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# **2017/18 SPRING STARTER POOL**

## **PAYMENT TERMS AND CONDITIONS**

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**17 August 2017**

**AWB Grower Service Centre: 1800 447 246**

AWB Harvest Finance Pools Pty Ltd, trustee of the 2017/18 AWB Pools Trust (ABN 14 391 417 252)  
GPO Box 58, Melbourne Vic 3001

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# SECTION 1

## AWB SPRING STARTER POOL PAYMENT GENERAL TERMS AND CONDITIONS

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### 1 WHEN DO THESE TERMS AND CONDITIONS APPLY TO YOU

#### 1.1 Contract Formation

- (a) You offer to sell to us such quantity and quality of Grain as specified in your offer (which includes the selection of a Payment Option) and, in the case of the Payment Options in Section 2 (AWB Distribution Option) and Section 3 (AWB Deferred Distribution Option) only, may include your election to not apply a Guaranteed Minimum Return and Capped Cost in the calculation of your Pool Payment, on and subject to these AWB Spring Starter Pool Payment General Terms and Conditions and the applicable Payment Option (**Offer**).
- (b) Subject to clause 1.1(c), your Offer shall not be valid unless it is made in strict compliance with the following approved methods:
- (i) telephoning us, whereby our record of such telephone call, including any written Confirmation, shall be conclusive and binding on you; or
  - (ii) faxing or emailing a scanned and executed copy of the document entitled 'Confirmation of AWB Grower Contract' to 03 9690 4516 or growerservicecentre@awb.com.au respectively. In the event of any uncertainty in relation to the information provided in the faxed or emailed document, we may, in our sole discretion, treat the Offer as invalid. The document is taken to have been received at the time printed on the fax by our fax machine or the time the email is received by us (as applicable); or
  - (iii) otherwise contacting us or our agents whereby the record of such oral arrangement, including any Confirmation by us or our agents (as applicable), shall be conclusive and binding on you.
- (c) The 2016/2017 Spring Starter Pool is open for offers for a limited time (as Published) or until such tonnage limit as determined by us is reached, whichever is earlier. We reserve the right to extend or reduce the period in which the 2016/2017 Spring Starter Pool is open for offers, or close the 2016/2017 Spring Starter Pool, at any time and without prior notice.
- (d) Subject to these AWB Spring Starter Pool Payment General Terms and Conditions and the terms and conditions of the applicable Payment Option, we accept your Offer provided that:
- (i) the Offer is in connection with a Grade of Grain for which we have Published an Estimated Pool Return and a Guaranteed Minimum Return (as applicable) at the time of the Offer or which is acceptable to us in our discretion;
  - (ii) the Offer is in respect of a Delivery Location at which we are accepting Grain for the 2017/2018 Spring Starter Pool at the time of the Offer or which is acceptable to us in our discretion;
  - (iii) the relevant Pool in respect of your Grain has not been withdrawn or closed by us before we receive your Offer; and
  - (iv) your Offer nominates only one Payment Option. If you select more than one Payment Option, we will not accept your Offer.

#### 1.2 Our Obligations

In accordance with these AWB Spring Starter Pool Payment General Terms and Conditions and the terms and conditions of the applicable Payment Option, we have agreed to:

- (a) purchase such quantity and quality of Grain from you to be delivered by you to the Delivery Location specified in the Confirmation (as applicable); and
- (b) pay for the Grain delivered by you in accordance with the terms of the Payment Option selected by you and accepted by us.

#### 1.3 Your Obligations

In accordance with these AWB Spring Starter Pool Payment General Terms and Conditions and the terms and conditions of the applicable Payment Option, you have agreed to:

- (a) sell to us such quantity and quality of the Grain in accordance with the Offer accepted by us; and
- (b) deliver the Grain to the Delivery Location specified in the Confirmation within the Delivery Period.

### 2 WHEN DOES THE TITLE IN GRAIN TRANSFER TO US?

2.1 Subject to clause 5, all right, title and interest in the Grain shall remain with you until the Grain has been delivered and the quality has been determined and a ticket issued, at which time it passes to us. Unless otherwise agreed by us in writing, risk of Loss or damage to the Grain shall remain with you until title in the Grain, resulting in our unencumbered ownership of the Grain, has been validly transferred to us.

2.2 A delivery of Grain occurs:

- (a) in respect of a physical delivery of your Grain, when you unload that Grain at the instruction of a BHC representative; and
- (b) in respect of a delivery by way of In-store Transfer of Grain, when an In-store Transfer of Grain occurs.

2.3 If we or the BHC at the Delivery Location specified in the Confirmation cannot accept delivery of the Grain within the Delivery Period for whatever reason, we may extend the Delivery Period by up to 90 days.

2.4 When you deliver the Contracted Tonnage to us via a BHC, you are responsible for obtaining from the BHC a ticket issued by the BHC and containing the following information for each delivery load:

• Contract number	• Variety	• Screenings content
• Ticket number	• Bin grade	• Moisture content
• Grower name	• Pay grade	• Site of Delivery
• Third Party Registration Number	• Test weight	• Treatment to the Grain or defects
• Date of delivery	• Protein content	• Load Tonnage

2.5 You must provide the ticket to us on our request. You agree that we can, in our discretion, rely on the accuracy of information contained in the Grain delivery ticket unless we consider that the information on the Grain delivery ticket is manifestly wrong.

- 2.6 Delivery of Grain to us by an In-store Transfer, for the purposes of the Contract, will be treated as if it occurred on a load by load basis with the weight of that Grain determined in accordance with clause 3(b).
- 2.7 If a contractor makes any of your deliveries of Grain, you agree that the contractor acts on your behalf and with your authority.
- 2.8 If the Contract is a 'Multi-Grade Contract', you may only deliver such Grades of Grain as specified in the Contract.
- 3 WEIGHT**
- The weight of each load of Grain delivered to us by way of:
- (a) a Physical Delivery will be determined at an approved weighing facility at the relevant BHC; and
  - (b) an In-store Transfer will be determined according to the original weigh bridge ticket supplied by the relevant BHC for that Grain.
- However, if we consider that the weight recorded is manifestly wrong, then we will consult with you so that we can agree with you the appropriate weight.
- 4 GRAIN RECEIVAL STANDARDS**
- You must ensure that all Grain delivered by you to us complies with the applicable grain receival standards that we require at the time of delivery and all applicable State and Federal pesticide treatment legislation or standards in relation to pesticide in grains intended for stock feed and/or for human consumption or industrial purposes (**Pesticide Standards**). Unless otherwise determined by us, the applicable grain receival standards are accepted industry receival standards at the Delivery Location specified in the Confirmation and can be obtained by contacting the AWB Grower Service Centre.
- 5 WE MAY WITHDRAW OUR ACCEPTANCE / REJECT ALL OR PART OF THE GRAIN**
- 5.1 Despite any other provision of the Contract, we may within 30 days of delivery of your Grain, withdraw our acceptance of your Offer or reject all or part of the Grain you have delivered to us under the Contract:
- (a) if you do not have good right and title to the Grain delivered by you to us;
  - (b) if any Encumbrance exists over that Grain, or the proceeds of sale of that Grain, and either:
    - (i) that Encumbrance is not discharged to our satisfaction; or
    - (ii) we decide, in our absolute discretion, that suitable priority arrangements have not been made between us and the holder of that Encumbrance;
  - (c) if you have delivered to us Grain that is not compliant with our grain receival standards or applicable Pesticide Standards referred to in clause 4;
  - (d) you have delivered a grade of Grain that is not Published, prior to the date of your Offer as a grade which we will accept;
  - (e) you have delivered Grain to a delivery location for which we have not Published, prior to the date of your Offer, an Estimated Pool Return; or
  - (f) if any representations or warranties that you make or have made to us are not correct.
- 5.2 If we withdraw our acceptance of your Offer or reject Grain you have delivered to us under the Contract in accordance with clause 5.1 (each a **Rejection**), we will notify you and we will require you to request a ticket amendment from the BHC. Once we notify you of a Rejection we will no longer be responsible for your Grain and, subject to clause 25, we disclaim any responsibility for any Loss you incur as a result of the Rejection or the BHC executing your ticket amendment request and returning your delivery to you. You agree that you will not bring a Claim against us (or any other AWB Entity) in respect of a Rejection made in accordance with clause 5.1 or any act or omission of the BHC in relation to that Rejection.
- 5.3 For the purposes of the Contract the Grain delivered by you and the Delivered Tonnage excludes grain returned to you as a result of a Rejection.
- 6 POOLS**
- 6.1 When you deliver Grain to us, we will allocate the Grain delivered against this Contract or, if you have entered into more than one contract (whether written or oral) with one or more AWB Entities with respect to Grain, in accordance with the sequencing in clause 9.1.
- 6.2 We may close a Spring Starter Pool at any time without notice.
- 6.3 We make no representations and provide no guarantees in connection with the financial performance of any Spring Starter Pool.
- 6.4 We may, in our absolute discretion, determine to attribute sales of Grain allocated to the AWB Pools Trust, to any Pool within the AWB Pools Trust.
- 7 PAYMENT**
- 7.1 Subject to clause 7.6, the amount payable to you for the Grain delivered to us shall be determined in accordance with the terms of the Contract, including the Payment Option selected by you and accepted by us.
- 7.2 We are entitled to charge you a management fee or an administration fee or both in respect of your delivery of Grain, as Published prior to the receipt of your Offer, and to deduct those fees from your Pool Payments.
- 7.3 We may charge other fees applicable to your delivery of Grain as Published by us, and deduct those fees from your Pool Payments. Where you have selected the Payment Option in Section 4 (AWB Flexible Loan Option), such fees may include:
- (a) the Facility Fee Published by us prior to the receipt of your Offer; and
  - (b) interest at a rate Published by us prior to harvest.
- 7.4 In respect of all your deliveries of Grain to us in a Crop Year under the Contract, you unconditionally and irrevocably agree that we may apply Pool Payments for that Grain as follows:
- (a) first, to pay Supplier Liabilities relating to the Grain;
  - (b) second, if you have selected the Payment Option in Section 4 (AWB Harvest Loan Option) or Section 5 (AWB Flexible Loan Option), to pay to us on your behalf any Amount Owing;
  - (c) third, to pay any other AWB Debt;
  - (d) fourth, to satisfy any other Encumbrance over that Grain; and
  - (e) when the amounts in paragraphs (a) to (d) above have been satisfied in full, to pay to you the amount remaining from those Pool Payments (if any), by crediting that amount to the bank account recorded in your Supplier Information or by issuing a cheque made payable to you by reference to the details recorded in your Supplier Information.
- 7.5 We are not responsible for any Loss suffered by you because of a delay in payment of a Pool Payment or any relevant GST unless:
- (a) we have Published a payment date which is described by us as "guaranteed", in which case your Loss will be limited to interest at a rate of 18% p.a. (calculated daily and compounded monthly) in respect of the period from the date in which the guaranteed payment date until but not including the date of payment; or
  - (b) we have agreed with you otherwise.

- 7.6 Prior to the date for your Final Pool Payment or any Interim Pool Payment, we may in our absolute discretion offer an amount to you in satisfaction of all or part of our obligations in respect of your deliveries under the relevant Contract. Any such payment will be made in the manner set out in clause 7.4 as if it were a Pool Payment.
- 7.7 If any Pool Payment is to be made to you under a Contract in respect of a delivery of Grain against which a Production Advance amount is paid to you, then in applying this clause 7, the Pool Payment will be reduced by the amount of the Production Advance referable to the Contract in priority to applying clause 7.4. For the avoidance of doubt the reduction of the Pool Payment reflects the fact that a part of your Pool Payment, that is, the Production Advance, has already been paid to you.
- 7.8 If you request a ticket reversal (ie a change to your selected Payment Option) from us, the decision whether to approve that ticket reversal will be in our absolute discretion. Any ticket reversal will be subject to ticket reversal fees as Published by us prior to the receipt of your Offer.

## **8 YOU MAKE REPRESENTATIONS AND WARRANTIES ON DELIVERY**

- 8.1 You represent and warrant to us each time you deliver Grain to us and each time you otherwise deal with us in connection with the Contract or as a result of the relationship arising pursuant to the Contract that:
- (a) as at the date of the Offer, you have good right and title to the crop planted to satisfy your obligations under the Contract;
  - (b) as at the date of each delivery:
    - (i) you have good right and title to the Grain delivered by you to us;
    - (ii) you have delivered a Grade of Grain acceptable to us for the purposes of the Contract;
    - (iii) you have disclosed to us any Encumbrances to which that Grain, or the proceeds of sale of that Grain, is subject;
    - (iv) in relation to any Grain delivered by you to us which is the subject of an Encumbrance, you have obtained the written consent of the holder of the Encumbrance to the sale of the Grain to us, such that we acquire the Grain free of that Encumbrance;
  - (c) you are not Insolvent;
  - (d) you are authorised to provide the Supplier Information on behalf of the Supplier;
  - (e) title to the Grain delivered by you will transfer to us in accordance with clause 2;
  - (f) you have complied with clause 4;
  - (g) if you enter into the Contract in the capacity of a trustee of a trust or settlement, you have full authority and power under the trust instrument to enter into the Contract for the proper administration of the trust or settlement and for the benefit of, and in the interests of, all beneficiaries of the trust or settlement;
  - (h) if you are not a wholesale client (as defined in section 761G of *Corporations Act 2001* (Cth)):
    - (i) any grain delivered by you to us has been produced by you in the ordinary course of your business;
    - (ii) you are registered as a grower on the National Grower Register maintained by the National Grower Register Pty Ltd ACN 095 857 266 or the AWB Grower Register maintained by AWB (Australia) Pty Ltd ACN 081 890 502;
    - (iii) you are an income tax exempt charity under the *Income Tax Assessment Act 1997* (Cth); or
    - (iv) you acquired the Grain delivered by you to us other than for money or money's worth; and
  - (i) you are authorised to provide the Supplier Information on behalf of the Supplier, and such Supplier Information remains accurate as at the time of delivery and that you will ensure that the Supplier Information is updated promptly to reflect any changes that occur after delivery for so long as any obligations under the Contract remain to be performed.

## **9 CONTRACT SEQUENCE**

- 9.1 You irrevocably nominate that the sequence for applying each and all Grain deliveries that you have made (whether or not the delivery was pursuant to an agreement made with any AWB Entity or Associate before or after the Contract) or are to make under any agreements with us, any AWB Entity or Associates (**AWB Contracts**), shall be as follows:
- (a) first, to each Season Starter Pool contract in respect of which you have been paid the Production Advance, on a first in first out basis, until you have satisfied all your obligations under the contract;
  - (b) second, to each Spring Starter Pool contract in respect of which you have been paid the Production Advance, on a first in first out basis, until you have satisfied all your obligations under the contract;
  - (c) thirdly, to each Commitment Tonnage Contract in respect of which you have been paid the Production Advance, on a first in first out basis, until you have satisfied all your obligations under the contract;
  - (d) fourthly, to each other Season Starter Pool contract on a first in first out basis, until you have satisfied all your obligations under the contract;
  - (e) fifthly, to each other Spring Starter Pool contract on a first in first out basis, until you have satisfied all of your obligations under the contract;
  - (f) sixthly, to each other Commitment Tonnage Contract on a first in first out basis, until you have satisfied all your obligations under the contract; and
  - (g) finally, to all other AWB contracts for the sale of the relevant commodity, in accordance with the terms of those AWB Contracts.
- 9.2 We may in our absolute discretion and without affecting any of our rights under the Contract determine not to remedy any default or exercise the rights conferred to us under clause 10 to reassign the delivery in accordance with clause 9.1.

## **10 FAILURE TO DELIVER CONTRACTED TONNAGE**

- 10.1 You are in default of your obligations under the Contract and an event of default is deemed to occur if:
- (a) the Delivered Tonnage is less than the Contracted Tonnage as at the last day of the Delivery Period;
  - (b) any of the representations and warranties that you made under the Contract are untrue or become untrue;
  - (c) you fail to notify us in accordance with clause 11.1 or clause 27.8;
  - (d) if we receive a notification in accordance with clause 27.8 and the change is or is likely to be adverse to our interests under the Contract;
  - (e) you notify us that you cannot or will not deliver all of the Contracted Tonnage;
  - (f) you become Insolvent; or
  - (g) you are otherwise in breach of the Contract.
- 10.2 If an event of default occurs, your obligation to deliver the undelivered Contracted Tonnage as at the time of default becomes due immediately notwithstanding that the Delivery Period may not have expired.
- 10.3 Without limiting any Claim that we may make in respect of your event of default, you acknowledge that we are in the business of on-selling the Contracted Tonnage to third parties and may in the ordinary course of our business enter into futures or options arrangements or engage in hedging against fluctuations of currency or grain prices (including using derivatives to provide you with the Guaranteed Minimum Return and Capped Cost) or arranging transportation and shipping and that if you are in default we may suffer

- Loss (including loss of profit) as a result of conducting our business in making arrangements for the on selling of the Contracted Tonnage in reliance on receiving the Contracted Tonnage during the relevant Delivery Period.
- 10.4 Without limiting any other Claim we may make in respect of your event of default, if an event of default occurs we will charge an amount equal to the management fee and administration fee that would have been charged by us under clause 7.2 had you delivered the Contracted Tonnage.
- 10.5 You shall pay damages to us to compensate us for any Claim, Loss incurred or suffered as a result of your event of default.
- 10.6 If at the time of the event of default you have not delivered 100 percent of the Contracted Tonnage:
- (a) upon or at any time after the occurrence of the event of default, we may in our absolute discretion and without in any way affecting any of our rights under the Contract acquire Grain at an arms' length price from third parties on your behalf to deliver the undelivered Contracted Tonnage pursuant to the Contract. Any payments made or costs incurred or suffered by us, your attorney or both under or in connection with such activities will be immediately due and payable by you and will attract daily interest at the Interest Rate plus two percent per annum compounded monthly from the date that the payment is made or the cost incurred. Notwithstanding any other provision of the Contract, this amount (including any interest thereon) will be taken into account (as a liability to be deducted) in determining your Final Pool Payment (as applicable); or
  - (b) we may notify you and you shall pay an administrative cost of \$200 for the undelivered Contracted Tonnage plus the difference between the Estimated Pool Return for the undelivered Contracted Tonnage as at the date of the event of default and the cost to us, if higher, of buying replacement Grain equal to the undelivered Contracted Tonnage of the Australian Premium Wheat quality; or
  - (c) we may notify you and you shall pay the amount determined by us in accordance with clause 10.4.
- 10.7 You agree that liquidated damages determined in the manner set out in clause 10.4 are reasonable and are a genuine pre-estimate of the actual damages we will incur as a result of your event of default.
- 10.8 You agree that liquidated damages determined in accordance with clause 10.4 are taken to be AWB Debt for the purposes of the Contract.
- 10.9 Without in any way limiting any of our rights, powers or remedies, in the event that you are in default, we may, in our absolute discretion, assign, transfer or novate all or part of our rights under the Contract or arising in connection with the Contract and/or engage a collection agency to assist us or the assignee or transferee with the collection of the outstanding liquidated damages. Interest at the Interest Rate plus five percent per annum calculated daily and compounded monthly, will apply on amounts outstanding greater than thirty (30) days.
- 11 FORCE MAJEURE**
- 11.1 If you are affected, or likely to be affected, by a Force Majeure Event you must immediately notify us of that fact including:
- (a) full particulars of the Force Majeure Event;
  - (b) an estimate of its likely duration;
  - (c) the obligations affected by it and the extent of its impact on those obligations; and
  - (d) the steps taken (or that you propose to take) to rectify it.
- 11.2 Subject to you discharging your obligations under clause 11.1, your obligations under the Contract are suspended to the extent to which they are affected by the relevant Force Majeure Event for as long as the Force Majeure Event continues or for so long as it takes you to discharge the steps in clause 11.1(d) above (whichever is earliest).
- 11.3 If you claim that a Force Majeure Event exists, you must use your best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.
- 11.4 If we are prevented in whole or in part from carrying out our obligations under the Contract as a result of any cause beyond our reasonable control, we must promptly give a notice to you specifying the cause and the measures we propose to take to remedy or abate the cause. Following this notice and while the cause continues, the obligations which cannot be performed because of the cause shall be suspended.
- 12 GST**
- 12.1 Words defined in the GST Law have the same meaning in this clause 12.
- 12.2
- (a) Unless otherwise expressly stated, any amounts payable or any form of consideration to be provided for a taxable supply made under the Contract are exclusive of GST (**GST exclusive amount**).
  - (b) If a supplier makes a taxable supply under the Contract, and the consideration is a GST exclusive amount, the recipient must pay to the supplier an amount on account of GST on the taxable supply (**GST amount**) equal to the GST exclusive amount multiplied by the GST rate. The GST amount is payable at the same time as the GST exclusive amount for the taxable supply.
- 12.3
- (a) You have agreed with and authorised us to issue a tax invoice (**Recipient Created Tax Invoice**) and adjustment note on your behalf in respect of any taxable supply of Grain made by you under the Contract to us. You have agreed and acknowledge that you will not issue a tax invoice or adjustment note in respect of the taxable supply of Grain.
  - (b) You must notify us immediately if you cease to be registered for GST. If you are not registered for GST at the time a Recipient Created Tax Invoice is issued by us:
    - (i) that invoice will not be treated as a Recipient Created Tax Invoice;
    - (ii) we are not obliged to pay you any amount in respect of that supply unless and until you have provided us with a valid tax invoice in relation to the relevant supply; and
    - (iii) we are entitled to recover any amount for GST from you, which has been paid to you in error.
  - (c) You warrant that you are registered for GST at the time of making the Offer and you will continue to:
    - (i) be registered for the term of the Contract; and
    - (ii) comply with the requirements of any taxation ruling relating to the issue of Recipient Created Tax Invoices during the term of the Contract.
- 12.4 If an adjustment event arises in relation to any taxable supply made under the Contract that gives rise to an increasing adjustment or decreasing adjustment the GST amount must be adjusted accordingly and where necessary a payment must be made to reflect that increasing adjustment or decreasing adjustment.
- 12.5 If a party is required under the Contract to pay for or reimburse or indemnify for a Loss of another party, the amount to be reimbursed or indemnified is first reduced by any input tax credits the other party (or the representative member of a GST group of which it is a member) is entitled to for the Loss and then increased in accordance with clause 12.4.
- 12.6 Any payment of an amount in respect of a taxable supply by one party to another pursuant to clause 12.2, 12.3 or 12.4 is deferred until the issue of the relevant valid tax invoice or adjustment note to the recipient.
- 12.7 You must, at our request, provide us with all documentation to enable us to claim any available input tax credits for the supplies you made to us under the Contract.

### 13 NOTICES AND COMMUNICATIONS

- 13.1 By entering into the Contract you agree and consent to the *Electronic Transactions (Vic) Act 2000* applying to the Contract. You agree that any notices and communications between us and you relating to or connected with the Contract or arising as a result of the relationship between us and you under the Contract can be conducted using Electronic Communications sent to any email address or mobile number specified by you from time to time and that you agree to enter into contracts and agreements with AWB and otherwise interact with AWB using Electronic Communications. Written communications to an AWB entity must be sent to AWB Harvest Finance Pools Pty Ltd c/- GPO Box 58, Melbourne, Victoria 3001 or as otherwise notified to you from time to time.
- 13.2 You consent, agree and acknowledge that:
- (a) using Electronic Communications in accessing or undertaking any transactions with AWB regarding any agreement, acknowledgement, consent, terms, disclosures or conditions, including without limitation Electronic Communication which bears your name (or that of our officers, employees or other authorised persons) or part of it, constitutes your signature, acceptance, and agreement as if actually signed by you in writing;
  - (b) no certification authority or other third party verification is necessary for the validity of the electronic signature in clause 13.2(a) and the lack of such certification or third party verification shall not in any way affect the enforceability of your signature or the resulting contract between AWB and you. Absent manifest error, the admissibility, validity, or use of any electronically signed document cannot be contested;
  - (c) sending or giving instructions or information by facsimile, the Internet or telephone (**Communications Methods**) is not a secure means of sending or giving information;
  - (d) you are aware of the risks involved in using such communications methods, including the risk that instructions may:
    - (i) be fraudulently or mistakenly written, recorded, altered or sent; or
    - (ii) fail due to failure of hardware, software, communication devices and connections;
    - (iii) not be received in whole or in part by the intended recipient or listener;
  - (e) no AWB Entity is under a duty to enquire as to whether any instructions which appear to have been properly given by you have in fact been given by you;
  - (f) no AWB Entity will be liable for any Claims or Losses incurred in connection with you using such Communication Methods, including in connection with an AWB Entity:
    - (i) not acting on any instructions which in its opinion appear to have been communicated fraudulently, mistakenly, erroneously or without authority; or
    - (ii) acting on instructions which appear to have been properly created by you and received by that AWB Entity, except in the case where that Claim or Loss is the direct result of fraud or wilful misconduct on the part of that relevant AWB Entity; and
  - (g) you release us (and each AWB Entity) from and indemnify us (and each AWB Entity) against, all Losses arising from any payment AWB (and any AWB Entity) makes or action AWB (and any AWB Entity) takes based on any instruction or agreement (even if not genuine) that AWB (and any AWB Entity) receives by Electronic Communication or other means bearing your details and/or a signature apparently yours (including your officers, employees and authorised persons) except where the Electronic Communication contains a manifest error or you have not contributed to the Loss in any way;
  - (h) neither you nor anyone claiming through you has any Claim against AWB (or any AWB Entity) in relation to payments or actions undertaken as a direct or indirect result of communications including Electronic Communications; and
  - (i) any AWB Entity may record and/or monitor telephone conversations with you with or without an automatic tone warning device and any AWB Entity may use those recordings or transcripts from such recordings for any purpose that AWB Entity considers desirable or appropriate in its absolute discretion.

### 14 RIGHT OF SETOFF AND CLAWBACK

- 14.1 If any AWB Entity has a Claim against you, whether or not arising under the Contract, then:
- (a) the Claim, if a liquidated amount, will be a debt due and owing by you to the relevant AWB Entity;
  - (b) if the Claim is unliquidated, then the relevant AWB Entity will be entitled to make a reasonable estimate of the amount claimed or owed which will be notified to you in writing. You agree that the amount of that estimate will be a debt due and owing by you to the relevant AWB Entity; and
  - (c) if the Claim is contingent, the AWB Entity will be entitled to make a reasonable estimate of the contingent liability and you direct the AWB Entity to withhold such amount until such time as the contingent liability crystallises (by agreement or otherwise) upon which the AWB Entity may treat that liability as a Claim to which clause 14.1(b) applies.
- 14.2 If there is any debt due and owing by you to an AWB Entity (collectively, **amount payable**) then that AWB Entity or any other AWB Entity which is liable to pay any amount to you on any account whatsoever (**amount receivable**) may deduct your amount payable from your amount receivable. The relevant AWB Entity has this right of deduction or set off even if the amount payable is owed by you to another AWB Entity. The AWB Entity to which your amount payable is due and owing and any AWB Entity which has made a deduction from your amount receivable in respect of your amount payable will account to each other for the amount deducted, and your amount payable shall be reduced by the amount deducted.
- 14.3 If there is any debt due and owing to you by an AWB Entity (collectively, **amount receivable**) then you may, after providing us with 5 Business Days' notice, deduct the amount of any amount payable by you (**amount payable**) from the amount receivable. You have this right of deduction or set off even if the amount receivable is owed by another AWB Entity. In the notice to us you must specify which AWB Entity owes you the amount receivable, the quantum of that amount receivable and the prior payment date for that amount receivable. We will reduce the amount receivable by the amount payable.
- 14.4 You unconditionally and irrevocably direct us to apply all proceeds payable to you in connection with any agreement you have entered into with us, other AWB Entities or our Associates, whether or not the agreement pre-dates the Offer, to repay any amount Overpaid to you under the Contract and then to pay to you any remaining balance. You ratify and confirm any and all acts carried out in connection with the above authority and direction.
- 14.5 If, after payment to you of any amount by an AWB Entity in relation to any agreement you have entered into with that AWB Entity, you have or had no right to some or all of that amount (including, where you are Overpaid) then, despite any other provision of that agreement, that AWB Entity may by giving you notice (**Notice**) recover from you that amount. The AWB Entity is also entitled to recover from you interest on that amount at the Interest Rate applicable at that time plus:
- (a) two percent per annum for the period from the date of the Notice until the date which is thirty (30) days after that date; and
  - (b) five percent per annum for the period from the date which is thirty-one (31) days after the date of the Notice,
- calculated daily until (but not including) the date upon which the amount is repaid, compounded monthly. However, if you are Overpaid directly and solely as a result of an act or omission by us interest will only be payable by you if you have not paid the relevant amount to the relevant AWB Entity within thirty (30) days after the provision of the Notice. In that case, the applicable interest rate will be the Interest Rate plus five per cent per annum (calculated daily and compounded monthly) for the period from the date which is thirty-one (31) days after the date of the Notice until (but not including) the date upon which the amount is repaid.
- 14.6 If any payment made to an AWB Entity in accordance with the terms of this clause 14 is void or voidable for any reason, that payment will be deemed not to have discharged your liability to that AWB Entity in respect of that payment (notwithstanding any release or discharge given by that AWB Entity).

## 15 TICKET REVERSALS

- 15.1 If you request a Ticket Reversal from us, the decision whether to approve the Ticket Reversal will be in our absolute discretion. If the Ticket Reversal is approved, Ticket Reversal fees will apply. If you are an individual and the Reversal In Payment Option is an AWB Harvest Loan Agreement or an AWB Flexible Loan Agreement, then the relevant request for a Ticket Reversal must be accompanied by a completed business purpose declaration.
- 15.2 Subject to clause 15.3, if a Ticket Reversal is approved in accordance with clause 15.1, you must:
- (a) repay the Amount Owing to us if the Reversal Out Payment Option is an AWB Harvest Loan Agreement or an AWB Flexible Loan Agreement;
  - (b) repay all payments to us if the Reversal Out Payment Option is the AWB Distribution Agreement or the AWB Deferred Distribution Agreement; and
  - (c) pay all Ticket Reversal Fees.
- 15.3 We may decide to deduct the amounts that you must pay to us under clause 15.2 from the amounts that we must pay to you under the Reversal In Payment Option, thus reducing the amounts that you must pay to us under clause 15.2 and reducing the amounts that we must pay to you under the Reversal In Payment Option. Unless otherwise determined by us, any fees, charges, costs and expenses incurred by you or otherwise taken into account in calculating the amounts payable to you under the Reversal Out Payment Option, are not refundable to you.
- 15.4 Upon you satisfying your obligations under clause 15.2, then your delivery of Grain to us will be treated by you and by us as having been delivered under the Reversal In Payment Option on the date that delivery was made under the Reversal Out Payment Option from the date the Ticket Reversal is processed by us and the Contract amended accordingly. We may in our absolute discretion determine that the amount of any fees, charges, costs and expenses payable by you under the Reversal In Payment Option is to be reduced to the extent that such fees, charges, costs and expenses were paid by or applied to payments made to you under the Reversal Out Payment Option.

## 16 APPLICABLE LAW AND JURISDICTION

- 16.1 Each party by making an offer subject to these AWB Spring Starter Pool Payment General Terms and Conditions or agreeing to the application of these AWB Spring Starter Pool Payment General Terms and Conditions irrevocably and unconditionally agrees that:
- (a) the offer, acceptance and the Contract shall be interpreted according to and governed by the laws in force in the State of Victoria with specific reference to the *Goods Act (Victoria) 1958*; and
  - (b) enforceability and performance of the Contract is governed by the *Goods Act (Victoria) 1958* and any related orders, rules, and regulations of all government agencies, except as limited in these AWB Spring Starter Pool Payment General Terms and Conditions and the terms and conditions of the applicable Payment Option.
- 16.2 Any legal action in relation to this document or the Contract evidenced by it against any party or its property and related non-contractual matters shall be brought in any court of competent jurisdiction in the State of Victoria. Each party by agreeing to the application of these AWB Spring Starter Pool Payment General Terms and Conditions to the Contract irrevocably and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

## 17 RELATIONSHIP OF PARTIES

- 17.1 Nothing in these AWB Spring Starter Pool Payment General Terms and Conditions and the terms and conditions of the applicable Payment Option is to be construed as constituting a partnership, trust, joint venture, agency or fiduciary relationship between the parties.
- 17.2 We may sell or otherwise deal with the Grain that we purchase from you to another AWB Entity or Associate on an arm's length basis, and you agree that neither us nor the AWB Entity or Associate shall be accountable to you for any profit, fees or commissions earned, arising or resulting from any such transactions and that we and the AWB Entity or Associate shall be entitled to retain such amounts for our own and the AWB Entity or Associate's own benefit (as applicable).

## 18 ASSIGNMENT AND VARIATION

- 18.1 Your rights in connection with the Contract or any of the obligations that you have under it cannot be assigned or varied by you without our prior written consent.
- 18.2 You agree that, other than a purported assignment of our obligations under this Contract, for which will require your prior consent, we may assign, transfer, novate and otherwise grant participation and sub-participations in, and can otherwise deal in any manner with all or any of our rights, remedies, powers and duties under the Contract in our absolute discretion without obtaining any further consent from you or giving any notice to you. Without limiting this, you agree that we may novate the Contract to an AWB Entity or Associate on the basis that you, the AWB Entity or Associate and each other party to the novated contract have the same rights, entitlements and obligations as if that person was a party to that contract initially.
- 18.3 If:
- (a) there is a change to a contract, agreement or arrangement, or loss of a contract, agreement or arrangement between an AWB Entity and a third party whom AWB engages with in order to provide the Spring Starter Pool which would prevent us from continuing to comply with any provision of this Contract;
  - (b) the amendment is required in order for us to adhere to any law, regulation or policy of any Government Agency; or
  - (c) for any other reason, as a result of unforeseeable circumstances beyond our control against which it would have been unreasonable for us to take precautions and which we cannot avoid,
- 18.4 we may unilaterally amend this Contract by notifying you in writing. Any other amendment to the Contract must be agreed between you and us. Any amendments to the Contract will apply to all deliveries of Grain made by you under that Contract from the date specified in the applicable notice or the date of agreement. Notification may be made by us by Publishing the amendments.

## 19 ENCUMBRANCES AND ADMINISTRATION FEE

- 19.1 You must not without our written consent:
- (a) create an Encumbrance over, dispose of, declare a trust over or otherwise deal with any interest that you have in the Contract, including all your rights under it or any amount payable to you under it;
  - (b) create or allow to come into existence any Encumbrance which affects the Contract; or
  - (c) purport to create or allow to come into existence any Encumbrance over Grain that you deliver to us, or create or allow to come into existence any Encumbrance over the proceeds of Grain you deliver to us.
- 19.2 Without limiting clause 19.1, you agree to notify us immediately if an Encumbrance exists or is created at any time over Grain, or over the proceeds of sale of Grain, that you deliver to us.
- 19.3 Without limiting clause 5.1(b) or clause 19.1, if an Encumbrance exists in respect of the Grain that you delivered to us or the proceeds of sale of that Grain, then, without limitation to any other right of ours, you agree to pay us an administration fee for processing, complying with and paying any Claims made by the holder of that Encumbrance. You agree that the administration fee will be the amount set by us from time to time, details of which are available from the AWB Grower Service Centre.
- 19.4 Whenever we reasonably request you to do anything to more satisfactorily mortgage, assure or secure an Encumbrance in favour of us in a manner not inconsistent with the Contract, you must do it immediately. It may include registering a charge or PPSA Security Interest created by or arising under the Contract where under the *Corporations Act*

2001 (Cth), the *Personal Property Security Act 2009* (Cth) (**PPSA**) or any other applicable law, registration is required or may affect the validity, enforceability or priority of that PPSA Security Interest, executing or registering any other document or agreement, delivering documents or evidence of title and executing and delivering blank transfers.

19.5 You must take any steps we reasonably require to perfect or otherwise ensure the enforceability and priority of any PPSA Security Interest granted to us under the Contract.

19.6 You waive your right under section 157(3) of the PPSA, to receive any notice from us in connection with the registration of a financing statement or a financing change statement. In addition, for the purposes of section 115 of the PPSA, sections 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA will not apply to any collateral arising from or in connection with the Contract.

## 20 INDEMNITY

20.1 As a separate and independent obligation enforceable against you, you agree that:

- (a) At your request we have agreed to enter into the Contract to buy your Grain on these AWB Spring Starter Pool Payment General Terms and Conditions and the terms and conditions of the applicable Payment Option and you agree and acknowledge that we enter into the Contract (including any oral agreement) in reliance on the indemnity in this clause 20.1.
- (b) You unconditionally and irrevocably indemnify us against any and all Claims or Losses which may be made or brought against or suffered or incurred by us arising as a result of your acts or omissions in connection with this Contract (whether oral or written) becoming unenforceable, including any money or other amounts that are not recoverable from you under any such oral or written contract, provided the contract has not become unenforceable due to the negligent or fraudulent acts of AWB Harvest Finance Pools Pty Ltd ACN 140 232 346.
- (c) You must pay to us immediately on demand any amounts due to us under this clause 20.1. We may make such a demand on you from time to time.
- (d) The indemnity in this clause 20.1 extends to any money that is not recoverable:
  - (i) because of any legal limitation, disability or incapacity of or affecting you or any other person;
  - (ii) because any transaction relating to that money was void, illegal, voidable or unenforceable except where caused by the negligent or fraudulent acts of AWB Harvest Finance Pools Pty Ltd ACN 140 232 346;
  - (iii) whether or not you knew or should have known any of the relevant matters or facts; and
  - (iv) because of any fact or circumstance that is not caused by our negligent or fraudulent acts.
- (e) This provision is a continuing indemnity for all amounts referred to in clause 20.1.
- (f) Your obligation under this clause 20.1 is a primary obligation and we are not obliged to proceed against or enforce any other right against any person or property or demand payment from any other person before making a demand for payment by you under this clause 20.1.
- (g) Your obligations under this clause 20.1 are absolute and unconditional. They are not subject to any set-off, counter claims or conditions (other than pursuant to clause 14). In particular, your obligations will not be affected by anything which might abrogate, prejudice or limit them or the effectiveness of the Contract.
- (h) If any transaction or payment under the Contract is void, voidable or otherwise unenforceable or refundable and such circumstances have not been caused by the negligent or fraudulent acts of AWB Harvest Finance Pools Pty Ltd ACN 140 232 346:
  - (i) we are entitled against you to all rights under the Contract that we would have had if the transaction or payment had not occurred or been made, as the case may be; and
  - (ii) you agree and undertake to do all things and sign such documents necessary to restore to us our rights under the Contract immediately before that transaction or payment.

20.2 Except to the extent such an agreement would constitute an offence by us, you agree to reimburse, pay and indemnify us (other than an interest created or granted by us):

- (a) against any Claim by any person claiming an interest in any Grain delivered by you or the proceeds of sale of such Grain;
- (b) for any Claims or Losses incurred by us in connection with:
  - (i) your failure to deliver Grain under the Contract;
  - (ii) any representation, warranty or statement made or repeated by you that is inaccurate, untrue or misleading (whether by omission or otherwise) or any breach by you, your officers, employees agents or contractors;
  - (iii) discharging any Encumbrance that affects the Contract;
  - (iv) any damage, death or injury that you, your officers, employees, agents or contractors cause to any property or person in connection with the Contract;
  - (v) your failure to comply with our grain receival standards referred to in clause 4;
  - (vi) your failure to comply with Pesticide Standards referred to in clause 4;
  - (vii) the Supplier Information provided to us by you or the provider of your Third Party Registration Number not being accurate and complete and, notwithstanding any other provision in the Contract, we will not be liable to you for any Loss or damage arising or resulting from that information not being accurate and complete;
- (c) for all Supplier Liabilities; and
- (d) for all government charges and any Taxes (other than income Tax and GST), duties and charges payable in respect of the Contract and the transactions under it.

20.3 Except to the extent such an agreement would constitute an offence by us, you agree to indemnify us for all Deductions or the Capped Cost (as applicable) other than those already deducted by us in determining any amount paid or payable by us for a delivery of Grain by you to us. If the Payment Option selected by you includes the Capped Cost, your liability under this clause 20.3 is limited to the amount of the Capped Cost.

## 21 WHAT HAPPENS IF YOU ARE A PARTICIPANT IN A SHARE-FARM ARRANGEMENT?

21.1 If you are a participant in a share-farm arrangement, you agree that where a person makes a delivery of Grain to us using the Third Party Registration Number for that share farm arrangement and selects a Payment Option for that delivery, that person is authorised to do so on behalf of each participant (including you) in that share-farm arrangement. This means that the Payment Option selected by that person will apply to all of the participants in that share-farm arrangement as identified by the Third Party Registration Number for that share farm arrangement.

## 22 BUSINESS DAYS

22.1 If the day on or by which a person must do something under the Contract is not a Business Day:

- (a) if the act involves making a payment, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

## 23 FACILITY FEE

23.1 Where you have selected the Payment Option in Section 4 (AWB Harvest Loan Option) or Section 5 (AWB Flexible Loan Option), you agree that we are entitled to charge you a facility fee for each delivery of Grain under that Payment Option and to deduct that fee from your Drawdown Amount. The total facility fee payable by you in respect of a delivery of Grain is an amount equal to the Facility Fee Rate multiplied by the tonnage of Grain in that delivery.

## 24 PRIVACY

24.1 Subject to any law to the contrary and provided you have not indicated otherwise, you authorise us to collect and use any information related to you and the performance of the Contract (which includes but is not limited to your personal information) for the purpose of managing our commercial relationship with you including but not limited to:

- (a) providing our products or services which you have agreed to obtain from us or any other AWB Entity for any other purposes relating to our business operations and our dealings with you;
- (b) contacting you on an ongoing basis by email, telephone and other means for the purpose of direct marketing, unless you withdraw your consent by opting out or by calling the AWB Grower Service Centre;
- (c) for the purpose of any arbitration proceeding relating to the Contract or a contract between you and us or any AWB Entity.

24.2 You agree and acknowledge that we:

- (a) may transfer and store your personal and other information overseas (including to the USA, India and Singapore) and disclose it to others (including contractors, buyers, third parties we have engaged to provide marketing services and other AWB Entities) and you consent for this to occur;
- (b) may collect information from an entity other than you including brokers used by you or from the National Grower Register;
- (c) if you do not provide us with the personal information we ask for, or if the information provided is incorrect or incomplete, we may be limited in our ability to provide our services effectively; and
- (d) other AWB Entities may also handle personal information in the same manner as us as described in this clause 24.

24.3 In dealing with your personal information we shall comply with the standards set out in the *Privacy Act 1988* (Cth) and the Australian Privacy Principles, as they apply to your personal information.

24.4 You represent that you have obtained and read the document entitled 'Summary of Cargill's Global Privacy Policy', from [www.awb.com.au/privacy/](http://www.awb.com.au/privacy/) or from AWB, which policy contains information about how personal information held by us and AWB Entities may be accessed and corrected and how complaints can be made and are managed. The document entitled 'Summary of Cargill's Global Privacy Policy' also contains further information regarding the handling of your personal information, including the countries that your information may be transferred to or stored in.

24.5 If you wish to give us any information about an individual other than yourself, then you agree to ensure the individual to whom that information relates agrees that we may use and disclose information about him or her in accordance with this clause 24.

## 25 LIMITATION OF LIABILITY

25.1 Our Liability

- (a) Our liability under the Contract is limited to our capacity as trustee of the AWB Pools Trust and we are not liable in any other capacity.
- (b) Subject to clause 25.1(e), our liability in respect of any cause of action, Claim or Loss arising:
  - (i) under or in connection with the Contract;
  - (ii) in connection with any transaction, conduct or any other agreement related to the Contract; or
  - (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with the Contract, (each, a **Trust Claim**), is limited to the assets of the particular Pool to which you are allocated (or you are to be allocated) within the AWB Pools Trust.
- (c) Your right to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which we are entitled and able to recover from the assets of the particular Pool to which you are allocated (or you are to be allocated) within the AWB Pools Trust (after taking account of the costs of exercising our right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against us personally.
- (d) Subject to clause 25.1(e), you must not, in respect of any Trust Claim:
  - (i) bring proceedings against us in our personal capacity;
  - (ii) seek to appoint an administrator or liquidator to us;
  - (iii) commence the winding-up, dissolution, official management or administration of us; or
  - (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of us.
- (e) If we act without good faith with fraud or dishonesty with a result that the actual amount recoverable by us in exercise of our right of indemnity, exoneration or recoupment of the assets of the particular Spring Starter Pool to which you are allocated (or you are to be allocated) within the AWB Pools Trust is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, we may be personally liable in respect of a Trust Claim.

25.2 Limitation of liability

- (a) To the maximum extent permitted by law, unless expressly provided in the Contract, all implied terms, conditions, warranties and any other additional obligations in relation to the performance of the Spring Starter Pools or nature of the Spring Starter Pools are excluded from the Contract.
- (b) To the extent that any law implies into the Contract any term, condition, warranty or additional obligations that cannot be lawfully excluded under clause 25.2(a), then our liability in respect of a breach of that term, condition, warranty or additional obligation is limited to the maximum extent (if any) permitted by that law, as if the provisions effecting such limitation are incorporated in the Contract.
- (c) Notwithstanding any other provision in the Contract, save for negligence, breach of this Contract or fraud on our part:
  - (i) we will not be liable in tort (other than negligence), contract (other than for breach of this Contract), bailment or otherwise to you for any damage to or Loss, theft or deterioration of the Grain; and
  - (ii) we will not be liable to you for Loss or damage arising or resulting from any statement, information, or advice made, given or Published in relation to the Contract.
  - (iii) Every exemption from liability, defence and immunity of whatsoever nature applicable to us or to which we are entitled hereunder shall also be available and shall extend to protect each AWB Entity and Associate acting hereunder or making or giving statements, information or advice and for the purposes of this clause 25 we shall be or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such AWB Entities and Associates as well as on our own behalf and all such entities shall to this extent be or deemed to be parties to the Contract.

**26 ROAD SAFETY**

- 26.1 At all times you must, and must ensure that your officer, employees, agents, contractors and sub-contractors:
- (a) comply with all Road Safety Laws and have a working knowledge of all relevant provisions of the Road Safety Laws and be adequately trained to comply with the Road Safety Laws in connection with this Contract;
  - (b) notify us immediately if you or they consider, that your performance of this Contract may breach or disregard any Road Safety Laws; and
  - (c) maintain all information and documents necessary to substantiate compliance with the Road Safety Laws in connection with this Contract and must make such material available to us when reasonably required by us to audit your compliance with the Road Safety Laws.

**27 GENERAL**

- 27.1 The Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Contract and has no further effect. The parties agree to exclude:
- (a) the application of the Grain Trade Australia Trade Rules; and
  - (b) to the extent permitted by law, the application of the relevant Sale of Goods Act.
- 27.2 Any provision of the Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Contract enforceable, unless this would materially change the intended effect of the Contract.
- 27.3 Clauses 10, 20, 20.1(b), 14,25 and 26.1(c) will continue to apply after expiration or termination of the Contract.
- 27.4 Unless otherwise specified in the Contract, time is of the essence in every respect.
- 27.5 In the event of any inconsistency between the provisions of the documents that constitute the Contract, the following documents will prevail in the following order:
- (a) the Special Terms, if any;
  - (b) the Confirmation;
  - (c) the AWB Spring Starter Pool Payment General Terms and Conditions; and
  - (d) the terms and conditions of the applicable Payment Option.
- 27.6 No failure or delay by a party to exercise a right, power or remedy will operate as a waiver. No waiver by a party will be effective unless it is in writing and signed by or for that party.
- 27.7 The Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- 27.8 You must notify us in writing of any proposed changes in directors, share holding, ownership of you or change of the trustee prior to such changes taking place and you undertake to also notify us of any material change in details provided by you in your Offer or any information provided to us in connection with the payment of the Production Advance (if applicable) at the time such change takes place.

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**AWB SPRING STARTER POOL PAYMENT OPTIONS**

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## SECTION 2

### AWB DISTRIBUTION TERMS AND CONDITIONS “AWB DISTRIBUTION OPTION”

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#### 1 WHEN DO THESE TERMS AND CONDITIONS APPLY TO YOU?

- 1.1 The terms and conditions in this Section 2 apply to you when you make an Offer in which you select these terms and conditions as your Payment Option and that Offer is accepted by us. The terms and conditions in this Section 2, together with the AWB Spring Starter Pool Payment General Terms and Conditions and the Confirmation, form the AWB Distribution Agreement.

#### 2 PRICE FOR GRAIN SOLD

- 2.1 In respect of a delivery of a Pay Grade of Grain by you to us under an AWB Distribution Agreement, we may pay periodic interim Pool Payments of an amount to be determined by us in our absolute discretion (each an **Interim Pool Payment**).
- 2.2 In respect of a delivery of a Pay Grade of Grain by you to us under an AWB Distribution Agreement, we will pay a Final Pool Payment (if any) on the Final Pool Payment Date. The GST-exclusive **Final Pool Payment** is calculated as follows:

$$(A \times B) - C - D - E$$

where:

**A** means the Delivered Tonnage;

**B** means the higher of the APR and the Guaranteed Minimum Return;

**C** means the lesser of the aggregate value of the Deductions and the Capped Cost;

**D** means any applicable Supplier Liabilities (unless the Supplier Liabilities have already been deducted); and

**E** means the aggregate of all Interim Pool Payments paid in accordance with clause 2.1.

- 2.3 All payments made in accordance with this clause 2 will be made in the manner set out in clause 7 of the AWB Spring Starter Pool Payment General Terms and Conditions.

#### 3 ALTERNATIVE PURCHASE PRICE

- 3.1 This clause 3 applies instead of clause 2 if in your Offer you specify not to calculate the Pool Payments on the basis of a Guaranteed Minimum Return and Capped Cost.
- 3.2 In respect of a delivery of a Pay Grade of Grain by you to us under an AWB Distribution Agreement, we may pay periodic interim Pool Payments of an amount to be determined by us in our absolute discretion (each an **Interim Pool Payment**).
- 3.3 In respect of a delivery of a Pay Grade of Grain by you to us under an AWB Distribution Agreement, we will pay a Final Pool Payment (if any) on the Final Pool Payment Date. The GST-exclusive **Final Pool Payment** is calculated as follows:

$$(A \times B) - C - D - E$$

where:

**A** means the Delivered Tonnage;

**B** means the APR;

**C** means the aggregate value of the Deductions;

**D** means any applicable Supplier Liabilities (unless the Supplier Liabilities have already been deducted); and

**E** means the aggregate of all Interim Pool Payments made in accordance with clause 3.2.

- 3.4 If this clause 3 applies, you will not be entitled to the Guaranteed Minimum Return and Capped Cost but the management fee charged under clause 7.2 of the AWB Spring Starter Pool Payment General Terms and Conditions will be lower than if you had selected the Guaranteed Minimum Return and Capped Cost.
- 3.5 All payments made in accordance with this clause 3 will be made in the manner set out in clause 7 of the AWB Spring Starter Pool Payment General Terms and Conditions.

#### 4 DICTIONARY

- 4.1 Capitalised words and phrases used in this Section 2 have the meaning given to them in Section 6 unless defined in this Section 2.

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**SECTION 3**  
**AWB DEFERRED DISTRIBUTION TERMS AND CONDITIONS**  
**“AWB DEFERRED DISTRIBUTION OPTION”**

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**1 WHEN DO THESE TERMS AND CONDITIONS APPLY TO YOU?**

- 1.1 The terms and conditions in this Section 3 apply to you when you make an Offer in which you select these terms and conditions as your Payment Option and that Offer is accepted by us. The terms and conditions in this Section 3, together with the AWB Spring Starter Pool Payment General Terms and Conditions and the Confirmation, form an AWB Deferred Distribution Agreement.

**2 PRICE FOR GRAIN SOLD**

- 2.1 In respect of a delivery of a Pay Grade of Grain by you to us under an AWB Deferred Distribution Agreement, we will pay in July following the date when you delivered Grain to us, the Final Pool Payment on the Final Pool Payment Date. The GST-exclusive **Final Pool Payment** is calculated as follows:

$$(A \times B) - C - D + E$$

where:

**A** means the Delivered Tonnage;

**B** means the higher of the APR and the Guaranteed Minimum Return;

**C** means the lesser of the aggregate value of the Deductions and the Capped Cost;

**D** means any applicable Supplier Liabilities (unless the Supplier Liabilities have already been deducted); and

**E** means any applicable Deferred Pool Distribution Interest payable.

- 2.2 All payments made in accordance with this clause 2 will be made in the manner set out in clause 7 of the AWB Spring Starter Pool Payment General Terms and Conditions.

**3 ALTERNATIVE PURCHASE PRICE**

- 3.1 This clause 3 applies instead of clause 2 if in your Offer you specify not to calculate the Pool Payment on the basis of a Guaranteed Minimum Return and Capped Cost.

- 3.2 In respect of a delivery of a Pay Grade of Grain by you to us under an AWB Deferred Distribution Agreement, we will pay, in July following the date when you delivered Grain to us, the Final Pool Payment on the Final Pool Payment Date. The GST-exclusive **Final Pool Payment** is calculated as follows:

$$(A \times B) - C - D + E$$

where:

**A** means the Delivered Tonnage;

**B** means the APR;

**C** means the aggregate value of the Deductions;

**D** means any applicable Supplier Liabilities (unless the Supplier Liabilities have already been deducted); and

**E** means any applicable Deferred Pool Distribution Interest payable.

- 3.3 If this clause 3 applies, you will not be entitled to the Guaranteed Minimum Return and Capped Cost but the management fee charged under clause 7.2 of the AWB Spring Starter Pool Payment General Terms and Conditions will be lower than if you had selected the Guaranteed Minimum Return and Capped Cost.

- 3.4 All payments made in accordance with this clause 3 will be made in the manner set out in clause 7 of the AWB Spring Starter Pool Payment General Terms and Conditions.

**4 DICTIONARY**

- 4.1 Capitalised words and phrases used in this Section 3 have the meaning given to them in Section 6 unless defined in this Section 3.

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## SECTION 4 AWB HARVEST LOAN TERMS AND CONDITIONS “AWB HARVEST LOAN OPTION”

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### 1. WHEN DO THESE TERMS AND CONDITIONS APPLY TO YOU?

- 1.1 Subject to clause 2, the terms and conditions in this Section 4 apply to you when you make an Offer in which you select these terms and conditions as your Payment Option and that Offer is accepted by us. The terms and conditions in this Section 4, together with the AWB Spring Starter Pool Payment General Terms and Conditions and the Confirmation, form an AWB Harvest Loan Agreement.
- 1.2 If you select this Payment Option, you cannot elect not to apply the Guaranteed Minimum Return and Capped Cost in the calculation of your Pool Payment under clause 5.1.

### 2. YOUR LOAN FACILITY

- 2.1 If you select the terms and conditions of this Section 4 as your Payment Option, you apply to us for, and we agree to make available to you:
- (a) in relation to your first delivery of Grain, the Original Loan Facility; and
  - (b) in all other circumstances, an increase to the borrowing limit under the Original Loan Facility,
- in an amount up to the Initial Credit Limit in respect of that delivery of Grain on the terms of the AWB Harvest Loan Agreement.
- 2.2 No AWB Harvest Loan Agreement is formed between us and we do not agree to make available any loan facility to you if an Encumbrance exists in respect of Grain delivered by you or, if you are an individual, you have not completed and returned to us a business purpose declaration.
- 2.3 We will determine your Initial Credit Limit in respect of each delivery of Grain by you to us. The Initial Credit Limit we will make available to you in respect of a delivery of a Pay Grade of Grain is a dollar amount calculated as follows:

$$(A \times B) - C - D$$

where:

- A** means the Delivered Tonnage;
- B** means the Guaranteed Minimum Return;
- C** means the Capped Cost; and
- D** means the Estimated Costs.

Subject to clauses 2.4 and 3, the Initial Credit Limit will be provided to you within 7 days from the date when you delivered the Grain to us.

- 2.4 In respect of any delivery of Grain by you to us under the AWB Harvest Loan Agreement, you unconditionally and irrevocably direct us to:
- (a) pay the total Facility Fee payable in respect of that delivery of Grain by deducting it from the Drawdown Amount payable to you in respect of that delivery; and
  - (b) satisfy any AWB Debt and any Encumbrance over any Grain delivered by you to us from the Drawdown Amount payable to you, and then to pay any remaining balance to you. We are not responsible to you for any Loss suffered because of delay in payment of the Drawdown Amount payable to you.

### 3. PAYMENT OF DRAWDOWN AMOUNTS

- 3.1 Subject to clause 3.2, you agree and we accept that the full amount of your Available Credit Limit will be drawn down automatically following each delivery of Grain you make to us under the AWB Harvest Loan Agreement.
- 3.2 We are only obliged to provide you the Drawdown Amount in respect of each of your Grain deliveries in a Crop Year if:
- (a) any fees payable by you in connection with the AWB Harvest Loan Agreement have been paid; and
  - (b) we are satisfied that you are not in default under the AWB Harvest Loan Agreement or any other agreement that you may have with an AWB Entity or any other finance agreement that you have with any other person.
- 3.3 Your Available Credit Limit reduces:
- (a) on each date that a Drawdown Amount is provided by us, by the amount of that Drawdown Amount; and
  - (b) on each date that a Pool Payment is made by us, by the amount of the Available Pool Payment for that date.

- 3.4 Although you may have more than one Initial Credit Limit under the AWB Harvest Loan Agreement, the AWB Harvest Loan Agreement is a single credit contract covering all Drawdown Amounts.

### 4. INTEREST

- 4.1 Subject to clause 9.3, you agree to pay us interest at the Interest Rate on the amount of each Loan over the term of that Loan.
- 4.2 Interest is calculated on your daily Loan balances. On the last Business Day of each month, accrued but unpaid interest is treated as a further Loan (on which interest will accrue) under the AWB Harvest Loan Agreement by being capitalised and added to the relevant Loan. Amounts of unpaid interest that have not yet been capitalised will be deducted from your Pool Payment along with the other amounts owing in respect of a Crop Year in accordance with clause 7 of the AWB Spring Starter Pool Payment General Terms and Conditions.

### 5. PRICE FOR GRAIN SOLD

- 5.1 Subject to clause 6, in respect of a delivery of a Pay Grade of Grain by you under an AWB Harvest Loan Agreement, we may pay periodic interim Pool Payments of an amount to be determined by us in our absolute discretion (each an **Interim Pool Payment**).
- 5.2 Subject to clause 6, in respect of a delivery of a Pay Grade of Grain by you under an AWB Harvest Loan Agreement, we will pay following the date when you delivered Grain to us, the Final Pool Payment on the Final Pool Payment Date. The GST-exclusive Final Pool Payment is calculated as follows:

$$(A \times B) - C - D - E$$

where:

- A** means the Delivered Tonnage;
- B** means the higher of the APR and the Guaranteed Minimum Return;
- C** means the lesser of the aggregate value of the Deductions and the Capped Cost;
- D** means any applicable Supplier Liabilities (unless the Supplier Liabilities have already been deducted); and
- E** means the aggregate of all Interim Pool Payments paid in accordance with clause 5.1.

- 5.3 All payments made in accordance with this clause 5 will be made in the manner set out in clause 7 of the AWB Spring Starter Pool Payment General Terms and Conditions.
- 6. REPAYMENT OF AMOUNT OWING**
- 6.1 The Amount Owing:
- (a) will be automatically repaid from the Pool Payment in accordance with clause 7.4(c) of the AWB Spring Starter Pool Payment General Terms and Conditions (**automatic repayment**); and
  - (b) can be repaid in full or in part by you in accordance with clauses 6.2, 6.3 and 6.4.
- 6.2 In addition to automatic repayments made under clause 6.1(a), you may repay the Amount Owing at any time, if the amount of the repayment is equal to or greater than \$5,000 and is a multiple of \$1,000, or is the Amount Owing in respect of that Crop Year. Any such repayment shall be treated as a reduction in your outstanding Drawdown Amounts.
- 6.3 When repaying the Amount Owing in full or in part:
- (a) if paying by electronic funds transfer or direct deposit, you must send a completed AWB Loan Repayment Notice by post to the address or by facsimile to the facsimile number set out in the form; and
  - (b) if paying by cheque, you must send to us a completed AWB Loan Repayment Notice and an unendorsed cheque made payable to us to the address set out in the form.
- 6.4 If you wish to repay the Amount Owing in full you must:
- (a) contact the AWB Grower Service Centre to ascertain the Amount Owing and to notify us that you wish to repay the Amount Owing in full; and
  - (b) pay the Amount Owing to us so that the Amount Owing is received by us no later than 5 Business Days after you contact the AWB Grower Service Centre.
- 6.5 The AWB Loan Repayment Notice is effective and irrevocable when received by us.
- 6.6 You may redraw amounts which have been repaid under clause 6.2 if you have complied with the following requirements
- (a) you request a further Drawdown Amount up to an amount equal to your Available Credit Limit;
  - (b) you have complied with the requirements set out in clause 3.2;
  - (c) you make a request for a further Drawdown Amount by 2.00 pm (Melbourne time) five Business Days before the Business Day that you require the further Drawdown Amount to be paid. Your request may be made by contacting the AWB Grower Service Centre or by any other method specified by us from time to time;
  - (d) you have lodged a password with us in accordance with AWB security procedures as specified from time to time;
  - (e) at the time of your request for a further Drawdown Amount, the security details and password provided by you are the same as those recorded by us;
  - (f) the further Drawdown Amount requested is equal to or greater than \$5,000 and is a multiple of \$1,000 or such other amount as agreed by us in our absolute discretion;
  - (g) the total amount of all your outstanding Drawdown Amounts (including capitalised interest) will not exceed your Available Credit Limit immediately after the Drawdown Amount is made available; and
  - (h) the date of your request is before 15 June in the year following that Crop Year (or such later date as we may determine in our absolute discretion) which falls on or before the Final Pool Payment Date.
- 6.7 Notwithstanding clause 6.6, we may, in our absolute discretion, apply an application processing period longer than the five Business Day period referred to in clause 6.6(c) to your request for a further Drawdown Amount. We are not responsible for any Loss suffered by you because of any delay in making that Drawdown Amount available.
- 7. YOU MAKE REPRESENTATIONS AND WARRANTIES ON DRAWDOWN**
- You represent and warrant separately to us each time we provide you with a Drawdown Amount that:
- (a) the representations and warranties set out in clause 8.1 of the AWB Spring Starter Pool Payment General Terms and Conditions are true and correct; and
  - (b) any Drawdown Amount provided to you will be used wholly or predominantly for business or investment purposes, other than investment in residential property, and is not provided or intended to be provided for personal, domestic or household purposes.
- 8. DEFAULT**
- 8.1 You are in default (**Default**) if:
- (a) any of the representations and warranties that you made under the AWB Harvest Loan Agreement are untrue or become untrue;
  - (b) you become Insolvent; or
  - (c) you are otherwise in breach of the AWB Harvest Loan Agreement.
- 8.2 If you are in Default, we may in our absolute discretion immediately suspend, cancel or terminate the loan facility made available to you under the AWB Harvest Loan Agreement, terminate the AWB Harvest Loan Agreement and/or, notwithstanding the provisions of clause 5 and 6, declare at any time by notice to you that all or part of the Amount Owing in respect of that Crop Year is immediately due for payment and may seek to recover the entire Amount Owing from you.
- 8.3 If you are in Default:
- (a) interest will be calculated under clause 4 at a rate equal to the Interest Rate which would be applicable to the Amount Owing by you plus five percent, rather than the Interest Rate; and
  - (b) you must pay us any Enforcement Expenses.
- 8.4 Nothing in this clause 8 limits our rights or any Claim that we may make in accordance with clause 10 of the AWB Spring Starter Pool Payment General Terms and Conditions.
- 9. PROVISION OF INFORMATION**
- 9.1 You agree to provide us with all information that we require to enable us to comply with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**AML/CTF Act**) including:
- (a) the verification of the name, address and date of birth of all parties to the AWB Harvest Loan Agreement;
  - (b) if you are a company or trust, we may require you to provide additional information to comply with the AML/CTF Act requirements.
- 9.2 Notwithstanding any other provision in the AWB Harvest Loan Agreement, we shall suspend or refuse any transaction that we suspect is, or is likely to be in breach of the AML/CTF Act and we shall not be liable to you for any Loss if we do so.
- 9.3 We shall take any action that we reasonably consider is necessary to comply with the AML/CTF Act, including disclosing any information we have about you to the AML/CTF regulators.
- 10. DICTIONARY**
- Capitalised words and phrases used in this Section 4 have the meaning given to them in Section 6 unless defined in this Section 4.

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## SECTION 5 AWB FLEXIBLE LOAN TERMS AND CONDITIONS “AWB FLEXIBLE LOAN OPTION”

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### 1 WHEN DO THESE TERMS AND CONDITIONS APPLY TO YOU?

- 1.1 The terms and conditions in this Section 5 apply to you when you make an Offer in which you select these terms and conditions as your Payment Option and that Offer is accepted by us. The terms and conditions in this Section 5, together with the AWB Spring Starter Pool Payment General Terms and Conditions and the Confirmation, form an AWB Flexible Loan Agreement.
- 1.2 The AWB Flexible Loan Agreement terms and conditions are the same as the AWB Harvest Loan terms and conditions contained in Section 4, modified in the manner set out in clause 2.

### 2 MODIFICATION OF THE AWB HARVEST LOAN TERMS AND CONDITIONS

For the purposes of this Section 5:

- (a) references in the AWB Harvest Loan terms and conditions to ‘AWB Harvest Loan Agreement’ shall be read as ‘AWB Flexible Loan Agreement’;
- (b) Clause 3.1 of the AWB Harvest Loan terms and conditions shall be deleted and the following clause 3.1 shall apply instead:
- “3.1 (a) You agree and we accept that subject to clause 3.2, you may request us by contacting the Grower Service Centre to provide you with Drawdown Amounts which in aggregate shall not exceed your Available Credit Limit.
- (b) We are only obliged to pay you a Drawdown Amount in respect of each of your Grain deliveries in a Crop Year if:
- (i) you request a Drawdown Amount up to an amount that does not exceed your Available Credit Limit;
  - (ii) you request a Drawdown Amount by 2.00 pm (Melbourne time) five Business Days before the Business Day that you require the Drawdown Amount to be paid. Your request may be made by contacting the AWB Grower Service Centre or by any other method specified by us from time to time;
  - (iii) you have lodged a password with us in accordance with AWB security procedures as specified from time to time;
  - (iv) at the time of your request for a further Drawdown Amount, the security details and password provided by you are the same as those recorded by us;
  - (v) the Drawdown Amount requested is equal to or greater than \$5,000 and is a multiple of \$1,000, or is equal to your Available Credit Limit, or such other amount as agreed by us in our absolute discretion;
  - (vi) the total amount of all your outstanding Drawdown Amounts will not exceed your Available Credit Limit immediately after the Drawdown Amount is made available; and
  - (vii) the date of your request is before 15 June in the year following that Crop Year (or such later date as we may determine in our absolute discretion) which falls on or before the Final Pool Payment Date.”; and
- (c) Clauses 5.1 and 5.2 of the AWB Harvest Loan terms and conditions shall be deleted and the following clause 5.1 shall apply instead:
- “5.1 Subject to clause 6, in respect of a delivery of a Pay Grade of Grain by you to us under an AWB Flexible Loan Agreement, we will pay, in July following the date when you delivered Grain to us, the Final Pool Payment on the Final Pool Payment Date. The GST-exclusive **Final Pool Payment** is calculated as follows:

$$(A \times B) - C - D + E$$

where:

**A** means the Delivered Tonnage;

**B** means the higher of the APR and the Guaranteed Minimum Return;

**C** means the lesser of the aggregate value of the Deductions and the Capped Cost;

**D** means any applicable Supplier Liabilities (unless the Supplier Liabilities have already been deducted); and

**E** means any applicable Deferred Pool Distribution Interest payable.”

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## SECTION 6 DICTIONARY AND INTERPRETATION

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**Actual Pool Return (APR)** means, in respect of a Pay Grade of Grain in a Pool in a Crop Year, the amount per tonne Published by us or an AWB Entity, on our behalf, as the actual pool return for that Grade in that Pool. The actual pool return is net of Operating Costs and if applicable a Port Differential, is denominated in Australian dollars and is quoted exclusive of GST. We may in our absolute discretion Publish different actual pool returns within a Pool by reference to different grouping of Grain according to Grade and or place of delivery and such other matters determined by us from time to time, including allocating the Operating Costs of the Pool on a differential basis in calculating the different actual pool returns within a Pool.

**Amount Owing** means, at any time, in respect of a Crop Year, the amount that you owe us at that time for all Loans provided to you in respect of all your deliveries of Grain to us in that Crop Year, together with all fees, costs, charges and expenses (including Enforcement Expenses) and all accrued but unpaid interest on those Loans that are payable or owing (whether actual or contingent, present or future), by you to us.

**Associate** means, an AWB Entity, a joint venture company in which an AWB Entity holds at least 25% of the issued share capital or a subsidiary of such a joint venture company.

**Available Credit Limit** means, in respect of deliveries of Grain made by you under the AWB Harvest Loan Agreement or the AWB Flexible Loan Agreement, the total of all your Initial Credit Limits for those deliveries less (1) your outstanding Drawdown Amounts (including capitalised interest) and (2) the total of all your Available Pool Payments for those deliveries provided that if this calculation results in an amount less than zero, the Available Credit Limit will be deemed to be zero.

**Available Pool Payment** means, in relation to Grain delivered by you to us under the AWB Harvest Loan Agreement or the AWB Flexible Loan Agreement, the amount of a Pool Payment (plus relevant GST) payable for that Grain less all Supplier Liabilities to be deducted from that Pool Payment. For the avoidance of doubt, for the purposes of this definition the amount of any Pool Payment is to be calculated without deduction of any amount of Production Advance referable to this Contract.

**AWB Debt** means any amount that is due and payable by you to any AWB Entity other than the Amount Owning.

**AWB Distribution Agreement** means the Contract between you and us which is made up of (i) the AWB Pool Payment General Terms and Conditions, (ii) the Confirmation and (iii) the terms and conditions set out in Section 2 (AWB Distribution Option).

**AWB Entity** means us, Cargill Australia Limited (ACN 004 684 173) or one of its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)), acting directly or through an agent or sub-agent, as the context requires.

**AWB Flexible Loan Agreement** means the Contract between you and us which is made up of (i) the AWB Spring Starter Pool Payment General Terms and Conditions, (ii) the Confirmation and (iii) the terms and conditions set out in Section 5 (AWB Flexible Loan Option).

**AWB Grower Service Centre** means the AWB telephone information service which (at the time of printing) can be reached on the telephone number listed at the front of the AWB Spring Starter Pool Payment General Terms and Conditions or as Published by us.

**AWB Harvest Loan Agreement** means the Contract between you and us which is made up of (i) the AWB Spring Starter Pool Payment General Terms and Conditions, (ii) the Confirmation and (iii) the terms and conditions set out in Section 4 (AWB Harvest Loan Option).

**AWB Loan Repayment Notice** means a notice in the prescribed form from you to us setting out details of a notice of repayment of any of the Amount Owning in respect of a Crop Year under an AWB Flexible Loan Agreement or AWB Harvest Loan Agreement (as applicable). Copies of the prescribed form of the AWB Loan Repayment Notice can be obtained by contacting the AWB Grower Service Centre.

**AWB Spring Starter Pool Payment General Terms and Conditions** means the terms and conditions set out in Section 1 entitled "AWB Spring Starter Pool Payment General Terms and Conditions".

**AWB Pools Trust** means the 2016/2017 AWB Pools Trust ABN 23 179 735 262 established under the AWB Pools Trusts Master Trust Deed entered into by us on 30 June 2011 as amended from time to time.

**BHC** means a bulk handling company or receival site and/or storage and handling facility that receives and/or stores and handles Grain on behalf of an AWB Entity and has been approved by an AWB Entity for that purpose.

**Business Day** means a day that is not a Saturday, Sunday or public holiday on which banks are open for general banking business in Melbourne.

**Capped Cost** means the maximum aggregate amount of Deductions as determined by us in our absolute discretion and Published by us prior to receipt of your Offer.

**Claim** means any claim, notice, demand, action, recovery, proceeding, litigation, investigation or judgment of any kind.

**Confirmation** is the written record prepared by us at the time of formation of the Contract in accordance with clause 1 and includes the document entitled 'Confirmation of AWB Grower Contract'.

**Contract** means the contract between you and us comprising (i) the AWB Spring Starter Pool Payment General Terms and Conditions and (ii) the Confirmation and (iii) the terms and conditions of the applicable Payment Option (in each case whether oral or written) formed upon our acceptance of your Offer as evidenced or recorded by the Confirmation.

**Contracted Tonnage** means, the quantity of Grain (in metric tonnes) of all Grades of Grain to be sold by you to us under the Contract, as specified in the Confirmation. The amount of the contracted tonnage may vary by any 'Tolerance %' as specified in the Confirmation. If you are a participant in a share-farm arrangement and that share-farm arrangement contracts to make a delivery using its Third Party Registration Number for that share farm arrangement), then the number of tonnes to be sold by you is your Percentage Share of that delivery.

**Crop Year** means the grain harvesting and delivery season to which a particular delivery or deliveries relate typically commencing in November of one year and continuing into May of the following year.

**Deductions** means, in relation to a delivery of Grain, the amount determined by us to be the costs incurred or applied by us in connection with that Grain including:

- (a) transport costs incurred;

- (b) location differentials applied to sales of Grain; and
- (c) any other site costs imposed by a BHC at that particular site that are not already included in the operating costs (for example additional charges that apply to Viterra tier 2 sites).

**Default** has the meaning given to it in clause 8 of Section 4.

**Deferred Pool Distribution Interest** means, in relation to the Pool Payment, the interest on so much of the funds held by the relevant Pool as we determine is attributable to participants in that Pool who deliver Grain under the applicable Payment Option, as calculated by reference to an interest rate determined by us in our absolute discretion.

**Delivered Tonnage** means, in relation to the Contract, the quantity (in metric tonnes) of the Contracted Tonnage delivered by you and accepted by us under the Contract. If you are a participant in a share-farm arrangement and that share-farm arrangement makes a delivery using its Third Party Registration Number for that share farm arrangement then the number of tonnes delivered by you is your Percentage Share of that delivery.

**Delivery Location** means, for 'port zone' deliveries, a BHC receival site or facility acceptable to an AWB Entity in the Port Zone.

**Delivery Period** means, in relation to the Contract, the period described in the Confirmation.

**dollar or \$** means the lawful currency of Australia.

**Drawdown Amount** means each principal amount provided or to be provided as a loan under a AWB Harvest Loan Agreement or a AWB Flexible Loan Agreement (as applicable), and includes the amount of the total Facility Fee payable by you in respect of the relevant delivery of Grain by you.

**Electronic Communications** means message transmitted and/or received by any electronic notice board on Your account, email, short message service (SMS), multimedia message service (MMS) or instant messaging or WAP.

**Encumbrance** means any security for the payment of money or the performance of obligations including a mortgage (including an assignment by way of mortgage), charge or any other hypothecation, lien (including a crop lien), pledge, trust or power of any kind whatsoever or a security interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth)).

**Endpoint Royalties** means royalties payable to or collectible by an AWB Entity from you in respect of Grain delivered to us on produce derived from plant varieties to which plant breeders' rights or patent rights attach.

**Enforcement Expenses** means all costs, fees and expenses incurred by or on behalf of us in the actual or attempted preservation or enforcement of the AWB Harvest Loan Agreement or the AWB Flexible Loan Agreement (as applicable).

**Estimated Pool Return (EPR)** means, on any day, in respect of a Pay Grade of Grain, our estimate in dollars per tonne of the Actual Pool Return for that Pay Grade, as Published by us in respect of that day. The estimated pool return is net of Operating Costs and any applicable Port Differential. The Estimated Pool Return is quoted exclusive of GST.

**Estimated Costs** means, in relation to a delivery of Grain by you to us, the sum of our estimate of the following amounts:

- (a) interest which is likely to accrue on your Loan balance relating to that delivery of Grain under clause 4 of Section 4 (AWB Harvest Loan Option) or clause 4 of Section 5 (AWB Flexible Loan Option) (as applicable); and
- (b) facility fees due under the AWB Flexible Loan Agreement or the AWB Harvest Loan Agreement (as applicable).

**Facility Fee** means the fee calculated in accordance with clause 23.

**Facility Fee Rate** means the rate set by us from time to time, expressed as an amount in dollars per tonne which will be Published by us.

**Final Pool Payment** has the meaning given in the relevant Payment Option.

**Final Pool Payment Date** means, in relation to Grain delivered by you to us in a Crop Year, the date on which we Publish either the amount of the Final Pool Payment or that no Final Pool Payment will be paid, for that Grain in that Crop Year.

**Force Majeure Event** means:

- (a) an act of war (either declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, industrial action or labour disturbance, embargo, action or inaction by a Government Agency; or
- (b) a failure of a public utility or common carrier which renders it impossible for you to transport the Contracted Tonnage to the Delivery Location specified in the Confirmation, but does not include any event relating to the production or non-production of Grain (including non-production of Grain wholly or partly caused by drought, flood, frost, fire or other environmental conditions).

**Government Agency** means a government or any governmental, semi-governmental, legislative, administrative, fiscal, quasi-judicial entity, authority, department or other body, whether foreign, federal, State, Territorial or local (including any self-regulatory organization established under statute).

**Grade** means each grade classification into which we allocate Grain according to certain criteria, including variety and various other minimum quality parameters.

**Grain** means wheat which, in relation only to the Contract, is specified in the Confirmation.

**Grain Trade Australia Trade Rules** means any trade rules issued by Grain Trade Australia Ltd from time to time (excluding the Grain Trade Australia Dispute Resolution Rules).

**GST** means the same as in the GST Law.

**GST Law** has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guaranteed Minimum Return** means in respect of a Pay Grade of Grain the amount in dollars per tonne Published by us and described as the 'guaranteed minimum return' for that Pay Grade at the time the Contract is entered into between you and us. For the avoidance of doubt, Pool Payments calculated on the basis of Guaranteed Minimum Return are subject to various adjustments including administration fees, Facility Fees and Supplier Liabilities in accordance with the relevant Payment Option.

**Initial Credit Limit** means, in respect of a delivery of a Pay Grade of Grain by you to us for which you have elected to enter into an AWB Flexible Loan Agreement or AWB Harvest

Loan Agreement, the maximum principal amount that we are prepared to lend you in respect of that delivery of Grain as determined and adjusted from time to time in accordance with clause 2.3 of the AWB Flexible Loan Agreement or AWB Harvest Loan Agreement (as applicable), which can be ascertained by contacting the AWB Grower Service Centre.

**Insolvent** means bankrupt, unable to pay debts as and when they fall due, in receivership, in receivership and management, in liquidation, in provisional liquidation, under any form of administration, wound up, dissolved, deregistered, subject to any arrangement, assignment or composition with creditors, protected from creditors under any statute or in receipt of protection under statute.

**Interest Rate** means, at any time, the interest rate Published by AWB in respect of the 2016/17 Pools. These rates are variable rates set by us from time to time in our absolute discretion. A varied rate is applicable on and from the day that it is Published on [www.awb.com.au](http://www.awb.com.au). If an interest rate is not Published the Interest Rate shall be taken to be that most recently Published for the most recent preceding pool.

**Interim Pool Payment** has the meaning given in the relevant Payment Option.

**In-store Transfer** means, in respect of Grain held by a BHC on your behalf, the transfer of ownership of that Grain that occurs when a BHC notifies us that it no longer holds that Grain for you but holds it on behalf of us (or our agent or sub-agent).

**Levies and Tolls** means, in relation to a delivery of Grain by you to us, any industry levies, tolls, fees, charges, duties and any other amount collectible by us in connection with the sale of that Grain to us.

**Loan** means each loan provided by us in respect of each delivery of Grain by you under the AWB Harvest Loan Agreement or the AWB Flexible Loan Agreement, which includes each Drawdown Amount provided or to be provided by us in respect of those deliveries under clauses 2 and 3 of Section 4 (AWB Harvest Loan Option) or 5 (AWB Flexible Loan Option (as applicable) and each amount to be treated as a loan under clause 4.2 of Section 4 (AWB Harvest Loan Option) or 5 (AWB Flexible Loan Option) (as applicable). For the avoidance of doubt, any loan provided by us to you subsequent to the Original Loan Facility is an increase of the amount loaned to you under the Original Loan Facility and all such loans constitutes a single loan pursuant to a single AWB Harvest Loan Agreement or the Flexible Loan Agreement (as applicable).

**Loss** means any loss, costs, charges, outgoings, liabilities, damages, expenses or indebtedness of any description.

**Multi-Grade contract** means the Contract where the Delivered Tonnage may be any of the Grades specified in the list of acceptable Grades of Grain for delivery against the Contract as per an attachment to the Contract, as varied from time to time, and Published. **Operating Costs** means, in relation to a Pool, Losses and Claims incurred by us or the Pool in relation to the Grain and Losses and Claims incurred by us (including our overhead charges) which we determine to be attributable to, arising from or in connection with the buying, holding, sale, risk management and disposal of the Grain and the overall management of the Pool (including its establishment and winding-up), howsoever incurred.

**Original Loan Facility** means the loan facility we agreed to provide you in relation to the first load of Grain delivered by you to us, in accordance with the AWB Harvest Loan Agreement or the AWB Flexible Loan Agreement (as applicable).

**Overpaid** means, at any time, the amount you have been paid in excess of your entitlement (or likely entitlement) under a contract with us or another AWB Entity and includes without limitation:

- (a) where a Final Pool Payment is less than zero, the amount of that deficiency; and
- (b) a payment made to you in error.

**Pay Grade** means a Grade of Grain allocated or to be allocated into a Pool by us in a Crop Year.

**Payment Option** means, in relation to Grain delivered by you to us, the terms on which you are to be paid by us for that Grain, being those set out in Section 2 (AWB Distribution Option), Section 3 (AWB Deferred Distribution Option), Section 4 (AWB Harvest Loan Option) or Section 5 (AWB Flexible Loan Option) selected by you and accepted by us.

**Percentage Share** means, in relation to each Supplier named under the heading "percentage share details" on an AWB share farm confirmation advice, or recorded by a third party in respect of a Third Party Registration Number applicable to a share farm arrangement, the percentage share for that Supplier specified in respect of Grain deliveries.

**Pesticide Standards** has the meaning given in clause 4.

**Physical Delivery** has the meaning given in clause 2.2(a).

**Pool** means a grouping of Grain according to Grade, time and/or place of delivery and any other matters determined by an AWB Entity. Nothing in this definition requires that quantities of Grain forming part of the same pool be physically merged or stored, handled or transported together.

**Pool Payment** means any amount paid or payable by us for a delivery of Grain by you to us under the Contract reduced by any Deductions and Supplier Liabilities and such other amounts in accordance with the Contract, unless the payment is already adjusted for such Deductions, Supplier Liabilities and other amounts.

**Port Differential** means the difference between (a) the value we determine (in our discretion) to be applicable to Grain delivered into a particular Port Zone and (b) the value we determine (in our discretion) to be applicable to Grain at the reference port (such reference ports being determined by us in our absolute discretion). The Port Differential will be expressed in dollars per tonne and may be positive, negative or zero and may be ascertained by comparing the EPR for the same Pay Grade across two different port zones.

**Port Zone** means, in relation to the Contract, the region associated with the location identified in the Confirmation, as determined by us from time to time. Details are available by contacting the AWB Grower Service Centre.

**PPSA Security Interest** has the meaning given to 'security interest' in the *Personal Property Securities Act 2009* (Cth). **Production Advance** means, in respect of a production advance offer made by us and accepted by you, the meaning given to that term in the 'Production Advance Addendum' referred to in the Offer.

**Published** means to make information publicly available on the AWB internet site at [www.awb.com.au](http://www.awb.com.au). If information is provided in writing to you under the AWB Spring Starter Pool Payment General Terms and Conditions that information shall apply to the exclusion of equivalent information otherwise Published, unless the terms of that Published information specifically provide otherwise.

**Reversal In Payment Option** means, in respect of each delivery of Grain by you the subject of a Ticket Reversal, the Payment Option that you want that delivery to be transferred into and the relevant Contract amended to reflect the new or revised Payment Option.

**Reversal Out Payment Option** means, in respect of each delivery of Grain by you the subject of a Ticket Reversal, the Payment Option you selected at the time of delivering that delivery of Grain and out of which you wish to transfer and wish to amend the relevant Contract so that it no longer reflects that Payment Option.

**Road Safety Laws** includes any Australian legislation, regulations and rules relating to road safety, road transport or heavy vehicle transport, including rules relating to:

- (a) vehicle dimensions, weight, load limits, speed limits and securing of loads;
- (b) driver management, including occupational health and safety, driving hours, fatigue management and illegal driving; and
- (c) road management including route and time restrictions.

**Sale of Goods Act** means the relevant Sale of Goods Act in a State or Territory.

**Spring Starter Pool** means one or more Pools established by us for the purposes of early commitment of Grain to the AWB Pools Trust in accordance with the terms of the Contract.

**Special Terms** means, the terms and conditions as Published from time to time which we determine to apply in respect of a delivery of Grain and includes any terms and conditions we have agreed in writing from time to time to apply to one or more of your deliveries or your Contract.

**Supplier** means the one or more persons or corporate entities whose details are set out under the heading 'Contact Details' on the most recent Supplier Confirmation Advice issued by us at the time of delivery. A Supplier does not include a group of persons participating in a share-farm arrangement.

**Supplier Information** means the information provided to us by you or the provider of your Third Party Registration Number in connection with the Contract including your name, trading name (if applicable), Australian Business Number, address, contact information, Third Party Registration Number and bank account information (account name, account number, BSB, name of bank and branch) for the receipt of payments.

**Supplier Liabilities** means, in relation to a delivery of Grain by you to us under a Contract the total of Levies and Tolls and Endpoint Royalties payable to third parties relating to that delivery of Grain, and any other fees, charges or other amounts to be collected by us from you or that are otherwise payable by you to us in connection with you selling that Grain and includes for example on-farm pick up, drying charges and storage charges incurred by you prior to the title in the Grain passing to us.

**Tax** means any tax, goods and services tax, levy, duty, impost, fee, charge, deduction or withholding, however described, that is assessed, levied, imposed or collected by law or by any Government Agency (including a tax on net income), together with any related interest, penalty, fine, fee or other charge or amount imposed on, or in respect of any of the above, in any jurisdiction.

**Third Party Registration Number** means a unique grower registration number issued by a third party which maintains a register of growers and other sellers and which we have agreed, in our absolute discretion, to accept for use to (amongst other things) identify Grain delivered by you under a Contract and to make payments to you using information provided by the provider of your Third Party Registration Number.

**Ticket Reversal** means, in respect of each delivery of Grain by you, the transfer of that delivery from the Reversal Out Payment Option into the Reversal In Payment Option.

**Ticket Reversal Fees** means the fees Published prior to the receipt of your Offer which we will charge in respect of each Ticket Reversal to compensate for our costs of the Ticket Reversal.

**Tonnage** means, in relation to a delivery of Grain to us, the number of tonnes in that delivery of Grain. If you are a participant in a share-farm arrangement and that share-farm arrangement makes a delivery of Grain to us under a Contract using its Third Party Registration Number for that share farm arrangement then your "tonnage" is your Percentage Share of that delivery of Grain. Any changes to your Percentage Share of a delivery of Grain will only be effective for any future deliveries made after that change.

## **Interpretation**

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural, and the converse also applies.
- (a) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (b) If the day on or by which a person must do something under the Contract is not a Business Day:
- (c) if the act involves making a payment, the person must do it on or by the next Business Day; and
- (d) in any other case, the person must do it on or by the previous Business Day.
- (e) A reference to an agreement or document (including a reference to a contract) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by these AWB Spring Starter Pool Payment General Terms and Conditions or that other agreement or document.
- (f) A reference to a party to a contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (i) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (j) 'we', 'us' or 'our' means AWB Harvest Finance Pools Pty Limited ACN140 232 346 as trustee for the AWB Pools Trust, acting directly or through an agent or sub-agent.
- (k) 'you' or 'your' refers to the party who sells Grain to us under the Contract (being the person identified as the seller in the Confirmation), who must be a Supplier with a Third Party Registration Number acceptable to us in our absolute discretion and includes any agent acting on behalf of that Supplier. If the Supplier Information includes more than one person or corporate entity as the Supplier, 'you' or 'your' refers to each of them separately and every two or more of them jointly and includes any agent acting on behalf of them. It also includes the Supplier's lawful assigns and successors. 'You' or "your" does not include a group of persons participating in a share-farm arrangement.