

## **PRE-PAY ADVANTAGE TERMS AND CONDITIONS**

CBH Grain Pty Ltd ABN 39 089 394 883 (“**CBH Grain**”) has agreed to make available for the benefit of the supplier named in the Application (“**Supplier**”) the Pre-Payment Amount on the following terms and conditions (“**Pre-pay Advantage Conditions**”).

These Pre-pay Advantage Conditions are incorporated into this Contract made between the Supplier and CBH Grain and formed upon the Supplier accepting an Offer from CBH Grain.

### **1. Definitions and Interpretation**

#### **1.1 Definitions**

“**Administrative Variation Fee**” means the fee specified in the Table.

“**Amount Owing**” means the total of all amounts that at any time are payable, are owing but not payable, or are contingently owing, by the Supplier to CBH Grain in connection with this Contract including all fees and accrued but unpaid interest which are payable, are owing but not payable, or are contingently owing, by the Supplier to CBH Grain under this Contract.

“**Application**” means the application made by or on behalf of the Supplier using the application process provided in LoadNet®.

“**Business Day**” means a day that is not a Saturday, Sunday or public holiday in Western Australia.

“**CBH**” means Co-operative Bulk Handling Limited ABN 29 256 604 947.

“**CBH Debt**” means any amount that is due and payable by the Supplier to CBH or any Related Body Corporate of CBH.

“**CBH Delivery and Warehousing Terms**” means the CBH delivery and warehousing terms current at the time at which the Supplier accepts an Offer from CBH Grain, as published on the Website.

“**CBH Price**” means, on any day and for any grain, the price offered by CBH Grain for the purchase of grain meeting the description of that grain on that day, being the relevant price specified on LoadNet® on that day.

“**CBH Record**” means the relevant sections of the CDF and LoadNet® nomination receipt.

“**CDF**” means the ‘Carter’s Delivery Form’ whether in hardcopy form as that document stands from time to time or submitted electronically via the CDF App.

“**CDF App**” means CBH’s ‘Carter’s Delivery Form’ software application.

“**Committed Tonnes**” means the number of tonnes of grain specified in the Offer under the heading “Committed Tonnes”.

“**Contract**” means this contract evidenced by:

- a. the Application;
- b. the Offer; and
- c. these Pre-pay Advantage Conditions.

“**Contract Season**” means the Season following the date on which this Contract is made.

“**Crop Insurance**” means insurance which provides cover for crops in respect of which loss or damage is suffered as a result of hail, fire, livestock intrusion, overspray, transit or storage loss.

“**Crop Lien**” means a security interest over crops.

“**Default**” means an event or circumstance so described in clause 8.1.

“**Default Rate**” means the rate which is 4% above the Rate.

“**Delivered and Reserved Tonnes**” means tonnes of Grain which have been Reserved.

“**Drawdown**” means a utilisation of the Pre-Payment Facility.

“**Drawdown Date**” means any date on which a Drawdown is provided by CBH Grain in accordance with clause 3.3c.

“**Encumbrance**” means any security for the payment of money or the performance of obligations including a Crop Lien, mortgage, charge, lien, pledge, trust or any other “security interest” (as that term is defined in the PPSA).

“**Grain**” means grain delivered by or on behalf of the Supplier to CBH in accordance with clause 2.2a. or 2.2e. or any other provision of this Contract.

“**Grain Entitlement**” has the same meaning given in the CBH Delivery and Warehousing Terms.

“**Gross Negligence**” means, if a duty of care is owed, an act or omission done with reckless disregard, whether consciously or not, for the consequences of the act or omission.

“**GST**” means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply.

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

A person is “**Insolvent**” if:

- a. it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth)); or
- b. it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- c. it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by CBH Grain); or
- d. an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, or any other action taken, in each case in connection with that person, in respect of any of (a), (b) or (c) above; or
- e. it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or
- f. it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which CBH Grain reasonably deduces it is so subject); or
- g. it is otherwise unable to pay its debts when they fall due; or
- h. something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

“**Indirect or Consequential Loss**” means indirect, consequential or remote loss or any loss in the nature

of compensation for loss of production, loss of profit, loss of opportunity, loss of markets, loss of use of money, goods or other property or loss of goodwill or business reputation.

“**Line Fee**” means the fee specified in the Table and as further described in clause 3.6.

“**LoadNet®**” means CBH’s online grain management interface available to users on the Website.

“**Material Adverse Event**” means, in the reasonable opinion of CBH Grain, an event or circumstance which has or is reasonably likely to have a material adverse effect on the Supplier’s yield of grain (for example frost, hail, flood, fire, drought, serious disease or pest attack).

“**Nominated Grain**” means the number of tonnes of grain which have been Nominated to CBH Grain during or following the Contract Season.

“**Nomination**” means a nomination of Grain to CBH Grain via LoadNet® or the CBH Grower Services Centre which effects a transfer of title in the CBH entitlement system from the Supplier to CBH Grain (and “**Nominate**”, “**Nominates**” and “**Nominated**” have a corresponding meaning).

“**Offer**” means the written offer from CBH Grain to the Supplier by which CBH Grain, in response to the Application, offers the Pre-Payment Facility.

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth).

“**PPS Register**” has the same meaning as given to the term “register” in section 10 of the PPSA.

“**Pre-Payment Amount**” means the amount specified in the Offer as the “pre-payment amount”, as substituted, reduced, or cancelled under this Contract.

“**Pre-Payment Facility**” means the facility provided under clause 3.3.

“**Pre-Payment Facility End Date**” means 31 July following the Contract Season.

“**Proceeds**” means the amounts paid or payable by CBH Grain for grain under a Sale Contract.

“**Rate**” means the interest rate specified by CBH Grain in the Offer as applicable to the Pre-Payment Facility on the date of this Contract, as amended from time to time in accordance with clause 3.7c.

“**Receiver**” includes a receiver or receiver and manager.

“**Related Body Corporate**” has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth).

“**Related Entity**” means, in relation to the Supplier:

- a. if the Supplier is an individual:
  - (1) each relative of the Supplier;
  - (2) a company of which the Supplier is a director;
- b. if the Supplier is a partnership:
  - (1) each relative of each partner of the partnership;
  - (2) a company of which a partner of the partnership is a director;
- c. if the Supplier is a company:
  - (1) each director of the company;
  - (2) each shareholder of the company;

- (3) each Related Body Corporate of the company;

- (4) each relative of each director and shareholder of the company; and

d. if the Supplier enters into this Contract as a trustee, the beneficiaries or unitholders of the trust.

“**Reserve**” means to distinguish and reserve part of, or to reserve all of, the Supplier’s Grain Entitlement (or, if applicable, the Grain Entitlement of a Related Entity of the Supplier) in LoadNet® as being solely transferrable to CBH Grain (and “**Reserved**” and “**Reservation**” have a corresponding meaning).

“**Sale Contract**” has the meaning given to it in clause 2.1.

“**Season**” means the grain harvesting and delivery season, generally commencing in November of one year and ending in February of the following year.

“**Secured Money**” means:

- a. the Amount Owing;
- b. all amounts which at any time the Supplier owes CBH Grain for any reason or circumstance in connection with any agreement, transaction, instrument (whether or not negotiable), document, event, act, omission, matter or thing whatsoever; and
- c. all amounts which at any time the Supplier owes any Related Body Corporate of CBH Grain at that time for any reason or circumstance in connection with any agreement, transaction, instrument (whether or not negotiable), document, event, act, omission, matter or thing whatsoever.

It includes all amounts which the Supplier would have been liable to pay to CBH Grain or any Related Body Corporate of CBH Grain but the amount remains unpaid because the Supplier is Insolvent.

“**Secured Obligations**” means all of the obligations and liabilities of the Supplier to CBH Grain or its Related Bodies Corporate at any time under or by reason of this Contract or any other transaction, matter or event whatsoever, but excluding the Supplier’s obligation to pay the Secured Money.

“**Secured Property**” means the Supplier’s right, title and interest in connection with:

- a. any crops (including the harvested produce of the crops), any grain and the Supplier’s Grain Entitlement;
- b. any benefits, privileges, bonuses, bounties, quotas, licences or other similar rights used or held in connection with any of the above;
- c. any agreement in connection with any dealing with any of the above;
- d. any amount paid or payable to the Supplier or to its order in connection with any of the above; and
- e. any account into which any amounts paid or payable in connection with any of the above are deposited or required to be deposited.

“**Table**” means the table at the end of these Pre-pay Advantage Conditions.

“**Website**” means the website [www.cbh.com.au](http://www.cbh.com.au).

“**Wilful Misconduct**” means an intentional and conscious disregard of any material provision of this Contract, but does not include any error of judgment

or mistake made by the person alleged to be culpable or by any director, employee, agent or contractor of that person in the exercise, in good faith, of any function, power, authority or discretion conferred on that person under this Contract or under any law.

## 1.2 Interpretation

In these Pre-pay Advantage Conditions unless the contrary intention appears:

- a. a reference to a person includes a reference to a body corporate, an individual, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- b. a reference to a paragraph or clause is a reference to a paragraph or clause in these Pre-pay Advantage Conditions;
- c. a reference to these Pre-pay Advantage Conditions, the Offer or any other instrument includes any variation or replacement of them;
- d. if a word or phrase is given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- e. if the day on or by which anything is to be done under these Pre-pay Advantage Conditions is not a Business Day, that thing must be done no later than the next Business Day;
- f. 'including' means 'including (without limitation)';
- g. the singular includes the plural and vice versa;
- h. words and expressions used in clauses 5, 27 and 28 which are not defined in these Pre-pay Advantage Conditions but which have a defined meaning in the PPSA have that same meaning; and
- i. these Pre-pay Advantage Conditions must not be construed adversely against a party just because that party prepared them or any part of them.

## 1.3 Inconsistency between Contract documents

In the event of any inconsistency between the provisions of the documents which constitute this Contract, the following documents will prevail in the following order:

- a. the Offer;
- b. these Pre-pay Advantage Conditions; then
- c. the Application.

## 1.4 Inconsistency with Sale Contract

In the event of any inconsistency between the provisions of this Contract and a Sale Contract, the provisions of this Contract will prevail.

## 2. Sale and Reservation of Grain

### 2.1 Agreement for sale

The Supplier and CBH Grain may (in their absolute discretion) enter into one or more CBH Grain cash and/or pool contracts (the terms of which are available on the Website) (each a "Sale Contract"), under which the Supplier agrees to sell Grain to CBH Grain and CBH Grain agrees to buy the Grain free of all Encumbrances for the consideration specified in the Sale Contract on the terms and conditions of this Contract and the Sale Contract.

### 2.2 Delivery and Reservation of Grain

- a. The Supplier must deliver (or procure to be delivered) into CBH's possession, in accordance

with the CBH Delivery and Warehousing Terms, grain which equals or exceeds the Committed Tonnes by 31 January during the Contract Season.

- b. Subject to clauses 2.2c and 2.2d, the Supplier agrees that immediately following the delivery of any grain into CBH's possession, each of CBH and its Related Bodies Corporate is unconditionally and irrevocably authorised and instructed to Reserve any or all Grain Entitlement.
- c. The authority of CBH and each of its Related Bodies Corporate to Reserve Grain Entitlement under clause 2.2b shall cease upon the Amount Owing being fully repaid.
- d. At any time before the Amount Owing has been repaid, the Supplier may request CBH Grain's consent to sell any part of the Delivered and Reserved Tonnes to a third party (such consent not to be unreasonably withheld). If CBH Grain consents to the sale, CBH Grain or its Related Bodies Corporate must promptly release the Reservation.
- e. If the tonnes of Grain Entitlement delivered into CBH's possession falls short of the Committed Tonnes or in the reasonable opinion of CBH or CBH Grain may fall short of the Committed Tonnes, each of CBH and its Related Bodies Corporate is unconditionally and irrevocably authorised and instructed to Reserve any other grain delivered to CBH by a Related Entity of the Supplier.
- f. If the Supplier requests any change to a Reservation, including a change to the type of grain the subject of a Reservation, CBH Grain may, in its absolute discretion, approve the request.
- g. The Supplier must pay the Administrative Variation Fee in respect of any consent given under clause 2.2d.

## 3. Payment

### 3.1 Payment for Grain

In consideration for the sale of any Committed Tonnes to CBH Grain under a Sale Contract, CBH Grain will pay the Proceeds in the manner set out in clause 3.2.

### 3.2 Payment of Proceeds

- a. The Supplier unconditionally and irrevocably directs and authorises CBH Grain to pay the Proceeds (including GST, if applicable) in respect of all grain sold by the Supplier under each Sale Contract as follows:
  - (1) firstly, to pay the Amount Owing;
  - (2) secondly, subject to these Pre-pay Advantage Conditions, to pay any other CBH Debt provided that CBH Grain will give the Supplier prior written notice of its intention to apply Proceeds to any other CBH Debt together with sufficient details to allow the Supplier to identify the CBH Debt; and
  - (3) when the amounts in clauses 3.2a(1) and 3.2a(2) have been satisfied in full, to pay to the Supplier any amount remaining.
- b. If the Supplier requests any change to the manner of payment set out in clause 3.2a, CBH Grain may, in its absolute discretion, approve the request.

- c. The Supplier must pay the Administrative Variation Fee in respect of any approval given under clause 3.2b.
- d. CBH Grain is not responsible to the Supplier for any loss or damage suffered or cost incurred because of any delay in payment of Proceeds (including Indirect or Consequential Loss), except for delays caused by CBH Grain's Gross Negligence, Wilful Misconduct or fraud.

### 3.3 Pre-Payment Facility

- a. The Supplier applies for and CBH Grain agrees to make available for the benefit of the Supplier, a Pre-Payment Facility of up to the Pre-Payment Amount on the terms of this Contract.
- b. The Pre-Payment Facility is a single credit contract in respect of the Pre-Payment Amount and covering all Drawdowns.
- c. The Supplier may ask CBH Grain to provide it with one or more Drawdowns up to a total amount equal to the Pre-Payment Amount in accordance with this clause 3. For the avoidance of doubt, the Pre-payment Amount is exclusive of GST.
- d. The Supplier acknowledges and agrees that, subject to clause 3.5, all Drawdowns must be applied for the purposes of enabling the Supplier to produce crops:
  - (1) from which the Committed Tonnes will be produced; and
  - (2) which will be planted no later than 6 months after the date on which this Contract is made or which are growing at the date on which this Contract is made.

The Supplier must immediately repay to CBH Grain any part of the Drawdowns not so used.

- e. In consideration for CBH Grain making available for the benefit of the Supplier, the Pre-Payment Facility, the Supplier shall pay to CBH Grain the Approval Fee.

### 3.4 Preconditions to Drawdowns

Unless waived in writing by CBH Grain (in its absolute discretion), CBH Grain is only required to provide a Drawdown if:

- a. the Supplier has requested a Drawdown not less than 5 Business Days before the Business Day on which the Supplier wishes the Drawdown to be paid;
- b. the Supplier has registered a valid email address with LoadNet® in accordance with CBH Grain's security procedures as specified from time to time;
- c. the total amount of all Drawdowns provided to the Supplier will not exceed the Pre-Payment Amount immediately after the Drawdown is provided;
- d. the Supplier's request is made before the Pre-Payment Facility End Date;
- e. no Material Adverse Event has occurred between the date of this Contract and the Drawdown Date;
- f. the Supplier does not have any CBH Debt which is more than 30 days outstanding;
- g. the Supplier is not in default under this Contract or any other contract with CBH Grain or its Related Bodies Corporate; and

- h. the date of the Drawdown is on or after the first business day in February in the year the Pre-Payment Facility is approved.

### 3.5 Application of Drawdowns

The Supplier unconditionally and irrevocably authorises CBH Grain to satisfy any CBH Debt from the proceeds of the Drawdowns (provided that CBH Grain will give the Supplier prior written notice of its intention to apply the proceeds of the Drawdowns to any CBH Debt together with sufficient details to allow the Supplier to identify the CBH Debt) and directs CBH Grain to then pay any remaining amount to the Supplier. CBH Grain is not responsible to the Supplier for any loss suffered because of delay in payment of any of the Drawdowns (including Indirect or Consequential Loss), except for delays caused by CBH Grain's Gross Negligence, Wilful Misconduct or fraud.

### 3.6 Supplier to pay Line Fee

- a. The Supplier shall pay to CBH Grain the Line Fee on the Pre-Payment Amount.
- b. The Line Fee accrues daily from (and including) the date on which CBH notifies the Supplier that the Pre-Payment Facility is available to (but excluding) the later of:
  - (1) the date on which the Pre-Payment Facility is fully repaid; and
  - (2) 31 October of the year in which the Contract Season commences.
- c. Accrued but unpaid Line Fee will be added to the outstanding balance of the Pre-Payment Facility on the last Business Day of each month.

### 3.7 Interest

- a. The Supplier shall pay to CBH Grain interest at the Rate on the outstanding balance of the Pre-Payment Facility.
- b. Interest accrues daily from (and including) the Drawdown Date to (but excluding) the date on which the Pre-Payment Facility is fully repaid and shall be calculated on the Supplier's daily balance of the Pre-Payment Facility. Accrued but unpaid interest will be added to outstanding balance of the Pre-Payment Facility on the last Business Day of each month.
- c. CBH Grain may, at any time, increase the Rate by providing written notice to the Supplier of the change to the Rate at least 5 Business Days before the change takes effect.
- d. An increase under clause 3.7c may only be to the extent reasonably necessary to reflect any increase in CBH Grain's cost of funds, and on the basis that the increase in the Rate applies to all pre-pay advantage contracts for the Contract Season.

### 3.8 Repayment of Amount Owning

- a. The Amount Owning:
  - (1) will be repaid automatically from Proceeds (plus relevant GST) in accordance with clause 3.2;
  - (2) may be repaid by the Supplier from amounts other than Proceeds (plus GST); and

(3) must be repaid in full on or before the date which is 7 days after the Pre-Payment Facility End Date.

b. If the Supplier requests to repay the Amount Owing (in part or whole) from amounts other than Proceeds, the Supplier must pay the Administration Variation Fee in respect of each request.

#### 4. Representations and warranties

4.1 The Supplier represents and warrants to CBH Grain that:

- a. all information set out in the Application is true and correct in every particular;
- b. it has good title to the Secured Property and there are no Encumbrances existing in respect of or in connection with any Secured Property;
- c. the Supplier will use the Pre-Payment Amount wholly or predominantly for business or investment purposes and not for personal, domestic or household purposes;
- d. if the Supplier is a company, the directors of the Supplier have determined that it is in the Supplier's best interests to make the Application and enter into this Contract;
- e. unless stated in the Application, it does not enter into this Contract or hold any assets as trustee;
- f. if the Supplier enters into this Contract as trustee:
  - (1) the trust has been duly established and it is the only trustee of the trust;
  - (2) it has been validly appointed as trustee of the trust and no action has been taken or proposed to remove it as trustee of the trust;
  - (3) it has not, and never has been, in default under the trust deed of the trust;
  - (4) it has the right to be fully indemnified out of the assets of the trust for obligations incurred under this Contract and the trust property is sufficient to satisfy that right of indemnity and all other obligations for which it is entitled to be indemnified out of trust property;
  - (5) it has power under the terms of the trust to enter into this Contract and comply with its obligations under it; and
  - (6) entry into this Contract is a valid exercise of its powers under the trust deed for the benefit of the beneficiaries;
- g. if the Supplier is a partnership:
  - (1) each partner is liable individually, and together with other partners liable jointly, for the obligations and liabilities of the Supplier under this Contract; and
  - (2) this Contract will continue to bind each person who is a partner at the date of this Contract and each person who becomes a partner, despite changes in the membership of the partnership or the fact that the person is no longer a partner in the partnership;
- h. the Supplier is not Insolvent;
- i. in entering into this Contract it has relied on its own skill and judgment;

j. it has not relied in any way on the skill or judgment of CBH Grain or any of CBH Grain's staff or representatives;

k. it is not in default under any other contract it has entered into with CBH Grain or its Related Bodies Corporate; and

l. it has not relied in any way on any representation made by CBH Grain that has not been expressly stated in this Contract.

4.2 The Supplier acknowledges that CBH Grain is relying on the accuracy of the representations and warranties given by the Supplier in clause 4.1 in entering into this Contract and agreeing to provide the Pre-Payment Facility. If any warranty is not correct at the time it is made or when it is deemed to be repeated, by reference to the facts and circumstances then subsisting, CBH Grain may not be able to provide some part or all of the Pre-Payment Facility to the Supplier under this Contract and may otherwise suffer loss or damage.

4.3 The Supplier agrees to indemnify CBH Grain (and its Related Bodies Corporate) from and against all actions, claims, causes of action (whether in contract, tort, statute or any other legal theory), proceedings, demands losses, liabilities, damages, costs and expenses CBH Grain (or its Related Bodies Corporate) suffer as a result of:

- a. having regard to clause 4.2, any of the warranties set out in clause 4.1 being materially false, incorrect or misleading (whether by omission or otherwise); or
- b. a person claiming an interest in the Secured Property regardless of whether the Supplier has notified CBH Grain of that claim other than as a result of the actions of CBH Grain; Or
- c. any misleading information under or in connection with this Contract, including any false declaration that the Supplier or its signatories had due authority to sign.

This indemnity does not apply to any actions, claims, causes of action (whether in contract, tort or statute), proceedings, demands losses, liabilities, damages, costs and expenses CBH Grain (or its Related Bodies Corporate) suffer as a result of CBH Grain's (or its Related Bodies Corporate) Gross Negligence, Wilful Misconduct or fraud.

#### 5. Restricted dealings

The Supplier covenants not to do any of the following without the prior written consent of CBH Grain (such consent not to be unreasonably withheld):

- a. grant any Encumbrance over any Secured Property;
- b. grant any Encumbrance over, or sell, any land on which crops which form part of the Secured Property are or will be growing (unless the secured party or new landowner has entered into such consent deed, access deed, priority deed, deed of covenant or any combination of them as CBH Grain may require); or
- c. dispose or part with possession of any Secured Property until the Amount Owing has been fully repaid, except as permitted in accordance with this Contract.

## 6. Reporting

### 6.1 Material Adverse Event

The Supplier must notify CBH Grain in writing within 7 days of the occurrence of a Material Adverse Event and, if requested by CBH Grain, must promptly provide full details of the Material Adverse Event and its anticipated impact on the Supplier's yield of grain.

### 6.2 Change in control or financial circumstances

- a. The Supplier undertakes to advise CBH Grain in writing of any change in the directors, shareholding or ownership of the Supplier, or any material change in the financial details previously provided to CBH Grain, at the time such change takes place, or as soon as it is reasonably practicable to do so.
- b. Where any change takes place in the ownership or control of the Supplier or the Supplier's financial circumstances which CBH Grain considers, acting reasonably, to be materially adverse to its interests under this Contract, provided 10 Business Days' notice is given by CBH Grain to the Supplier, a Default is deemed to occur under clause 8.

## 7. Insurance

- a. If the Pre-Payment Amount is greater than or equal to \$500,000, or if CBH Grain otherwise requests, the Supplier agrees to:
  - (1) obtain Crop Insurance on or before 30 September of the year in which the Contract Season commences (or such later time specified by CBH Grain) in respect of the crops which form part of the Secured Property with a reputable and independent insurer in the manner and to the extent which is in accordance with prudent business practice relating to crops and comply with and maintain that Crop Insurance until the Committed Tonnes have been delivered into CBH's possession;
  - (2) ensure that CBH Grain is named as a loss payee or an insured under the insurance policy for the Crop Insurance; and
  - (3) provide CBH Grain with a certificate of currency for the Crop Insurance policy showing that CBH Grain is named as a loss payee or insured within 10 Business Days of the commencement of the policy or the date of this Contract, whichever is the earlier.
- b. Unless otherwise agreed by CBH Grain, the Supplier agrees to use the proceeds from any insurance claim in respect of loss of or damage to the Supplier's crops planted or growing for the Contract Season to make an early repayment of the Amount Owing.

## 8. Default

### 8.1 Definition

The Supplier is in Default if:

- a. it fails to deliver the Committed Tonnes in accordance with clause 2.2a and the Supplier does not remedy that breach within 10 Business Days of its occurrence;
- b. it fails to pay any amount payable by it under this Contract within 3 Business Days of it being due;

- c. any of the representations and warranties it makes under clause 4.1 are or become untrue in any material respect and the Supplier does not remedy that breach within 10 Business Days of its occurrence;
- d. it, or any person providing a guarantee of the Amount Owing, becomes Insolvent;
- e. distress is levied or a judgment, order or Encumbrance is enforced or becomes enforceable against any Secured Property including by the seizure of any crops which are Secured Property (whether under section 123 of the PPSA or otherwise);
- f. provided 10 Business Days' notice has been given to the Grantor, a Material Adverse Event occurs;
- g. it is materially in breach of clause 10 and the Supplier does not remedy that breach within 10 Business Days of its occurrence;
- h. it is in breach of clause 5.a, 5.b or 5.c;
- i. it is in default under any other contract with CBH Grain or its Related Bodies Corporate and the Supplier does not remedy that breach within 10 Business Days of its occurrence; or
- j. it is otherwise materially in breach of the terms of this Contract and the Supplier does not remedy that breach within 10 Business Days of its occurrence.

### 8.2 Consequences

- a. If the Supplier is in Default (and, in the case where the Supplier is only in Default under clause 8.1d, the Corporations Act 2001 (Cth) does not prevent CBH Grain from exercising rights because of the Insolvency), CBH Grain may, at its discretion:
  - (1) Nominate any or all of Delivered and Reserved Tonnes to any Sale Contract on the Supplier's behalf and apply the Proceeds from such Sale Contract in accordance with clause 3.2a.;
  - (2) notwithstanding the provisions of clause 3.8, require at any time by notice to the Supplier immediate repayment of the Amount Owing and if such a notice is given, the Supplier shall immediately repay the Amount Owing;
  - (3) immediately suspend, cancel or terminate the Pre-Payment Facility;
  - (4) terminate this Contract; and/or
  - (5) enforce the security interest granted pursuant to clause 27.1 or any other security interest granted to CBH Grain in respect of the Secured Money or Secured Obligations by:
    - A. appointing one or more Receivers; and/or
    - B. doing anything the law allows an owner or a Receiver of the Secured Property to do.
- b. If the Supplier is in Default:
  - (1) interest shall be calculated under clause 3.7 and on any other amount owing to CBH Grain by the Supplier under this Contract at the Default Rate rather than the Rate; and

- (2) if CBH Grain has exercised its rights under clause 8.2a(2) or (5), the Supplier shall pay to CBH Grain on demand all legal and other costs incurred by CBH Grain in seeking to enforce repayment of the Amount Owing.
- c. The Default Rate interest will accrue daily from (and including) the date on which the Default occurs to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.

## **9. Authority**

The Supplier unconditionally and irrevocably authorises CBH Grain to obtain from CBH details of the tonnage of grain delivered by the Supplier to CBH during the Contract Season (including, without limitation, the tonnes of Delivered and Reserved Tonnes and the tonnes of grain which the Supplier has delivered to CBH and has not nominated or transferred to a third party).

## **10. Audit, inspection and information**

- 10.1 CBH Grain may, on the provision of reasonable notice, audit the Supplier's compliance with the terms of this Contract including, without limitation, the accuracy of information provided by the Supplier in relation to the total tonnes of grain harvested by the Supplier. The Supplier unconditionally and irrevocably consents to CBH Grain conducting a full on-farm audit of the Supplier for this purpose and must provide all reasonable assistance, access to property, information and records in any way related to the Supplier's compliance with this Contract, and co-operation necessary for CBH Grain to conduct the audit.
- 10.2 At CBH Grain's request, the Supplier must provide the following information to CBH Grain within 7 days of such request:
  - a. an accurate and true consolidated statement of assets and liabilities and a budget of the Supplier; and
  - b. such further information regarding the financial condition, business and operations of the Supplier or any other information as CBH Grain may reasonably request, including details about any deliveries, or proposed deliveries, of grain.
- 10.3 The Supplier unconditionally and irrevocably consents to CBH Grain, on the provision of reasonable notice, inspecting any property from which the Supplier produces grain for the purpose of assessing the state of the Supplier's crops and the Supplier must provide all reasonable assistance, access and co-operation necessary for CBH Grain to conduct the inspection.
- 10.4 The Supplier:
  - a. acknowledges that information about the Supplier is collected by and may be exchanged between CBH and its Related Bodies Corporate for the purposes of and in connection with this Contract and for providing other services and products to the Supplier; and
  - b. consents to the use and transmission of any such information, and acknowledges that it has read and understands the CBH Privacy Policy available on the Website and that CBH will deal with information supplied by the Supplier in accordance with the terms of that policy.

## **11. Guarantee**

- 11.1 The Supplier will provide such security to CBH Grain as CBH Grain requires in its absolute discretion, including the execution of personal guarantees by any director of the Supplier (if the Supplier is a company or a corporate trustee).

## **12. Additional Pre-Payment Facility**

- 12.1 Subject to CBH Grain's approval, the Supplier may apply to CBH Grain for another pre-payment facility under which it commits further tonnes of grain for delivery, in consideration of CBH Grain making available to the Supplier a pre-payment facility.
- 12.2 CBH Grain may deem any such approved pre-payment facility an amendment or variation to this Contract, in which case the Supplier agrees and acknowledges that these Pre-Payment Advantage Conditions apply to this Contract (as amended or varied).
- 12.3 Any such amendment to this Contract, which results in an increase in the approved pre-payment facility, will incur a fee in accordance with the table set out on the last page of these Pre-Pay Advantage Conditions (being the "Approval Variation Fee" specified in the Table), which shall be added to outstanding amount of the Pre-Payment Facility or payable by the Supplier within 14 days of demand from CBH Grain.

## **13. Liability**

- 13.1 If the Supplier is comprised of more than one person, then the obligations of the Supplier under this Contract will bind each of those persons jointly and severally.
- 13.2 If the Supplier enters into this Contract as a trustee, the Supplier shall be liable under this Contract in its personal capacity and in its capacity as trustee of the trust.
- 13.3 If the Supplier enters into this Contract as a partnership, each partner shall be liable under this Contract individually, and jointly with the other partners.

## **14. GST**

### **14.1 Defined Terms**

Words used in this clause 14 which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.

### **14.2 Supplier's GST liability**

To the extent that the Supplier is required to pay GST on a supply under this Contract:

- a. CBH Grain must pay to the Supplier the amount of GST that the Supplier is liable to pay (subject always to the Supplier providing the relevant information to CBH Grain); and
- b. CBH Grain must give the Supplier:
  - (1) if the Supplier has provided a valid ABN and is registered for GST, a valid Recipient Created Tax Invoice that states the amount of the GST that the Supplier is liable to pay, at the same time that CBH Grain is obliged to pay for the supply; or
  - (2) if the Supplier has provided a valid ABN but is not registered for GST, a payment advice setting out the amount paid to the Supplier excluding GST; or

- (3) if the Supplier has not provided a valid ABN, a payment advice setting out the amount paid to the Supplier excluding GST and subject to any withholding tax in accordance with clause 14.4.

#### 14.3 CBH Grain's GST liability

To the extent that CBH Grain is required to pay GST on a supply under this Contract:

- a. the Supplier must pay to CBH Grain the amount of GST that CBH Grain is liable to pay; and
- b. CBH Grain must give the Supplier a valid Tax Invoice that states the amount of the GST that the Supplier is liable to pay, at the same time that the Supplier is obliged to pay for the supply.

#### 14.4 Withholding Tax

If the Supplier:

- a. does not have an ABN or does not provide a valid ABN to CBH Grain; and
- b. has not provided an executed Statement by a supplier form to CBH Grain,

CBH Grain may be required to withhold 46.5% (or such rate as is prevailing at the time) of the gross supply value by the Australian Taxation Office.

#### 15. Time

Except where otherwise specified in this Contract, time is of the essence in every respect.

#### 16. Governing law

This Contract is governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia and, as applicable, the Commonwealth of Australia.

#### 17. Supervening legislation

Any present or future legislation which operates to vary the Supplier's obligations in relation to this Contract with the result that CBH Grain's rights or obligations are adversely affected is excluded except to the extent that its exclusion is prohibited or rendered ineffective at law.

#### 18. Notices

All notices, requests, demands and other communications under or in connection with this Contract must be in writing, and must be given to the parties at their address or email address shown in the CBH Record or Application, or as otherwise notified. A notice sent by mail is deemed to have been given ten Business Days after being sent in a properly addressed pre-paid envelope. A notice sent by email is deemed to have been given at the time that is 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address.

#### 19. Telephone conversations

The Supplier acknowledges and agrees that any telephone conversation with CBH Grain may be recorded and kept as evidence of the Supplier's instructions unless the Supplier objects at the beginning of the telephone conversation.

#### 20. Assignment

- a. The Supplier must not assign its rights under, or the benefit of, this Contract without the prior written consent of CBH Grain.
- b. CBH Grain must not assign its rights under, or the benefit of, this Contract to any person without the Supplier's consent unless the assignment, transfer or disposal is to any of CBH Grain's Related Bodies Corporate.

#### 21. Variations

Except as otherwise provided in this Contract, this Contract may only be varied by agreement in writing.

#### 22. Costs

Except as otherwise provided in this Contract, each party must bear its own legal and other costs and expenses relating to performance of its obligations under this Contract.

#### 23. Severability

If any term or part of this Contract is or becomes invalid or unenforceable at law, then that term or part will be deemed to be severed from this Contract. Severance will not affect the remainder of this Contract, and the remainder of this Contract will continue to be valid and enforceable.

#### 24. Waiver

Waiver of any power or right arising under this Contract must be in writing and signed by the party granting the waiver. Any failure or delay by a party to exercise a power or right does not operate as a waiver of that power or right.

#### 25. Counterparts

Any of the documents forming part of this Contract may be executed in any number of counterparts, all of which taken together are deemed to constitute one document.

#### 26. Entire agreement

This Contract forms the entire agreement between the parties with respect to the subject matter of this Contract.

#### 27. PPSA

- 27.1 (**Security interest**): The Supplier grants a security interest in the Secured Property to CBH Grain to secure payment of the Secured Money and performance of the Secured Obligations.
- 27.2 (**Section 85 priority**): The parties acknowledge that the security interest granted under clause 27.1 is intended to have the priority conferred by section 85 of the PPSA in respect of any crops which are Secured Property and their proceeds.
- 27.3 (**Financing statements**): CBH Grain may register any security interest contemplated by this Contract on the PPS Register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Secured Property or any part of it, with such expiry dates as CBH Grain determines in its absolute discretion). The Supplier must provide CBH Grain with any information it requires for the purposes of giving effect to such registration.
- 27.4 (**Verification statements**): For the purposes of section 157(3) of the PPSA, the Supplier irrevocably and unconditionally waives its right to receive any



notice from CBH Grain in connection with the registration of a financing statement or a financing change statement.

27.5 (**Costs**): The Supplier agrees that any action taken by CBH Grain in relation to CBH Grain's security interest in the Secured Property is at the cost of the Supplier and must be paid to CBH Grain within 3 Business Days of demand.

27.6 (**Enforcement**): The parties agree that to the extent the law permits:

- a. for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (1) CBH Grain need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
  - (2) sections 142 and 143 of the PPSA are excluded; and
- b. for the purposes of section 115(7) of the PPSA, CBH Grain need not comply with sections 132 and 137(3) of the PPSA.

27.7 (**Further assurances**): The Supplier must take any steps CBH Grain reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest granted to it under this Contract, including, at the request of CBH Grain:

- a. obtaining and giving any consents;
- b. producing and providing any receipts or information in respect of the Secured Property;
- c. signing or procuring the signing of any documents;
- d. facilitating registration of any security interest on the PPS Register;
- e. facilitating the giving of notice to any person, including any person who also has, or appears to have, a security interest over the Supplier or the Secured Property; and
- f. facilitating the exercise of CBH Grain's right in enforcing any security interest.

27.8 (**Benefit**): To the extent that the security interest granted under clause 27.1 secures amounts owing to Related Bodies Corporate of CBH Grain, CBH Grain holds the benefit of this clause 27 and may exercise the rights under this clause 27 on its own behalf and for and on behalf of each of its Related Bodies Corporate but nothing in this clause obliges such Related Bodies Corporate to perform any of the obligations of CBH Grain under this Contract.

**28. Confidentiality**

The parties agree that other than the existence of a security interest in the Secured Property, and details of the relevant crops planted to produce the Committed Tonnes or of the Grain, and the amount (if any) owing by the Supplier to CBH Grain from time to time in relation to this Contract or any Grain, all other information relating to this Contract is subject to a duty of confidence, and must not be disclosed to any person other than:

- a. to a Related Body Corporate of CBH Grain or the Supplier;
- b. to an advisor, employee, banker, auditor or other consultant of CBH Grain or the Supplier; or
- c. as required by any law or by any government body or stock exchange. Except as specifically

permitted under this clause, neither party may disclose any information in connection with this document under section 275(4) of the PPSA unless section 275(7) of the PPSA applies.

**29. Right of set off**

- a. Subject to these Pre-pay Advantage Conditions, any amounts owing by CBH Grain or any of its Related Bodies Corporate to the Supplier whether under this Contract or otherwise and whether or not due for payment, may, at the election of CBH Grain, be set off against any amount due for payment by the Supplier to CBH Grain or any of its Related Bodies Corporate, whether under this Contract or otherwise provided that CBH Grain will give the Supplier prior written notice of its intention to effect any set-off together with sufficient details to allow the Supplier to identify the amounts to be set-off.
- b. CBH Grain holds the benefit of this clause 29, and may exercise the rights under this clause, on its own behalf and for and on behalf of each of its Related Bodies Corporate but nothing in this clause obliges such Related Bodies Corporate to perform any of the obligations of CBH Grain under this Contract.

**30. Further assurances**

Each party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this Contract and the transactions contemplated by it.

<b>Table of GST exclusive fees</b>	
The following GST exclusive fees apply for discretionary services required or utilised by or on behalf of a Supplier:	
Column 1: Service	Column 2: Fee
Approval Fee	The greater of: (i) 0.15% of the Pre-Payment Amount; and (ii) \$500.  The Application Fee will (be added to the outstanding amount of the Pre-Payment Facility.
Approval Variation Fee	The greater of: (i) 0.15% of the amount by which the Pre-Payment Amount may have increased; and (ii) \$250.
Line Fee	0.50% of the approved Pre-Payment Amount (as that is adjusted under this Contract).
Administrative Variation Fee	\$200 for each variation made to this Contract.