move, transfer or relocation of the Cargo to any warehouse and/or other storage location, due to such non-collection by the Customer, from the expiry of the said free storage period shall be on account of the Customer.
- 7.2. The Parties hereby agree that for the purposes of implementing and giving effect to the provisions of clause 3.8.8 and 7.1 and for all purposes incidental thereto:
  - 7.2.1. the Customer hereby irrevocably nominates, constitutes and appoints GBHL (acting through an agent or any representative of GBHL from time to time) with power of substitution, to be its true and lawful attorney to do all such things and to complete and sign all such documents;
  - 7.2.2. the provisions of the Disposal of Uncollected Goods Act shall not apply; and
  - 7.2.3. in the event GBHL decides in its sole discretion to dispose the Cargo (by way of sale or otherwise), GBHL shall reserve the first right to recover from the proceeds of the disposal its Charges (plus any interest accrued thereon) and/or any sums that GBHL may have incurred in disposing the Cargo.
- 7.3. GBHL shall be entitled to dispose off any dust or sweepings that remain on GBHL's property once the Cargo has been collected by or delivered to the Customer unless the Customer wishes to collect the same provided that the Customer shall notify GBHL, in writing, within forty eight (48) hours of receipt of the Delivery Outturn Report of the Customer's wish to collect such dust and/or sweepings. GBHL shall not be liable to the Customer and the Customer shall hold GBHL harmless at all times and from time to time for the disposal or destruction of the said dust/sweepings.

## 8. Insurance, Limitation of Liability and Indemnity

- 8.1. The Customer shall obtain and maintain, from time to time and at all times, with a reputable insurance company adequate insurance cover for their Cargo including, but not limited to, marine insurance cover.

- 8.2. Subject to the limitations set forth below, the Customer shall:
- 8.2.1. be responsible for and will indemnify GBHL (on a full and unqualified indemnity basis) against all actions, proceedings, claims, losses, costs, expenses and damages suffered or incurred by GBHL arising out of or in consequence of the following:
    - 8.2.1.1. any act, neglect or default of the master, crew, pilot and/or any servants of the Customer or vessel owner in the navigation or in the management of the vessel;
    - 8.2.1.2. any incorrect information and/or documentation supplied to GBHL, or any warranty being incorrect, untrue or misleading or any incorrect declarations in respect of the weight, nature or quantity of the Cargo;
    - 8.2.1.3. any act, neglect or default of the Customer, its contractors, agents or servants whosoever (other than GBHL) in or on the Terminal in connection with the use of the Terminal by them;
    - 8.2.1.4. any inherent defect in the quality of the Cargo; and
    - 8.2.1.5. any costs incurred for the disposal, removal or relocation of the Cargo in accordance with the terms of these Terms and Conditions;
  - 8.2.2. the Customer shall defend, hold harmless and fully indemnify GBHL, and its respective officers, directors, agents, employees, affiliates, owners, parents, subsidiaries, successors and assigns against and from any and all actions, causes of action, claims, suits, debts, dues, sums of money, judgments, damages, expenses (including reasonable attorney's fees) or liability of any kind or nature whatsoever in respect of or relating to any loss or damage (including consequential and economic loss) to the Cargo during the provision of the Services;
  - 8.2.3. have no claim against GBHL and shall not hold GBHL liable and shall indemnify GBHL from any taxes and all other statutory payments, rents, costs, claims, losses, acts or omissions on the part of the Customer (together with all interest, penalties and fines arising therefrom) that GBHL may incur as a result of the Customer's failure, ignorance and/or delay to comply with the Applicable Laws or in the event of a change in laws from time to time;
  - 8.2.4. indemnify GBHL in respect of any additional charges incurred by GBHL in complying with the directions and instructions of the Competent Authorities and laws of the Kenya at that time in connection with the delivery of the Services; and
  - 8.2.5. be fully liable for all the loss and/or damages incurred by GBHL as a result of any acts and/or omissions that may result in the transfer, transport and/or disposal of the Cargo.
- 8.3. GBHL shall only be liable for loss and/or damage to the Customer's Cargo resulting directly from:
- 8.3.1. the wilful acts and/or omissions of GBHL, its agents and/or its employees;
  - 8.3.2. negligence occasioned by GBHL, its agents and/or its employees; or
  - 8.3.3. breach by GBHL, its agents and/or its employees of any statutory or contractual duties and/or obligations including those contained in the Terms and Conditions provided always all Customer claims should be reported within the timelines provided in clause 8.5.2 of these Terms and Conditions. Failure to lodge any claims within the said applicable time period shall be prima facie evidence of delivery by GBHL of the Cargo in intact condition.
- 8.4. GBHL shall only be liable for loss and/or damage claims made by third parties (including employees of GBHL) against the Customer in respect of death and/or personal injury caused by the Customer's Cargo and/or the vessel that result directly from the wilful acts, defaults and/or negligence of GBHL, its agents, and/or employees.
- 8.5. GBHL shall not be liable to pay claims as described in Clause 8.3 above unless:
- 8.5.1. the Cargo was under the sole control of GBHL;

- 8.5.2. the Customer notifies GBHL in writing of the breach, loss and/or damage within twenty four (24) hours from the occurrence of the event and in the case of a quality dispute, as provided in clause 10 below;
  - 8.5.3. an investigation has been commissioned and carried out in respect to such losses and/or damage to ascertain whether or not such losses and/or damage were as a result of any material breach, wilful act and/or omission and /or negligence of GBHL, its agents and/or employees and GBHL accepts liability; or
  - 8.5.4. GBHL accepts liability for such loss and/or damages that Customer may have incurred.
- 8.6. Any amounts payable by GBHL pursuant to claims made by the Customer under clause 8.3 shall be limited to a minimum amount of US\$1,000 per claim and a maximum amount of US\$50,000 per incident or the equivalent in Kenya Shillings.
- 8.7. The Customer shall provide the full claim documentation within fourteen (14) days of request by GBHL. GBHL shall undertake an investigation and assessment of the claim and provide a report thereof within thirty (30) days of the receipt of the full claim documentation. For purposes of this clause, full claim documentation shall mean provision of the following documents: clear copies of the duly executed consignment note, commercial invoice/ customs entry, packing list or Bill of Lading, delivery note, inspection report and any other document that may be required.

## 9. Notices

- 9.1. Any notice, demand or other document to be given or made by one party to any other shall be in writing and shall be delivered as follows:

- 9.1.1. in the case of a notice to GBHL, to:

Address:

Attn: Jared Locklear/Patrick Idemudia  
Email:[jared@grainbulk.com](mailto:jared@grainbulk.com);  
[pidemudia@grainbulk.com](mailto:pidemudia@grainbulk.com)

or such other address or email as GBHL shall have specified in writing; and

- 9.1.2. in the case of a notice to the Customer, to the registered office of the Customer or the branch

or agency office of the Customer through which the Customer has dealt with GBHL in respect of the provision of the Services.

- 9.2. Save as otherwise expressly provided herein, any notice, demand or document to be given or made by one party to the other shall be deemed made:
  - 9.2.1. when dispatched (if given by email during Business Hours) provided that the appropriate acknowledgement of proper transmission is obtained by the sender;
  - 9.2.2. when left during Business Hours at the principal office of each party; or
  - 9.2.3. seven (7) Business Days after posting by registered post provided that proof is given that the notice, demand or document was properly addressed adequately stamped and put into the post by registered post.
- 9.3. Any notice under these Terms and Conditions that is served/delivered: (i) outside Business Hours; or (ii) on a date that does not fall on a Business Day or, then such notice shall be deemed to have been served/delivered during Business Hours on the immediately succeeding Business Day.
- 9.4. The provisions of clause 9 do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 10. Quality Dispute

In the event of a dispute regarding the quality of the Cargo being delivered by GBHL to the Customer at the Terminal, the Customer shall immediately and no later than forty eight (48) hours from the date of such delivery, notify GBHL in writing. GBHL shall immediately upon receipt of the said notice engage an independent expert to test samples in respect of the Cargo so delivered and in dispute. The Parties agree that the decision of the said independent expert shall be final and binding save in the case of fraud or manifest error. In the event of a dispute relating to fraud or manifest error by the expert, the aggrieved party shall apply to resolve the same in a court of law of Kenya.

## 11. Force Majeure

GBHL shall not be liable for any failure to perform the Services due to a Force Majeure Event. However, if a Force Majeure Event occurs, then GBHL shall immediately and in any event within Seventy Two (72) hours notify the Customer of (i) the nature of

the Force Majeure Event and its likely duration (ii) the obligation(s) which are affected and (iii) the reasonable steps GBHL shall take to mitigate the effects of the Force Majeure Event.

## 12. Governing Law

These Standard Terms and Conditions shall be governed by and construed in accordance with the Laws of Kenya.

## 13. Dispute Resolution

- 13.1. Save for any disputes relating to quality which shall be resolved in accordance with clause 10, Parties shall endeavour to amicably resolve all disputes as to matters arising pursuant to these Terms and Conditions.
- 13.2. In the event that a dispute cannot be resolved amicably within thirty (30) days after receipt by one Party of another Party's request for such amicable settlement, such dispute shall be resolved as follows:
  - 13.2.1. if the value of the dispute is under (and including) the sum of USD 50,000.00, then the courts of law in Kenya shall have exclusive jurisdiction in respect of the same; or
  - 13.2.2. if the value of the dispute is over (and including) the sum of USD 50,001.00, then such dispute may be submitted by any Party to arbitration in accordance with the provisions of the rest of clause 13.
- 13.3. If the Parties hereto so agree, the dispute shall be referred to a single arbitrator or if they are unable to agree upon the person to be the arbitrator within twenty (20) days after the expiry of the aforesaid thirty (30) day period, the sole arbitrator shall, at the request of either Party hereto, be appointed by the Chairman of the Chartered Institute of Arbitrators of the Kenya. The arbitration shall be held in Mombasa.
- 13.4. Except as stated herein, arbitration proceedings shall be conducted in English language and in accordance with the rules or procedures for arbitration of the Chartered Institute of Arbitrators of Kenya.
- 13.5. If for any reason the arbitrator is unable to perform his function, a substitute shall be appointed in same manner as the original arbitrator.
- 13.6. The arbitrator appointed pursuant to this clause shall be a nationally recognised legal or technical expert with extensive experience in relation to the matter in dispute.
- 13.7. The decision of the arbitrator shall be final and binding on the Parties.
- 13.8. The fees and expenses of the arbitrator (the "Fees") shall be borne by the party who refers the dispute to arbitration (the "Referring Party") but recoverable from the party who loses the arbitration unless the arbitrator awards otherwise.
- 13.9. Notwithstanding the above provisions of this clause 13, a party hereto is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.
- 13.10. Each party hereto irrevocably waives any immunity in respect of its obligations under these Terms and Conditions that it may acquire from the jurisdiction of any court or any legal or arbitral process for any reason including, but not limited to, the service of notice, attachment prior to judgement or attachment in aid of execution.

## 14. Bribery and Anti-Corruption

The Customer represents and warrants that it and its agents, directors, employees, officers and sub-contractors will comply with all applicable laws relating to antibribery and anti-corruption including but not limited to the Bribery Act (Act No. 47 of 2016) and will not engage in any activity, practice or conduct which would constitute an offence under the relevant laws of Kenya or any conventions that Kenya has ratified.

## 15. Data Protection

- 15.1. GBHL confirms that it shall protect any personal data collected from the Customer. GBHL shall only process Customers' personal data it reasonably requires to provide the Services and will use the Customer's personal information in line with the Data Protection Act (Act No. 24 of 2019) and its data protection policy (as amended from time to time).
- 15.2. GBHL may use the Customer's personal data for a number of purposes including:
  - 15.2.1. to provide the Services and enable the Customer to use the Portal;

- 15.2.2. to undertake background research on the Customer to confirm that the Customer is not a Sanctioned Person; and
- 15.2.3. to respond to feedback, queries of complaints that the Customer submits to GBHL through the feedback forum.

**15.3. The Customer shall at all times have the right:**

- 15.3.1. to access the Customer's personal data in custody of GBHL;
- 15.3.2. to object to the processing of all or part of the Customer's personal data;
- 15.3.3. to correction of false or misleading data about the Customer; and
- 15.3.4. to deletion of false or misleading data about the Customer.

- 15.4. GBHL shall keep the Customer's personal data within GBHL and/or its trusted third parties except where disclosure is required by law. In the event that any of the Customer's personal data is transferred overseas, GBHL shall remain responsible for the Customer's personal data and shall always ensure that the Customer's personal data remains protected and secure when being transferred.

For the purposes of clause 15, the term "personal data" shall include, without limitation, the name, date of birth, identity card or passport number, address (both postal and physical), Kenya Revenue Authority Personal Identification Number or any other information relating to an identifiable natural person.

**16. Sanctions**

- 16.1. The Customer represents and warrants to GBHL that:
  - 16.1.1. it is not a Sanctioned Person nor has it or does it engage in any activity that would reasonably be expected to result in it being designated as a Sanctioned Person; and
  - 16.1.2. it is not engaged, directly or indirectly, in any activity which is prohibited under the Sanctions, including without

limitation (a) any direct or indirect dealings involving or benefitting a person that is listed on, or owned or controlled by, or acting on behalf of a person listed on any list administered by a Sanctions Authority or otherwise the target of Sanctions; (b) any business or making or receiving any contribution of funds, goods or services to or for the benefit of Sanctioned Person; (c) any dealing in, or otherwise engaging in any transaction relating to any property or interests in property subject to prohibitions under Sanctions; and (d) any transaction that evades, avoids or attempts to violate any of the prohibitions set forth in the Sanctions or has such a purpose.

**17. General**

**17.1. Assignment**

- 17.1.1. GBHL may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations herein.
- 17.1.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations herein without the prior written consent of GBHL.

**17.2. Terms and Conditions take precedence**

Unless expressly provided under a written contractual agreement and/or arrangement, in the event of any inconsistencies between these Terms and Conditions and such other written arrangement and/or agreement between parties, these Terms and Conditions shall prevail.

**17.3. Payments exclusive of VAT**

All amounts payable by the Customer in respect of the Services are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made to the Customer, the Customer shall, on receipt of a valid VAT invoice from GBHL, pay to the GBHL such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same



time as payment is due for the supply of the Services.

#### 17.4. Severance

If any provision or part-provision of the Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Terms and Conditions.

#### ACCEPTANCE

I Graette Jammet, HEREBY CONFIRM THAT I HAVE READ AND UNDERSTOOD THE GRAIN BULK HANDLERS LIMITED STANDARD TERMS AND CONDITIONS (VERSION MAY, 2020) AND AGREE TO BE BOUND BY THE SAME. I FURTHER CONFIRM THAT I AM DULY AUTHORISED BY THE

CUSTOMER TO ISSUE THIS CONFIRMATION ON BEHALF OF THE CUSTOMER:



24 NOV 2020

Signature: P. O. Box 2877-00100, NAIROBI  
Date: 25/11/2020

Contract effective Nov 20th  
clause 4.2 supersedes T&C  
where it stipulates anything  
different.



Annexures

Annexure 1

## **GBHL Fertilizer Tariff - Effective from October 2020**

**All Charges are in \$ USD Unless Otherwise Stated**

<b>GBHL Mombasa</b>	<b>Rate Per Metric Tonne</b>
Vessel Discharge	\$ 7.80
Terminal Handling	\$ 4.90
Delivery (to Customer on truck or Rail)	\$ 2.95
Bagging Fees (all bags must be provided by client) 25kg (charge is in addition to normal delivery charge)	\$ 3.50
Bagging Fees (all bags must be provided by client) 50kg (charge is in addition to normal delivery charge)	\$ 3.00
Free Storage Period For Mombasa (Days After "Last Sling")	7 Days
<b>KPA Charges (Payable Directly to KPA by Client via Vessel Agent)</b>	
Stevedoring (KPA Tariff Section II)	\$ 1.65
Wharfage (KPA Tariff Section III)	\$ 2.20
<b>Supplementary Charges Applicable Per Site Per Metric Tonne</b>	
Storage Rate Per Day (after Free Storage Period has ended)	\$ 0.30
Un-Entered Charges (First 30 Days) (all KRA Regulations Applicable)	\$ 2.00
Un-Entered Charges (Subsequent 30 Day Periods)	\$ 1.00
UnReleased Charges or Cargo under waiver of Lein (Per Ton first 30 days)	\$ 1.50
UnReleased Charges or Cargo under waiver of Lein (Per Ton subsequent 30 day periods)	\$ 1.00
Surcharge for handling of cargo with high volume of caked cargo that is non-free flowing.	\$ 2.00
Surcharge for Truck Towing or due to Truck Blocking Facility and Operations (per incident)	KES 20,000.00
Warehousing of Cargo	On Application
Sorting, sieving, reconstitution of Cargo	On Application
**All charges are shown exclusive of VAT, which will be charged where applicable	
*** The GBHL Standard Terms and Conditions will apply to all consignments	
Grain House, Beira Road, Shimanzi.	
P. O. Box 80469 - 80100 Mombasa, KENYA	
Tel: +254 (0) 703 017 000	



## Annexure 2

### Part I – Terminals

- GBHL Mombasa, Grain House, Beira Road, Shimanzi, Mombasa
- GBHL Embakasi, Nairobi

### Part II - Terminal Tolerance for Cargo

- Diammonium phosphate (DAP): 0.20% of landed quantity
- UREA: 0.20% of landed quantity
- Calcium ammonium nitrate (CAN): 0.30% of landed quantity
- Nitrogen, phosphorus, and potassium (NPK): 0.30% of landed quantity
- Polysulphate: 0.20% of landed quantity
- Muriate of potash, also known as potassium chloride (MOP): 0.20% of landed quantity
- any other approved fertilizer that has a critical relative humidity of less than 60%: 0.3% of landed quantity
- any other approved fertilizer that has a critical relative humidity of more than 60%: 0.2% of landed quantity



### Annexure 3 Handling Services

- Vessel Discharge: This activity covers the evacuation of Cargo from the vessel by means of mechanical unloaders or shore cranes unto GBHL discharge line.
  - Terminal Handling: This activity covers the transportation of the Cargo from the discharge line to the storage location.
  - Delivery: This activity covers the delivery of the Cargo from the storage location in the form chosen by the Customer. The delivery can either be in:
    - I. Bulk
    - II. Bagged - either in:
      - 90kg Bags; or
      - 50 kg bags
      - 25 kg bags
      - Other sizes to be agreed upon in advance and in writing with Customer
  - Bagging Fees: This covers the cost of bagging operations.
- Other Services**
- Storage: This activity covers the safe keeping of Cargo post free storage period at the rate set out in the Tariff.
  - Lease: This covers long term storage as contractually agreed between GBHL and the Customer.
  - Un-entered services: This refers to the services covering the discharge of Cargo that does not have customs entry and GBHL decides to berth the vessel. It comes into effect upon the berthing of the vessel.
  - Unreleased services: This refers to the service covering the non-release of Cargo to the Bill of Lading Holder by the trader. It becomes effective at the completion of Cargo operations.
  - Vessel Handling Surcharge: This covers the extra cost accrued when there is a high volume of impurities, high dust content, excessive foreign matter, foreign particles and non-free flowing Cargo.
  - Truck Surcharge: This refers to the cost of truck towage or blockage within the facility (chargeable to the Customer).
  - Railage: This activity covers the movement of Cargo between Terminals.
  - Sorting, sieving, reconstitution of Cargo: This is applicable if the condition of the Cargo is not homogenous and requires to be sorted and/or sieved and/or reconstituted to become acceptable for the end user.

Dated as of the 17<sup>th</sup> day of June 2022

**GRAIN BULK HANDLERS LIMITED**

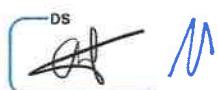
- a n d -

**ONE ACRE FUND**

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Renewal and Variation Agreement  
in respect of the  
Services Agreement dated 20 November 2020

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DS  


This Renewal Agreement is made on the 17<sup>th</sup> day of June 2022 between:

1. **GRAIN BULK HANDLERS LIMITED**, a private company incorporated with limited liability in the Republic of Kenya of Post Office Box Number 80469-80100, Mombasa (hereinafter referred to as "**the Company**" which expression shall, where the context so permits, include the Company's successors in title and assigns); and
2. **ONE ACRE FUND**, a not-for-profit corporation registered in the USD and duly registered in Kenya as an INGO with its registered offices at 81 Prospect St., Brooklyn, NY, 11201, USA and P.O. Box 659-50100 Jesus Junction Kakamega, Kenya and registered in Kenya as the branch of a foreign company pursuant to Section 975 of the Companies Act 2015 (No. 17 of 2015) with Certificate of Compliance No. 52/2007 (hereinafter referred to as "**the Customer**" which expression shall, where the context so permits, include the Customer's successors in title and assigns),

(each hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**").

**WHEREAS:**

1. The Parties entered into an agreement dated 24 November 2020 (the **Commencement Date**) for the provision of handling, logistics, storage and other related services (hereinafter referred to as "**the Original Agreement**").
2. The term of the Original Agreement was twelve months from the Commencement Date.
3. The Parties now wish to agree to the renew the Original Agreement on the same terms and conditions thereto, save for the amendments set forth below.

**NOW THEREFORE**, in consideration of each of the Parties entering into this Renewal Agreement (such consideration being agreed by the parties to be good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and agreed), **IT IS HEREBY AGREED THAT:**

1. The Parties shall renew the Original Agreement for an additional period of eight (8) months commencing on 25 November 2021, on the same terms and conditions set out in the Original Agreement, which terms are incorporated herein mutatis mutandis.
2. The existing Clause 12.9 appearing after clause 13.8 shall be renumbered to Clause 13.9.
3. The existing Clause 15.1 and 15.2 appearing in clause 16 shall be renumbered to Clause 16.1 and 16.2 respectively.
4. The Re-bagging fees set out in Schedule III shall be amended as follows:

A photograph showing two handwritten signatures. The signature on the left is enclosed in a blue rectangular box and ends with the initials "DS". To the right of the box is a blue "M".

<b>Item Description</b>	<b>UoM</b>	<b>Rate Per MT Exc VAT</b>
Rebagging into 50 kg bags*	MT	10.50
Rebagging into 25 kg bags*	MT	13.10
Rebagging into 6.25 kg bags*	MT	18.50
*All bags must be provided by the Customer. Charges are in addition to normal delivery charge		

5. The persons signing this Renewal Agreement in a representative capacity warrant their authority to do so and each Party confirms that it has complied with its internal procedures and has obtained all necessary approvals required to enter into this Renewal Agreement.
6. This Renewal Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.
7. This Agreement may be executed in two (2) of counterparts, whether signed originally or reproduced by facsimile, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument.

**\*The rest of this page has been left blank intentionally\***



**IN WITNESS WHEREOF** the Parties hereto have caused this Renewal Agreement to be duly executed as of the day and year first above written.

EXECUTION

THE COMPANY

SEALED with the Common Seal of  
**GRAIN BULK HANDLERS LIMITED**

In the presence of

DIRECTOR

DIRECTOR

)  
)  
)  
)  
)  
)  
)  
)



THE CUSTOMER

SEALED with the Common Seal of  
**ONE ACRE FUND**

In the presence of

Charlotte Lammertyn

DocuSigned by:  
 AE76D0FB6FF613490

DIRECTOR

6/17/2022

DIRECTOR



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