

CBH GRAIN COMMODITY SWAPTION

GENERAL TERMS

These Swaption General Terms must be read with each other document comprising a Swaption Contract.

1. Definitions and Interpretation

1.1 Definitions

Unless otherwise stated:

“**ABN**” means Australian Business Number.

“**AFCA**” refers to the Australian Financial Complaints Authority.

“**Authorised Persons**” has the meaning given in clause 11(a).

“**Business Day**” means a day on which banks are ordinarily open for business in Perth, Western Australia.

“**Calculation Date**” means the date for calculation of the Cash Settlement Amount for a Reference Swap, as specified in a Reference Swap Confirmation. It will be the date that is 3 Business Days before the last Business Day of the month preceding the Contract Month.

“**Cash Settlement Amount**” means the amount payable by one party to the Swaption to the other, based on the difference between the Fixed Price and the CRP or Early Closure Price for the underlying commodity (as applicable) in respect of a Reference Swap (less any Discount, if applicable).

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

“**CBH Grain**” means CBH Grain Pty Ltd ABN 39 089 394 883 and its successors and assigns, operating under AFS License Number 269743.

“**CBH Group**” means CBH Grain and all of its Related Bodies Corporate, including CBH.

“**Commencement Date**” means the day on which the Swaption Contract commences, as specified in the Swaption Offer Letter.

“**Commodity Amount**” means the portion of the Notional Amount that You exercise under the Swaption in respect of a Reference Swap.

“**Contract Month**” has the meaning given in clause 4.2(b)(iii).

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

“**CRP**” is a price determined by CBH Grain by reference to the price quoted for the previous night’s settlement rate of the Relevant Future on the Relevant Futures Exchange and converted to an AUD per metric tonne equivalent (which conversion will be at the hedge settlement rate Australian fix 10am (**‘HRSA’**) for the relevant currency as displayed daily on the Reuters Page HSRA at 10am Australian eastern standard time on the next Business Day after the Calculation Date).

“**Credit Limit**” means:

- (a) the amount prescribed by CBH Grain as Your credit limit in the Swaption Offer Letter; or
- (b) any other amount which CBH Grain notifies You during the Exercise Period, provided that in the event the amount is reduced, CBH Grain will provide You with 14 days’ prior notification.

“**Default Event**” has the meaning given in clause 6.1(a).

“**Discount**” means an amount calculated by CBH Grain acting reasonably in its sole discretion, which is based on the number of days between the Early Payment Date and the Payment Date, and the discount rate reasonably determined by CBH Grain having regard to the adjusted market interest rates applicable on the days between the Early Payment Date and the Payment Date.

“**Early Calculation Date**” means:

- (a) if You ask to bring forward the Calculation Date in accordance with clause 5.2(a)(i), the date on which You accept the Early Closure Price; or
- (b) if CBH elects to bring forward the Calculation Date in accordance with clause 5.2(a)(ii), the date which CBH notifies You.

“**Early Close Out Advice**” means the confirmation provided by CBH Grain to You, as at the Early Calculation Date, confirming the details used to calculate a Cash Settlement Amount in respect of a Reference Swap following a change to the Calculation Date or Payment Date of that Reference Swap.

“**Early Closure Price**” means the price that will be used to calculate the Cash Settlement Amount in respect of an Early Calculation Date determined for a particular Reference Swap. The price will be based on:

- (a) the prices quoted for the Relevant Future on the Relevant Futures Exchange and converted to an AUD per metric tonne equivalent (which conversion will be based on the appropriate forward foreign exchange rate for the Calculation Date determined for the Reference Swap);
- (b) market volatility and liquidity at the time of calculating the price; and
- (c) the cost of the provision of CBH Grain’s services to You and other administration and brokerage costs incurred by CBH Grain, to the extent that these are payable by You under any provision of the Swaption Contract and remain unpaid.

“**Early Payment Date**” means:

- (a) if You are making a payment to CBH Grain, 30 days after; or
- (b) if CBH Grain is making a payment to You, 7 days after:

the earlier of:

- (c) any Early Payment Date requested by You;
- (d) the Calculation Date;

- (e) the last Business Day in March after the Early Calculation Date; and
- (f) the date determined by CBH Grain at any time and notified to You if CBH Grain elects to do so:
 - (i) if You exceed Your Credit Limit;
 - (ii) in the event of a Default Event; or
 - (iii) if a right to terminate otherwise arises under any provision of the Swaption Contract.

“Exercise Period” means all Business Days from and including the Commencement Date to and including the Maturity Date.

“Fixed Price” means the fixed price applicable to Your commodity as determined by CBH Grain by taking the following factors into account:

- (a) the live price quoted on the Relevant Futures Exchange for the Relevant Future;
- (b) the current forward foreign exchange rate for the Calculation Date;
- (c) market volatility and supply and demand at the time of calculating the fixed price;
- (d) the cost of the provision of CBH Grain's services to You and other administration and brokerage costs incurred by CBH Grain, to the extent that these are payable by You under any provision of the Swaption Contract and remain unpaid;
- (e) the Reference Swap period; and
- (f) CBH Grain's risk margin.

“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.

“Grower Service Centre” means the department that provides services to growers for all members of the CBH Group. The Grower Service Centre may be contacted by calling 1800 199 083 or by emailing growerservicecentre@cbh.com.au

“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).

“Harvest Season” means the season during which the delivery month of a swap occurs, with each season comprising the period from 1 April of a given year to 31 March of the following year.

“Indirect Loss” means indirect, remote or unforeseeable loss, or any loss in the nature of loss of profit or revenue, loss of opportunity, loss of markets or access to markets, loss of goodwill or business reputation, business

interruptions, failure to supply or other similar pure economic loss, or punitive damages howsoever arising.

“Insolvent” means, in respect of a party, a party that is insolvent or insolvent under administration (each as defined in the Corporations Act), or is in receivership, in receivership and management, under administration, in liquidation, in provisional liquidation, or is subject to statutory management or judicial management, is wound up, subject to any arrangement, assignment or composition for the benefit of its creditors, or dissolved or becomes subject to any proceedings which is analogous to any of the above under foreign law.

“Interest Rate” means on a particular date the rate of interest being 5% above the rate published on the Australian Financial Markets Association webpage BBSW as at 11 am on the first date on which interest accrues on that payment, or if the rate is not published on the Australian Financial Markets Association webpage BBSW, the rate determined by CBH Grain, acting reasonably, to be the nearest equivalent rate (plus the relevant mark-up) having regard to prevailing market conditions.

“Knock-out Event” means an event for which CBH determines that:

- (a) You have exceeded Your Credit Limit;
- (b) You are the party in respect of which a Default Event has occurred, and such default is continuing; or
- (c) permitting You to exercise Your Swaption will expose CBH Grain to an unacceptable level of risk, having regard to the market conditions (including volatility) in respect of the relevant commodity type (with an unacceptable level of risk deemed to exist if: (i) the Relevant Future on the Relevant Futures Exchange is limit bid or offered; (ii) in CBH's reasonable opinion it is not possible to unwind hedges in respect of the relevant commodity type; or (iii) the Relevant Future Exchange has restricted or suspended trading and trading has not resumed prior to the scheduled closing time).

“Maturity Date” means the last date by which a Reference Swap may be determined under Your Swaption, notified by CBH Grain to You and confirmed in the Swaption Offer Letter, subject to extension if agreed by You and CBH Grain.

“Minimum Exercise Amount” means 50 metric tonnes.

“Notional Amount” of the Swaption means the amount in metric tonnes of a particular grain that is specified as the Notional Amount in the Swaption Offer Letter.

“Outstanding Reference Swap” has the meaning given to it in clause 6.2(a).

“Payment Date” means the date that is 3 Business Days after the Calculation Date specified in the relevant Reference Swap Confirmation, unless otherwise varied in accordance with these Swaption General Terms. For the avoidance of doubt, it will be the date that is the last Business Day of the month preceding the Contract Month.

"Privacy Policy" means the policy on, and accessible from, the CBH website accessible from www.cbh.com.au. A copy of the policy may be obtained from Grower Service Centre.

"Reference Swap" means the reference swap that is determined when You exercise the Swaption.

"Reference Swap Confirmation" means the confirmation provided to You by CBH Grain in respect of a Reference Swap.

"Related Body Corporate" has the meaning given in section 50 of the Corporations Act.

"Relevant Future" means:

- (a) in the case of wheat, wheat futures contracts; and
- (b) in the case of canola, canola futures contracts.

"Relevant Futures Exchange" means:

- (a) in the case of wheat, either the Chicago Board of Trade (commonly referred to as 'CBOT') or Marché à Terme International de France (more commonly referred to as 'MATIF') as specified by You when indicating to CBH that You wish to exercise Your Swaption and confirmed in the Reference Swap Confirmation; and
- (b) in the case of canola, either the Intercontinental Exchange (commonly referred to as 'ICE') or Marché à Terme International de France (more commonly referred to as 'MATIF') as specified by You when indicating to CBH that You wish to exercise Your Swaption and confirmed in the Reference Swap Confirmation.

"Swaption" means a Swaption between CBH Grain and You, as described in the Swaption Offer Letter.

"Swaption Application" means the form provided by CBH Grain to You setting out Your personal details, which is required to be completed by You in order for CBH Grain to decide whether to provide a Swaption Offer Letter to You.

"Swaption Contract" means these Swaption General Terms, the Swaption Application, the Swaption Offer Letter, any Reference Swap Confirmation and any Early Close Out Advice.

"Swaption General Terms" means the terms set out in this document.

"Swaption Offer Letter" means the letter that will be provided by CBH Grain to You upon approval of Your Swaption Application or as an offer to enter into a Swaption.

"Wilful Misconduct" means an intentional and conscious disregard of any material provision of this Swaption 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 Swaption Contract or under any law.

"You" or **"Your"** means a party to the Swaption Contract other than CBH Grain. If there are more than one, "You" means each of them individually and every two or more of them jointly. You and Your includes your successors and assigns.

1.2 Interpretation

In these Swaption General Terms unless the contrary intention appears:

- a) a reference to a person includes a reference to a body corporate;
- b) a reference to a paragraph or clause is a reference to a paragraph or clause in these Swaption General Terms;
- c) a reference to these Swaption General Terms or any other instrument includes any variation or replacement of them;
- d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- e) 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;
- f) "includes" in any form is not a word of limitation;
- g) the singular includes the plural and vice versa.

Nothing in the Swaption Contract is to be construed against a party because that party prepared or put forward the Swaption Contract or any part of the Swaption Contract.

2. Scope of Swaption General Terms

- a) These Swaption General Terms (along with each other document comprising part of the Swaption Contract) govern the Swaption entered into between You and CBH Grain before or after the time You receive these Swaption General Terms, even if no reference is made to these Swaption General Terms in any other document comprising part of the Swaption Contract.
- b) The Swaption Contract constitutes a single agreement between You and CBH Grain.

3. Entering a Swaption

- a) Prior to entering into a Swaption, You must:
 - i) have had assessed and approved by CBH Grain in its absolute discretion Your financial position for credit approval purposes, in accordance with its standard credit evaluation and approval process;
 - ii) have had assessed and determined by CBH Grain in its absolute discretion that You are a wholesale client under the Corporations Act; and
 - iii) execute and provide to CBH Grain the Swaption Application.
- b) If You have provided a duly completed and executed Swaption Application and You have been approved for credit approval purposes, CBH Grain will send You (electronically) the Swaption Offer Letter setting out certain details of the

Swaption to be entered into between You and CBH Grain.

- c) To accept the offer to enter into the Swaption as set out in the Swaption Offer Letter, You must accept the terms set out in the Swaption Offer Letter by returning to CBH Grain an executed copy of the Swaption Offer Letter within the period of time stated in the Swaption Option Letter (or if no period is stated, within 7 days of the date of the Swaption Offer Letter).
- d) In the event of any inconsistency between a Swaption Offer Letter and these Swaption General Terms, the Swaption Offer Letter will prevail to the extent of the inconsistency for the purpose of the Swaption.

4. Electing to exercise Your rights under a Swaption

4.1 Rights under a Swaption

- a) Under Your Swaption, You may (but are not obliged to) exercise all or less than all of Your unexercised Notional Amount (provided that Your requested Commodity Amount is equal to or more than the Minimum Exercise Amount, but less than or equal to any unexercised sub-limit if any (as specified in Swaption Offer Letter)) on one or more days in the Exercise Period in accordance with clause 4.2. The sub-limit (if applicable) represents the maximum Commodity Amount which can be exercised under the Swaption for a given commodity for a given season.
- b) You may exercise Your Swaption multiple times over the life of the Swaption, up to the amount of Your total Notional Amount. Each time You exercise the Swaption, a Reference Swap is determined in respect of the relevant Commodity Amount by reference to which payment obligations due under the Swaption are calculated.
- c) Your right to exercise Your Swaption is conditional upon a Knock-out Event not having occurred and continuing as of the time of such exercise.

4.2 Exercising Your Swaption

- a) If You wish to exercise Your Swaption, You must indicate this to CBH Grain during a telephone call with Your Swaption Representative (which may be recorded) during the Exercise Period.
- b) During the telephone call with the Swaption representative You must indicate the following details:
 - i) Commodity Amount;
 - ii) commodity type; and
 - iii) the month which is to be used for the purposes of determining key events upon exercise of the Swaption Contract (**Contract Month**).
- c) CBH will provide the Fixed Price which would apply to the specific terms requested in the indication given under paragraph b).
- d) You can elect to exercise Your Swaption and determine a Reference Swap by accepting the Fixed Price provided by CBH under c).

- e) Upon You making such election, CBH Grain will send You a Reference Swap Confirmation setting out the details in respect of the Reference Swap, including the Commodity Amount, commodity type, Calculation Date and Fixed Price.
- f) Within one Business Day of receiving the Reference Swap Confirmation, You must:
 - i) acknowledge that the Reference Swap Confirmation is correct by signing a copy and delivering it to CBH Grain, or using any other method of acknowledgement that has been agreed in writing between You and CBH Grain; or
 - ii) notify CBH Grain in writing that You believe that the details of the Reference Swap are not correctly set out in the Reference Swap Confirmation.
- g) The Reference Swap Confirmation will be deemed to correctly set out the details of that Reference Swap unless (i) You have notified CBH Grain in accordance with clause 4(h)(ii) of any error You believe the Reference Swap Confirmation contains and the Reference Swap Confirmation does in fact contain that error or (ii) at any other time either You or CBH Grain notifies the other of an error in the Reference Swap Confirmation and You and CBH Grain agree that the Reference Swap Confirmation does in fact contain that error.
- h) Once You confirm Your acceptance of the Fixed Price provided by CBH Grain under c), the exercise of the Swaption in accordance with those details is irrevocable and unconditional. This is not conditional on:
 - i) the issuance of a Reference Swap Confirmation;
 - ii) Your receipt of a Reference Swap Confirmation; or
 - iii) Your acknowledgment or deemed acknowledgment that the Reference Swap Confirmation is correct in accordance with clause 4.2(f).

Accordingly, Your failure to receive or acknowledge that the Reference Swap Confirmation is correct does not invalidate or otherwise prejudice the determination of a Reference Swap.

5. Payments under exercise of a Swaption

5.1 Standard settlement

Unless clauses 5.2 or 5.3 apply, in respect of each Reference Swap determined upon the exercise of Your Swaption, an amount equal to the Cash Settlement Amount (expressed as a positive amount) will be calculated on the Calculation Date. The Cash Settlement Amount is calculated in accordance with the following formula:

$$\text{Cash Settlement Amount} = (\text{Fixed Price} - \text{CRP as of the Calculation Date}) \times \text{Commodity Amount}$$

5.2 Bringing forward the Calculation Date

- a) CBH Grain will bring forward the Calculation Date in respect of a particular Reference Swap to the Early Calculation Date if:
- i) You ask to change the Calculation Date for that Reference Swap by notifying Your Swaptions representative on free-call 1800 199 083 and You accept the Early Closure Price (determined by CBH Grain acting reasonably) that CBH Grain provides to You in respect of that Early Calculation Date, or You elect to do so in the event of a Default Event or if a right to terminate otherwise arises under any provision of the Swaption Contract in which case CBH Grain will notify You of the Early Closure Price (determined by CBH acting reasonably) that CBH will provide to You in respect of that Early Calculation Date; or
 - ii) CBH Grain elects to do so:
 - (1) if You exceed Your Credit Limit;
 - (2) in the event of a Default Event; or
 - (3) if a right to terminate otherwise arises under any provision of the Swaption Contract,

in which case CBH Grain will notify You of the Early Closure Price (determined by CBH acting reasonably) that CBH will provide to You in respect of that Early Calculation Date.
- b) If clause 5.2(a) applies, the Cash Settlement Amount is calculated in accordance with the following formula:

$$\text{Cash Settlement Amount} = (\text{Fixed Price} - \text{Early Closure Price}) \times \text{Commodity Amount}$$

5.3 Bringing forward the Payment Date

- a) If the Calculation Date of a particular Reference Swap is brought forward to the Early Calculation Date in accordance with clause 5.2, You will have an Early Payment Date, in which case an amount equal to the Cash Settlement Amount (expressed as a positive amount) will be due and payable on the Early Payment Date.
- b) If clause 5.3(a) applies, the Cash Settlement Amount will be calculated in accordance with the following formula:

$$\text{Cash Settlement Amount} = [(\text{Fixed Price} - \text{Early Closure Price}) \times \text{Commodity Amount}] + \text{Discount}$$

5.4 Payments

- a) If the Cash Settlement Amount is a positive amount, then by the Payment Date or Early Payment Date (as applicable) CBH Grain will, subject to any set-off occurring under clause 5.6a) and the application of clause 5.7, credit an account held in Your name with an amount equal to the Cash Settlement Amount. If the Cash Settlement Amount is a negative amount, then CBH Grain will issue to You an invoice for an amount equal to the Cash Settlement Amount (expressed as a positive amount), and by the Payment Date or Early Payment Date (as applicable) that amount must be paid by You to CBH Grain.

- b) Any payment to be made by You under the Swaption Contract must be made and received by CBH Grain in cleared and immediately available funds, free and clear of taxes and without any set off or deduction.
- c) If You have provided authority to CBH Grain to directly debit any bank account held by You, CBH Grain will apply such authority to settle the payable amount under the Swaption Contract.
- d) Without limiting clause 5.4([Error! Reference source not found.](#)) and subject to these Swaption General Terms, CBH Grain's obligation to make a payment to You under a Swaption on a date is conditional on CBH Grain receiving payment in cleared and immediately available funds of all amounts which are payable by You to CBH Grain on or before that date provided that CBH Grain will give You prior written notice of Your obligation to make payment to CBH Grain.
- e) Prior to the settlement of payment obligations under a Swaption where CBH Grain is required to make a payment, You must provide Your settlement instructions to CBH Grain, including details of any accounts to which the payment is to be made. If You fail to provide this information CBH Grain may, at its discretion, take such action as it considers appropriate in the circumstances.
- f) If, at any time, CBH Grain determines (acting reasonably) that the performance of any of its obligations under the Swaption Contract is, will be, or may be impossible or illegal for any reason (including due to an inability to convert a currency, or make payments or transfers in a currency or in a place or an inability to make a calculation or determination needed for the performance of an obligation) then CBH Grain may, by notice to You, do any of the following as it chooses (to be determined acting reasonably):

- i) postpone the date for the performance of the obligations affected until such date as it determines that they are no longer impossible or illegal;
- ii) change the terms of the Reference Swap or Swaption Contract to other terms which CBH Grain believes are economically equivalent and the performance of which is not illegal or impossible; or
- iii) bring forward the Calculation Date in respect of any Reference Swap affected so that clause 5.2(a)(ii) applies to that Reference Swap.

Also, at any time CBH Grain may, acting reasonably, choose to terminate under clause 5.4(e)(iii), even if it has already chosen postponement or a change of terms under clause 5.4(e)(i) or (ii) respectively. Nothing in this clause 5.4(e) limits any other rights of CBH Grain under the Swaption Contract or otherwise at law.

5.5 Late Payment

- a) If You or CBH Grain fail to pay any amount to the other party in full required under the Swaption Contract by the due date, CBH Grain or You, as applicable, may charge interest on the unpaid amount at the Interest Rate calculated daily from

the due date until payment is received by CBH Grain or You. Interest payable under this clause 5.5(a) must be paid on demand from the party entitled to receive it.

5.6 Right of set off

- a) Subject to these Swaption General Terms, any amounts owing by CBH Grain or any of its Related Bodies Corporate to You, whether under the Swaption Contract or otherwise, may at CBH Grain's election be set off against any amounts owing by You to CBH Grain or any of its Related Bodies Corporate, whether under the Swaption Contract or otherwise provided that CBH Grain will give You prior written notice of its intention to effect any set-off together with sufficient details to allow You to identify the amounts to be set-off.
- b) CBH Grain holds the benefit of this clause 5.6 and may exercise the rights under this clause 5.6 on its own behalf and for and on behalf of its Related Bodies Corporate, but nothing in this clause obliges such Related Bodies Corporate to perform any of its obligations under the Swaption Contract.

5.7 Withholding funds

If You have a potential liability to CBH Grain or any of its Related Bodies Corporate under any other contract, to the extent You make a request to CBH Grain, CBH Grain may in its discretion and notwithstanding any other provision of the Swaption Contract retain an amount equivalent to Your potential liability until such time as Your potential liability has either:

- a) crystallised and been paid; or
- b) ceased to exist.

5.8 Overpayment

If, after payment in connection with the Swaption Contract, either party calculates, in accordance with this Swaption Contract, that the party that received payment had no right to some or all of that amount (including where a party is overpaid) then, despite any other provision of the Swaption Contract, the party that made the payment may recover from the receiving party that amount. If the receiving party fails to repay the amount outstanding within 30 days of demand, it must pay the amount outstanding plus interest on that amount at the Interest Rate from the date that the amount is outstanding until (but not including) the date upon which the amount is repaid.

5.9 Credit Limit

The aggregate of any money:

- a) payable by You to CBH Grain under the Swaption Contract which is unpaid at the relevant time; and
- b) that would be payable by You to CBH Grain under all Reference Swaps if the Calculation Date of all the Reference Swaps were immediately brought forward to the Early Calculation Date,

will be used to determine whether at any time You have exceeded Your Credit Limit under the Swaption Contract.

5.10 Fees, costs and other expenses

You must pay CBH Grain for costs and expenses in enforcing or taking any other action in connection with CBH Grain's rights if CBH Grain becomes entitled to take action under the Swaption Contract.

5.11 Early Close Out Advice

- a) If a Calculation Date or Payment Date is brought forward under this clause 5, CBH Grain will send You an Early Close Out Advice.
- b) Within one Business Day of receiving the Early Close Out Advice, You must:
 - i) acknowledge that the Early Close Out Advice is correct by signing a copy and delivering it to CBH Grain, or using any other method of acknowledgement that has been agreed in writing between You and CBH Grain; or
 - ii) notify CBH Grain in writing that You believe that the details of the change to the Calculation Date or Payment Date are not correctly set out in the Early Close Out Advice.
- c) The Early Close Out Advice will be deemed to correctly set out the details of the relevant payment obligation unless (i) You have notified CBH Grain in accordance with clause 5.11(b)(ii) of any error You believe the Early Close Out Advice contains and the Early Close Out Advice does in fact contain that error or (ii) at any other time either You or CBH Grain notifies the other of an error in the Early Close Out Advice and You and CBH Grain agree that the Early Close Out Advice does in fact contain that error.
- d) Once a change to the Calculation Date or Payment Date occurs in accordance with these Swaption General Terms, the change is irrevocable and unconditional. This is not conditional on:
 - i) the issuance of an Early Close Out Advice;
 - ii) Your receipt of an Early Close Out Advice; or
 - iii) Your acknowledgment or deemed acknowledgment that the Early Close Out Advice is correct in accordance with clause 5.11(c).

Accordingly, Your failure to receive or acknowledge that the Early Close Out Advice is correct does not invalidate or otherwise prejudice the change to the Calculation Date or Payment Date.

6. Default

6.1 Events of Default

- a) A party is in default if:
 - i) the party fails to pay on time any money payable to the other party under the Swaption Contract and the failure to pay is not rectified for a period of 1 Business Day after notice of the failure is given to the party;
 - ii) any of the representations and warranties made by the party in connection with the Swaption Contract is untrue or misleading in any material respect and the party does not

- remedy that breach within 10 Business Days of its occurrence;
- iii) the party becomes Insolvent;
 - iv) the party is otherwise in breach of any of the provisions of the Swaption Contract, and the breach is not remedied for a period of 10 Business Days after notice of the breach is given to the party by the other party;
 - v) the party breaches any term of any other agreement with the other party or a related body corporate of the other party (as defined in the Corporations Act), after giving effect to any applicable grace period and the party does not remedy that breach within 10 Business Days of its occurrence; or
 - vi) the party dies, if the party is an individual, (each a **Default Event**).
- b) The party in respect of whom the Default Event occurs (the **defaulting party**) must notify the other party (the **non-defaulting party**) if it becomes aware of the occurrence of a Default Event in respect of it as soon as reasonably practicable (and in any event within 3 days of that party becoming aware of the Default Event).

7. Warranties

- a) Each party represents and warrants that:
 - i) it has the power to enter into the Swaption Contract;
 - ii) the Swaption Contract is (or once entered into will be) binding on it; and
 - iii) it enters into the Swaption Contract as a principal and not as a trustee; unless the contrary is disclosed in writing to the other party before an offer made in a Swaption Offer Letter is accepted.
- b) You represent and warrant to CBH Grain that:
 - i) in entering into the Swaption Contract You have relied on Your own skill and judgment and have taken, or have appropriately considered taking, independent advice on the Swaption Contract;
 - ii) You have not relied in any way on the skill or judgment of CBH Grain or any of CBH Grain's staff or representatives as advice or a recommendation or guarantee of result in respect of the Swaption Contract;
 - iii) You have not relied in any way on any representation made by CBH Grain that has not been expressly stated in these Swaption General Terms;
 - iv) You fully understand and accept the pricing risks involved in the Swaption Contract (and any Reference Swap determined upon exercise of the Swaption);
 - v) anything You have stated in a Swaption Application is true and correct;
 - vi) You are entering into and exercising the Swaption Contract for the sole purpose of hedging Your actual or reasonably expected physical position;

- vii) You are 'wholesale client' under the Corporations Act;
- viii) You fully understand the legal and financial implications of being a wholesale client under the Corporations Act; and
- ix) You acknowledge and accept that the protection provisions of the Corporations Act which apply to retail clients will not apply to You in connection with the Swaption Contract.

You acknowledge that CBH Grain, in entering into the Swaption Contract, is relying on the accuracy of the warranties given by You in this clause 7b). 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 services to You under the Swaption Contract, or equivalent services, and may otherwise suffer loss or damage.

- c) Each of these representations and warranties is deemed to be repeated on each date on which You elect to exercise Your Swaption and CBH determines a Reference Swap, in each case with reference to the facts and circumstances then subsisting.

8. Liability and Indemnity

- a) Except as provided by law or as expressly set out in any other provision of the Swaption Contract, the maximum liability of CBH Grain and its Related Bodies Corporate to You under or in connection with this Swaption Contract is limited to a maximum of \$100,000 for a single event and an aggregate of \$250,000.
- b) Subject to clause 7, and so far as the law permits neither CBH Grain, any Related Body Corporate, nor You will be under any liability for any Indirect Loss arising out of or in connection with the Swaption Contract.
- c) Except as specified in the Swaption Contract, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, by CBH Grain or any Related Body Corporate, are excluded to the fullest extent permitted by law.
- d) You agree to indemnify CBH Grain (and its Related Bodies Corporate) from and against all 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:
 - i) having regard to clause 7, any of the warranties set out in clause 7 being false, incorrect or misleading (whether by omission or otherwise); or
 - ii) any breach of the Swaption Contract.

The indemnity in this clause 8d) 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.

9. Confidentiality

The parties agree that other than the amount (if any) owing by You to CBH Grain or by CBH Grain to You from time to time in relation to the Swaption Contract all other information relating to the Swaption 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 You;
- b) to an advisor, employee, banker, auditor or other consultant of CBH Grain or You; or
- c) as required by any law or by any government body or stock exchange.

10. GST

- a) Unless expressly included, the consideration under the Swaption Contract does not include GST.
- b) To the extent that You are required to pay GST on a supply under the Swaption Contract:
 - i) CBH Grain must pay to You the amount of GST that You are liable to pay (subject always to You providing all relevant information to CBH Grain); and
 - ii) CBH Grain must provide to You:
 - (1) a valid Recipient Created Tax Invoice that states the amount of the GST that You liable to pay, at the same time that CBH Grain is obliged to pay for the supply; or
 - (2) if You have provided a valid ABN but are not registered for GST, a payment advice setting out the amount paid to You excluding GST; or
 - (3) if You have not provided a valid ABN, a payment advice setting out the amount paid to You excluding GST and subject to any withholding tax in accordance with clause 9(d)(g).
- c) To the extent that CBH Grain is required to pay GST on a supply under the Swaption Contract:
 - iii) You must pay to CBH Grain the amount of GST that CBH Grain is liable to pay; and
 - iv) CBH Grain must give You a valid Tax Invoice that states the amount of the GST that You are liable to pay, at the same time that You are obliged to pay for the supply.
- d) If You:
 - v) do not have an ABN or do not provide a valid ABN to CBH Grain; and
 - vi) have 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.

11. Privacy

- a) Information about You is collected for the purposes of providing grain storage, handling, transport, marketing and accumulations services to You. The information may be provided to CBH Grain's subsidiaries and holding entities. Your contact details may also be used to communicate issues that could be of interest to You as a shareholder in CBH.
- b) You acknowledge that You consent to the use and transmission of any information (including personal information), and that You have read and understood our Privacy Policy at www.cbh.com.au and that we will deal with information supplied by You in connection with Your use of the website in accordance with the terms of that policy.

12. Authorised Persons

- a) You may give CBH Grain written notice of persons authorised to act on Your behalf under the Swaption Contract and to sign Reference Swap Confirmations and other documents in connection with the Swaption Contract on Your behalf (**Authorised Persons**).
- b) You must promptly notify CBH Grain in writing of any subsequent changes to any Authorised Persons notified under paragraph a). Any such notification will not be effective until received and processed by CBH Grain.
- c) Any consultant that is recorded in 'GRID' (Co-operative Bulk Handling Limited's online system which gives You the ability to review and update business and account information) as having authority to market grain on Your behalf is deemed to be an Authorised Person.
- d) You must ensure that any Authorised Person complies strictly with all obligations imposed on You and an Authorised Person by these Swaption General Terms.
- e) You acknowledge that You remain liable for all acts and omissions of each Authorised Person, and that it is Your responsibility to ensure that each Authorised Person has the appropriate authority as required by You and acts within this authority.

13. Trustee provisions

- a) This clause 13 applies if You are the trustee of a trust.
- b) You acknowledge that You enter into a Swaption Contract in Your personal capacity and in Your capacity as trustee of the trust and You are liable both personally and in Your capacity as trustee.
- c) You declare that:
 - i) a Swaption Contract is for the benefit of the trust;
 - ii) You are the sole trustee of the trust (together with anyone else who enters into a Swaption Contract as trustee);

- iii) You have authority to enter into a Swaption Contract and comply with its terms;
 - iv) You have not, and never have been, in default under the trust deed of the trust;
 - v) You have the right to be fully indemnified out of the assets of the trust for obligations incurred under a Swaption Contract and the trust property is sufficient to satisfy that right of indemnity and all other obligations for which You are entitled to be indemnified out of trust property;
 - vi) no action has been taken or proposed to terminate the trust nor has any event for the vesting of the trust property occurred; and
 - vii) You have not delegated any of Your powers as trustee or exercised any power of appointment.
- d) You must notify CBH Grain in writing before (if possible) or as soon as reasonably possible after (if prior notice is not possible) anything happens which would mean You could not truthfully repeat each declaration in clause 13c).
- e) You must:
- i) comply with Your obligations as trustee of the trust; and
 - ii) ensure that You remain the sole trustee of the trust (with anyone else who enters into a Swaption Contract as trustee).
- f) You must not do anything, or permit anything to be done or fail to do anything, which may:
- i) effect or facilitate the variation of the trust deed of the trust;
 - ii) resettle, set aside or distribute any of the trust property; or
 - iii) result in the trust property being mixed with other property.

14. Dispute Resolution

- a) If You have any complaint regarding the Swaption Contract:
- i) You may telephone CBH Grain on free-call 1800 199 083 or write to CBH Grain; and
 - ii) a CBH Grain representative will acknowledge Your complaint within one Business Day of receiving it (or, if this is not reasonably practicable, as soon as reasonably practicable after receiving it) and advise You about CBH Grain's internal complaint handling procedure and the expected timeline for handling Your complaint.
- b) CBH Grain will provide a response to the complaint as soon as reasonably practicable and in any case within 30 days of receiving the complaint (and, if the complaint is rejected (in whole or part), the reasons for the rejection), unless there is no reasonable opportunity for CBH Grain to provide a response within 30 days in which case CBH Grain will give written notice to You regarding the delay.

- c) If You are not satisfied with CBH Grain's handling of or decision regarding Your complaint, CBH Grain agrees to You referring the complaint to CBH Grain's external financial services dispute resolution service provider, Australian Financial Complaints Authority ("AFCA").
- d) AFCA can be contacted at:
- Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001
Website: www.afca.org.au
Email: info@afca.org.au
Phone: 1800 931 678
- e) CBH Grain agrees to You using the AFCA service free of charge.

15. General

a) Joint and several liability

If You consist of more than one party, Your liability under the Swaption Contract is joint and several.

b) Notices

All notices, requests, demands and other communications under or in connection with the Swaption Contract must be in writing, and must be given to the parties at their address or email address shown on the Swaption Offer Letter or as otherwise notified (unless the Swaption Contract expressly provides otherwise). 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.

c) Telephone conversations

You consent to CBH Grain recording any telephone conversation with You or Your Authorised Persons as evidence of Your instructions, unless You object at the beginning of the telephone conversation. For the avoidance of doubt, at the beginning of or during any telephone conversation, CBH Grain will not seek Your or Your Authorised Person's consent to record the telephone conversation on the basis that Your consent has been given under this paragraph (c).

d) Supervening legislation

Any present or future legislation which operates to vary Your obligations in relation to the Swaption 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.

e) Costs

Except as otherwise provided in the Swaption Contract, each party must bear its own legal and

other costs and expenses relating to performance of its obligations under the Swaption Contract.

f) **Severability**

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

g) **Waiver**

Waiver of any power or right arising under the Swaption 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.

h) **Assignment**

You must not assign, mortgage, charge, declare a trust over or otherwise deal with any of Your rights under the Swaption Contract without the prior written consent of CBH Grain. CBH Grain must not assign its rights under, or the benefit of, the Swaption Contract without Your prior written consent unless the assignment, transfer or disposal is to any of CBH Grain's Related Bodies Corporate.

i) **Time**

Except as otherwise specified in the Swaption Contract, time is of the essence in connection with anything to be done under the Swaption Contract.

j) **Entire agreement**

The Swaption Contract constitutes the whole agreement between the parties and supersedes all prior discussions and representations (including, for the avoidance of doubt, anything stated in any information memorandum You have been given or obtained in connection with the Swaption).

k) **Counterparts**

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

l) **Exercise of rights**

CBH Grain may exercise a right or remedy in connection with the Swaption Contract in any way CBH Grain considers appropriate, acting reasonably. If CBH Grain does not exercise a right of remedy in connection with the Swaption Contract fully or at a given time, CBH Grain may still exercise it later.

m) **Remedies cumulative**

CBH Grain's rights and remedies in connection with the Swaption Contract are in addition to other rights and remedies given by law independently of the Swaption Contract.

n) **Governing law**

The Swaption Contract is governed by and construed in accordance with 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.