

HARVEST LOAN FACILITY TERMS (AUGUST 2006)

**Elders Rural Bank Limited
(ABN 74 083 938 416)**



Elders Rural Bank
Committed to Agribusiness

ABN 74 083 938 416
Australian Financial Services Licence (AFSL) 238042
Registered Office: 27 Currie Street, Adelaide, SA 5000

Note 1:

Clause 1 contains various definitions that are used in both these terms and the *agreement*. For your assistance, defined expressions are shown "like this" when used in these terms. Clause 1 also includes some simple rules to assist in understanding these terms and the *agreement*.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms:

"account" means, in relation to a *harvest facility*, the account opened in accordance with, or specified in, the *loan application* relating to that *harvest facility*;

"advance" means each *advance* of funds made under a *harvest facility* by the *Bank* to, or at the request or direction of, the *borrower*;

"agreement" means the agreement between the *Bank* and the *borrower* constituted by these terms, the *loan application* and the *Bank's* notification of its approval of the *loan application*;

"amount of available advances" or **"AA"** means, in connection with each *wheat ticket*, the amount calculated in accordance with **clause 3.2** less, where applicable, any amount which the *Bank* considers is likely to be owing to the holder (other than the *Bank*) of a prior ranking security interest over the relevant wheat or *mortgaged property*;

"approved purpose" is to assist the *borrower* in repaying existing indebtedness, meeting seasonal expenses or such other purpose approved by the *Bank*;

"authorised officer" means any director, secretary or attorney of the *Bank*, any lawyer acting for the *Bank* and any employee of the *Bank* whose title includes the word "manager";

"AWBI" means AWB (International) Limited (ABN 14 081 890 413) and, where applicable, AWB Limited (ABN 99 081 890 459) as its agent;

"Bank" means Elders Rural Bank Limited (ABN 74 083 938 416) and its successors and assigns;

"borrower" means each person described in the *agreement* as a *borrower* and if more than one person is so described, a reference to "borrower" is a reference to them jointly and each of them severally;

"borrower's nominated account" means the account nominated as such in the relevant *loan application*;

"business day" means a day on which banks in general are open for business in Adelaide;

"Corporations Act" means the Corporations Act 2001 (Cwlth);

"estimated costs" or **"EC"** means in relation to each *wheat pool contract* the amount estimated by the *Bank* to be the aggregate per tonne of:

- (a) all direct costs to be incurred in relation to the relevant *wheat pool* including storage, handling, transport and port costs; and
- (b) all levies and tolls incurred in relation to that *wheat pool*; and
- (c) interest which is likely to accrue on your *harvest facility*;

"estimated pool return" or **"EPR"** means in relation to a *wheat pool* the amount per tonne estimated by AWBI as published in the first week of November of the season you deliver, whether on a grade basis or otherwise;

"estimated wheat pool return" or **"EWPR"** means in relation to a *wheat pool* the amount per tonne estimated by AWBI (and as published from time to time) as being the nominated *EPR* for that *wheat pool* whether on a grade basis or otherwise;

"event of default" means any of the events referred to in **clause 8**;

"facility limit" or **"FL"** means in relation to a *harvest facility*, the aggregate of the amounts calculated in accordance with **clause 3.1**;

"fees and charges" means the fees and charges specified in the *loan application*;

"government body" means any person, body politic or other thing exercising an executive, legislative, judicial or other governmental function, any public authority and any person deriving by delegation a right directly or indirectly from any other *government body*;

"GST" means any goods and services tax, value added tax or any tax or charge of a like nature levied or imposed under A New Tax System (Goods & Services Tax) Act, 1999 or other legislation;

"harvest facility" means each *harvest facility* which the *Bank* has agreed to provide to the *borrower* as set out in the *agreement*;

"insolvency event" means, in relation to the *borrower*:

- the appointment of a liquidator, provisional liquidator, administrator or controller (as those expressions are defined in the *Corporations Act*) to it or over the whole or any part of its property;
- it being, or stating that it is, unable to pay all its debts as and when they become due and payable;
- it is deemed insolvent under the *Corporations Act*;
- any event described in Section 461 of the *Corporations Act* occurs in relation to it;
- it is an insolvent under administration as defined in the *Corporations Act*; or
- any action is taken to make an appointment referred to in this definition.

"interest rate" means, in relation to a *harvest facility*, the *Bank's* harvest loan interest rate from time to time;

"irrevocable directions" means irrevocable directions in the form attached to the relevant *loan application*;

"loan application" means, in relation to a *harvest facility*, the harvest loan application executed by the *borrower* relating to that *harvest facility* together with all documents attached to, or forming part of, that harvest loan application;

"mortgaged property" means, at any time, all of the *borrower's* rights under, and in connection with, each *wheat pool contract* in relation to which the *borrower* has delivered to the *Bank* a *wheat ticket* including all moneys paid or payable to or on behalf of the *borrower* under or in connection with that *wheat pool contract*;

"NPDO" means the terms and conditions offered by AWBI for wheat sold into a *wheat pool* under the National Pool Distribution Option as in operation at the date of the relevant *agreement* or such other equivalent or replacement terms and conditions acceptable to the *Bank*;

"nt" means the number of tonnes (specified in a *wheat ticket* delivered to the *Bank* in accordance with an *agreement*) of wheat delivered by the *borrower* to AWBI or its agents;

"P" means the premium or discount (being a positive and negative number respectively) applied by AWBI to any wheat the subject matter of a *wheat ticket* delivered to the *Bank*;

"potential event of default" means anything that, with the giving of notice or lapse of time or both, would become an *event of default*;

"power of attorney" means the power of attorney attached to the *loan application*;

"relevant document" means the *agreement*, these terms, the *securities* and the *power of attorney*;

"repayment date" means, in relation to a *harvest facility*, the latter of 15 months from the date of the first *advance* under that *harvest facility* and the date the final distribution is made under the NPDO for the relevant *wheat pool*;

"securities" means a first mortgage from the *borrower* over the *mortgaged property* and the *irrevocable directions* together with any document required in connection with, or to give effect to, a transaction contemplated by any of them;

"taxes" means all present and future *taxes*, levies, imposts, stamp and other duties, fees, compulsory loans, withholdings or deductions and penalties and interest imposed in relation to any of them, but does not include a tax on the net income of the *Bank* or GST;

"trust" means any *trust* of which the *borrower* is trustee, whether or not the *Bank* has been notified of the existence of such *trust*;

"trust deed" means each instrument establishing a *trust*;

"underwriting fee" or **"UF"** means the fee per tonne charged to the *Bank* by Elders International Australia Limited from time to time to enable the *Bank* to limit its rights in accordance with **clause 13** (such fee being available from the *Bank* upon request);

"wheat pool" means a grouping of wheat by AWBI according to the time of delivery, location, quality, grade or variety or such other matters as are determined by AWBI;

"wheat pool contract" means each contract (whether in writing or not) made between the *borrower* and AWBI for the wheat sold into a *wheat pool* under NPDO; and

"wheat ticket" means the ticket issued (including electronically issued) by, or on behalf of, AWBI to the *borrower* at the receival site for wheat sold under the NPDO and which specifies the *borrower's* grower registration number, the quality and quantity of wheat delivered and the date of that delivery and which is otherwise in a form acceptable to the *Bank*.

1.2

Interpretation

In these terms:

- the singular includes the plural and vice versa;
- a reference to any gender includes all other genders;
- "person" includes a partnership, a corporation, an unincorporated association and an authority;
- the whole includes any part;
- headings and notes do not affect its interpretation;
- a reference to a document or legislation includes a reference to that document or legislation as varied, amended or replaced from time to time;
- a reference to a person includes that person's executors, administrators, successors and permitted assigns; and
- where an example of something is given, it does not limit what else may be included.

1.3

Inconsistency

Where there is an inconsistency between these terms and any other *relevant document*, the following order of precedence applies:

- first, the *agreement*; and
- second, the *security*.

Note 2:

Clause 2 sets out various steps that must be taken before the *borrower* may request an advance under a *harvest facility*. Other requirements are set out in these terms and may be included in the *agreement*.

2.

CONDITIONS PRECEDENT

The *Bank* is not obliged to provide an *advance* under a *harvest facility* unless, on or before 31 March 2007:

- it receives, in a form and substance satisfactory to it, the *power of attorney* and any other documents the *Bank* reasonably requires to evidence that all necessary action was taken to authorise the execution and delivery of each *relevant document*;
- the *securities* are, if necessary, stamped and registered in such jurisdictions and with such *government bodies* as are required for the *securities* to be valid, fully enforceable and to confer the priority required by the *Bank*;
- it receives (whether in electronic form or otherwise) a *wheat ticket*;
- it has received the *irrevocable directions* required under the *loan application* duly executed by the *borrower*;
- it has received an acknowledgement of receipt from the addressee of any *irrevocable direction* required under the *loan application*;
- it is satisfied that each of the representations and warranties contained in each *relevant document* is correct; and
- it is satisfied that there is no subsisting *event of default* or *potential event of default*.

These conditions precedent are for the benefit of the *Bank* only. The *Bank* may waive or defer (with such requirements or conditions as it sees fit) the satisfaction of any of them at any time.

Note 3:

Clause 3 sets out the manner in which the *facility limit* and the *amount of available advances* are calculated.

3. FACILITY LIMIT AND AMOUNT OF AVAILABLE ADVANCES

3.1 Calculation of Facility Limit

In relation to each *wheat ticket* delivered to the *Bank* the *facility limit* is calculated as follows:

- (a) Where the *EWPR* has been published by the *AWBI* by the 14th November in the same season as your delivery, then the following will apply:

$$FL = 90\% \text{ of } nt(EWPR +/- P) - EC$$

or

- (b) Where the *EWPR* has not been published by the *AWBI* by the 14th November in the same season as your delivery, then the following will apply:

$$FL = 90\% \text{ of } nt(EPR +/- P) - EC$$

Plus an additional advance equal to \$A (if \$A is a positive number) will be made as follows should *AWBI* subsequently publish the *EWPR* and the *EWPR* is greater than the *EPR*:

$$\$A = [90\% \text{ of } nt(EWPR +/- P) - EC] - [90\% \text{ of } nt(EPR +/- P) - EC]$$

3.2 Calculation of Amount of Available Advances

The *amount of available advances* is calculated as follows:

$$AA = FL - (nt \times UF)$$

3.3 Additional Sums

The difference between the *Facility Limit* and the *amount of available advances* actually provided is available to meet the *underwriting fee* payable by the *Bank*.

Note 4:

Clause 4 sets out various requirements that apply to the use of a *harvest facility*. Others may be specified in the *agreement*.

4. USE OF FACILITY

4.1 General

The *borrower*:

- agrees that at no time may the debit balance of an *account* exceed the *facility limit* applicable to the relevant *harvest facility*;
- agrees that the aggregate of all *advances* may not exceed the *amount of available advances*;
- agrees that the *harvest facility* may only be used for an *approved purpose* and that any *advance* used for any purpose other than an *approved purpose* must be immediately repaid;
- authorises the *Bank* to debit each *advance* to the *account* on the date that it is provided to the *borrower* or at its request;
- authorises the *Bank* to debit the *underwriting fee* to the *account* even if the *amount of available advances* is not fully utilised;
- directs the *Bank* to deduct from the *amount of available advances* any amount owing to the holder of any prior ranking security interest over the wheat the subject matter of a *wheat pool contract*, or over the *mortgaged property*; and
- acknowledges that no *advance* will be permitted after the earlier of 31 March 2007 and the date of the first distribution under *NPDO*.

4.2 Prepayment

The *borrower* may at any time repay all or any part of the debit balance of the *account* without any additional cost. Any amount prepaid may not be reborrowed.

4.3 Priority

Without prejudice to its rights under any *relevant document*, if the *Bank* becomes aware that:

- any other person holds a security interest or encumbrance over any wheat the subject matter of a *wheat pool contract* or over any *mortgaged property*; or
- the *securities* are not registered with the priority required by the *Bank*,

then the *Bank* is not obliged to continue to provide the *harvest facility* until it has entered into a priority agreement with all relevant parties on terms satisfactory to the *Bank*.

Note 5:

Clause 5 sets out various requirements relating to the payments required to be made including, when those payments are required, how they are calculated, where they must be made and how they must be made.

5. PAYMENT OBLIGATIONS

5.1 General

All payments required to be made under or in connection with a *relevant document* must be made:

- in cleared funds free of any set-off, counterclaim or deduction;
- on a *business day*;
- in Australian dollars; and
- to the *Bank* at its address shown in the *agreement* or as subsequently advised to the *borrower* in writing.

5.2 Interest

Interest is payable on the debit balance of each *account*. Subject to **clause 5.7**, interest is payable on the debit balance of an *account* calculated at the *interest rate* applicable to the relevant *harvest facility* and will be debited to the *account* in arrears on the first day of the following month. The *interest rate* (unless otherwise specified in the *agreement*) is variable and the current *interest rate* applicable to the relevant *harvest facility* can be obtained from any office of the *Bank*. Any illustrative *interest rate* set out in the *loan application* may not apply during the term of the *harvest facility* and may change even before an *advance* is made.

5.3 Fees

The *borrower* must pay on demand the fees outlined in the *loan application*.

If the *borrower* is an existing customer of the *Bank* with a seasonal loan account then the *borrower* directs the *bank* to debit those fees and charges to that seasonal loan account or the *account*.

If the *borrower* is not an existing customer of the *Bank* with a seasonal loan account then the *borrower* directs the *bank* to debit those fees and charges to the *account*.

5.4 Calculation

Interest and, where relevant, fees are calculated daily based on the actual number of days in the calendar year.

5.5 Repayments

Subject to **clause 13** the *borrower* must repay to the *Bank* the debit balance of each *account* on or before the *repayment date* applicable to the relevant *harvest facility*.

All distributions received by the *Bank* from *AWBI* in accordance with an *irrevocable direction* will be credited to the *account*.

Any credit balance in the *account* after all moneys owing (actually or contingently) by the *borrower* to the *Bank* under or in connection with the *agreement* have been paid to the *Bank* belongs to the *borrower* and the *borrower* directs the *Bank* to credit those funds to the *borrower's nominated account*.

5.6 Other costs and expenses

The *borrower* must pay on demand all other costs, charges, duties and expenses including reasonable legal costs (on a full indemnity basis), stamp duty and other government charges incurred by the *Bank* in connection with:

- the preparation, negotiation and execution of each *relevant document*;
- the stamping and, where necessary, registration of each *relevant document*;
- the conduct of any searches and enquiries including obtaining any valuation or other report required by the *Bank*;
- the enforcement and attempted enforcement or preservation by the *Bank* of its rights under any *relevant document*;
- any request for consent and approval in connection with any *relevant document*; and
- any advice obtained, or assessment undertaken, in connection with the *relevant documents* and the *Bank's* rights and duties under them.

The *borrower* authorises the *Bank* to debit those costs and expenses to:

- the *borrower's* seasonal loan account if it currently has one open with the *Bank*, or
- the *account*.

The *borrower* acknowledges that it is liable for these costs and expenses even if no *advance* is ever made under the *harvest facility*.

5.7 Interest on Unpaid Amounts

The *borrower* must pay interest on any moneys due but unpaid under the *relevant documents* at the rate being the higher of the rate charged by the *Bank* from time to time on its unsecured seasonal facilities and the aggregate of 3% per annum and the rate of interest applicable to those moneys under the *relevant documents*. Interest on unpaid amounts is calculated from, but excluding the date the payment was due to, and including the date the payment is made. Interest not paid when due will be capitalised monthly.

5.8 Merger

If the liability of the *borrower* to pay to the *Bank* any moneys payable under a *relevant document* becomes merged in any deed, judgement, order or other thing, then the *borrower* must pay interest on the amount owing from time to time under that deed, judgement, order or other thing at the higher of the rate payable under the applicable *relevant document* and the rate fixed by, or payable under, that deed, judgement, order or other thing.

5.9 Interest on Credit Balances

No interest is paid by the *Bank* on any credit balance in the *account*.

Note 6:

Clause 6 contains various representations and warranties given by the *borrower*. The *Bank* relies on these representations and warranties when entering into the *harvest facility* and when each *advance* is made. Other warranties are included in Clause 10 and may be set out in the *agreement*.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties

The *borrower* represents and warrants that:

- all information provided to the *Bank* including in the *loan application*, is true and correct and is not false or misleading;
- unless it has disclosed the contrary to the *Bank* in writing prior to the date of the relevant *loan application*, it is not the trustee of any *trust*;
- it has taken all necessary steps, and has all requisite power, to execute, and authorise the execution of, each *relevant document*;
- execution of each other *relevant document* does not cause a breach of any existing law, its constitution (if applicable) or any other agreement to which it is a party;
- other than as disclosed in writing to the *Bank* on or prior to the date of the relevant *loan application*, it has not granted any security interest or encumbrance over all or any part of the *mortgaged property* or over the wheat the subject matter of a *wheat ticket*;
- it has obtained all necessary consents, licences, approvals and other authorisations from all relevant persons in connection with execution of each *relevant document*;
- no *insolvency event* has occurred or is threatened;
- it has not failed to disclose to the *Bank* any material information which a reasonable person would consider relevant to the assessment by the *Bank* of the *loan application* and to the *Bank's* decision to provide the *harvest facility*;
- the *advances* provided, or to be provided, under each *harvest facility* have been, or will be, applied wholly or predominantly for business or investment purposes;
- no *event of default* or *potential event of default* has occurred;
- no representation, warranty, promise, assurance or other statement has been made to it by any person (including, the *Bank* and its servants and agents) concerning or relating to any *relevant document* other than those contained in the *relevant documents*;
- all wheat delivered to *AWBI* which is the subject matter of a *wheat ticket* delivered to the *Bank* meets *AWBI's* receival standards from time to time;
- all wheat the subject matter of a *wheat ticket* delivered to the *Bank* has been sold by the *borrower* to *AWBI* under *NPDO*;
- the *borrower's* rights under each *wheat pool contract* including its right to receive payments are not subject to any *security interest*, right of set-off or other equitable right other than in favour of the *Bank*;
- it has obtained all necessary consents under each *wheat pool contract* to enter into and incur obligations under, each *relevant document*;
- each *wheat pool contract* is valid, binding and enforceable and no party is in default under that *wheat pool contract*; and
- no wheat the subject matter of a *wheat ticket* delivered to the *Bank* is subject to any loan or payment options (other than the *NPDO*) offered by *AWBI* or any of its related bodies corporate.

6.2 Reliance

The *borrower* acknowledges that the *Bank* relies on the representations, warranties, covenants and acknowledgments set out in these terms and the other *relevant documents* in agreeing to provide the *harvest facility* and that the *Bank* would not have agreed to provide the *harvest facility* but for those representations, warranties, covenants and acknowledgments.

6.3 Survival and Repetition

Each representation and warranty set out in these terms survives the acceptance of the *agreement* and is deemed to be repeated with reference to the facts and circumstances then existing on the date each *wheat ticket* is delivered to the *Bank*, on the date each *advance* is provided and on the first *business day* of each month.

Note 7:

Clause 7 contains various obligations by the *borrower*. Others are contained in the *agreement* and in the *securities*.

7. COVENANTS

The *borrower* must:

- not (without the prior written consent of the *Bank*):
 - dispose of, or deal with any interest in, the *mortgaged property*;
 - commence, abandon, settle, compromise or discontinue or become non-suited in respect of any proceedings against *AWBI* or any other person (other than the *Bank*) in respect of the *mortgaged property*;
 - vary the terms of any *wheat pool contract* relating to the *mortgaged property*; or
 - waive any of its rights against, or release, *AWBI* or any other person from its obligations under a *wheat pool contract* relating to the *mortgaged property*;

- provide any information the *Bank* may reasonably request in relation to any *wheat ticket* delivered to the *Bank* and in relation to any *wheat pool contract*;
- notify the *Bank* in writing as soon as it becomes aware of:
 - an *event of default* or a *potential event of default*;
 - any breach of any representation and warranty given by it in any *relevant document*; and
 - any notice from *AWBI* relating to any *wheat pool contract*, any *wheat ticket* or *irrevocable direction* and promptly provide a copy to the *Bank*;
- comply with the provisions of the *Corporations Act* (if applicable) and all existing laws;
- punctually comply with all requirements of any *government body* relating to each *relevant document* and each *wheat pool contract* relating to the *mortgaged property*; and
- punctually perform all of its obligations under each *relevant document* and *wheat pool contract* relating to the *mortgaged property*.

Note 8:

This clause lists the *events of default* and what happens if an *event of default* occurs.

8. EVENTS OF DEFAULT

8.1 Nature

Each of the following is an *event of default*:

- the *borrower* does not perform or comply with any covenant, agreement or undertaking on its part contained in any *relevant document*;
- any representation, warranty or statement by the *borrower* in any *relevant document* or any document delivered under any of them is not complied with or is incorrect in any material respect when made or deemed to be repeated;
- an *insolvency event* occurs;
- all or any part of any *relevant document* or *wheat pool contract* relating to the *mortgaged property* is terminated or is able to be terminated or is, or becomes capable of becoming void, voidable, illegal, invalid or unenforceable or of limited force and effect; and
- the *securities* do not have the priority as required by the *Bank*.

8.2 Exercise Rights

If the *borrower* fails to pay to the *Bank* any money payable on demand or if any other *event of default* occurs the *Bank* may do any one or more of the following:

- cancel all or any part of the *harvest facility*;
- make all moneys owing (actually or contingently) under or in connection with the *harvest facility* immediately due for payment or payable on demand; or
- subject to **clause 13** (if applicable), enforce its other rights under this or any other *relevant document*.

Note 9:

Clause 9 sets out various requirements that the *borrower* must observe and deals with the payment of any applicable GST.

9. GST PROVISIONS

9.1 General

The *borrower* agrees that:

- unless otherwise expressly provided, any amount referred to in any *relevant document* which is relevant in determining a payment to be made by one person to another is exclusive of GST; and
- if GST is levied or imposed on or in respect of any supply made under or in connection with any *relevant document* for which the consideration is a monetary payment, then the amount payable for that supply is increased by the rate at which GST is levied or imposed.

9.2 Acknowledgments

The *borrower* acknowledges that the *Bank* has advised it to obtain independent legal and financial advice in connection with the GST liability attaching to receipt of payments under the *wheat pool contracts* relating to the *mortgaged property* and that the *Bank* has advised it to set aside funds to meet those GST obligations.

Note 10:

This clause applies where the *borrower* acts as trustee of a *trust*, whether or not the *Bank* is aware of the existence of that *trust*.

10. TRUSTS

10.1 Additional representations and warranties

The *borrower* represents and warrants to the *Bank* that:

- the *trust* is validly formed and the *trust deed* has been validly executed and stamped;
- it is validly appointed as the trustee of the *trust*, is not in breach of its obligations as trustee and no circumstances exist by which it may be removed as trustee;
- each *relevant document* is executed pursuant to and in proper exercise of its powers as trustee of the *trust* and all formalities required in connection with such execution have been observed;
- the *approved purpose* and performance by it of its obligations under the *relevant documents* is for a proper purpose of, and provides commercial benefit to, the *trust* and its beneficiaries;
- it is entitled to be fully indemnified out of the assets of the *trust* for its liability under each *relevant document* and it has not charged its rights of indemnity to any other party;
- it is the legal owner of all the assets of the *trust*;
- there is no dispute between it and any other person in relation to the *trust* or the trust assets;
- it is empowered to carry on its business as now conducted or contemplated and to own its property and assets in its capacity as trustee of the *trust* and there is no restriction or condition in the *trust deed* upon such activity by it;
- the *trust* has not terminated and no event for the vesting of the trust assets has occurred;
- the trust assets have not been re-settled or set aside;
- all action required under the *trust deed* in relation to execution of the *relevant documents* and the entry into the transactions contemplated by them has been taken; and
- any copy *trust deed* supplied to the *Bank* is a true and complete copy of the original.

10.2 Further obligations

The *borrower* must not, without the *Bank's* consent:

- cease to be the trustee of the *trust* or do anything which would cause or enable its removal, or retire, as trustee of the *trust*;
- cause or permit the *trust* to be determined or a vesting date to be appointed;
- do or permit anything which adversely affects its right of indemnity against the trust assets;
- re-settle, set aside or distribute any of the trust assets unless required to do so by the *trust deed*;
- in any way vary or permit to be varied the terms of the *trust deed*; or
- delegate any of its power as trustee of the *trust* or exercise any power of appointment.

10.3 Additional covenants

The *borrower* must:

- procure any person who becomes a trustee of the *trust* (whether in replacement of or in addition to it) to enter into a deed with the *Bank* under which that person agrees to perform the obligations identical to those of the *borrower* under the *relevant documents*; and
- comply with all of its duties as trustee of the *trust*.

10.4 Liability

The *borrower's* liability under the *relevant documents* is not limited or otherwise affected by it being trustee of the *trust* or by the extent of its ability to indemnify itself out of the assets of the *trust*. The *borrower* is liable under the *relevant documents* personally and as trustee of the *trust*.

Note 11:

Clause 11 contains certain indemnities given by the *borrower* to the *Bank*.

11. INDEMNITIES

11.1 Nature

The *borrower* unconditionally and irrevocably indemnifies, and must keep indemnified, the *Bank* against any liability, loss, cost or expense (including consequential and economic loss) which the *Bank* incurs or sustains or for which the *Bank* becomes liable, directly or indirectly, which is caused or contributed to by:

- any event of default;
- the exercise or attempted exercise or preservation of any right by the *Bank* under any *relevant document*;
- any act by the *Bank* in reliance on any communication purporting to be from the *borrower* or to be given on its behalf; or
- any advance requested by the *borrower* not being provided by the *Bank* for any reason, other than a default by the *Bank*.

11.2 Scope

Each indemnity contained in these *terms* and in any other *relevant document* is:

- a continuing obligation;
- an additional, separate and independent obligation; and
- not limited by, and does not limit, any other indemnity.

11.3 Preservation of Liability

The liability of the *borrower* under each indemnity contained in these *terms* and in any other *relevant document* is not affected by any act or omission of the *Bank* (or its servants and agents) or by anything that might otherwise affect that liability at law or in equity.

Note 12:

This clause contains various additional provisions relevant to the arrangements between the *Bank* and the *borrower*.

12. MISCELLANEOUS

12.1 Certificate

A certificate signed by the *Bank* or any *authorised officer* stating an amount owing to the *Bank* at a particular date or as to any other matter or thing, is conclusive evidence against the *borrower* unless proved incorrect.

12.2 Assignment

The *Bank* may assign its rights under a *relevant document* to any person at any time without the consent of the *borrower*. The *borrower* may not, without the prior consent in writing of the *Bank*, assign or encumber any of its rights under a *relevant document*.

12.3 Notices

Any notice, demand, consent, or other communication from the *Bank* under a *relevant document* must be in writing signed by the *Bank* or any *authorised officer* and may be served (in addition to any method authorised by law) on the *borrower* by being delivered personally or by being sent by:

- post to its registered office or at its address shown in a *relevant document*;
- facsimile to the facsimile number shown on any document sent to the *Bank* or as specified in a facsimile directory; or
- to such other address or facsimile number as may be last known to the person signing or sending such communication.

If sent by post it will be deemed to be given 2 *business days* after it is posted and if sent by facsimile on completion of the transmission.

12.4 No merger

Subject to **clause 1.3**, nothing in these terms prejudicially affects any security or any rights the *Bank* may have against the *borrower* or any other person nor do the *securities* prejudicially affect its rights under these terms.

12.5 No waiver or variation

Any waiver under, or variation of, a *relevant document* is effective only to the extent it is in writing.

12.6 Exercise of rights

No failure on the part of the *Bank* to exercise and no delay in exercising and no course of dealing with respect to any rights, powers or remedies under any *relevant document* impairs or operates as a waiver of those rights, powers or remedies. No single or partial exercise of any of these rights, powers or remedies precludes any further exercise of them or the exercise of any other rights, powers or remedies.

12.7 Moratorium

Any legislation that varies, prevents or prejudicially affects the exercise by the *Bank* of any right, power or remedy conferred on it under any *relevant document* is, to the extent permitted by law, excluded.

12.8 Time of the essence

Time is of the essence of the *borrower's* obligations under any *relevant document*.

12.9 Severance

Any provision of a *relevant document* that is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to the extent only of the prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of the provision in any other jurisdiction.

12.10 Power of attorney

The *borrower* irrevocably appoints the *Bank* as its attorney with power to appoint and remove at its pleasure any one or more of its *authorised officers* as substitute attorneys to do, at any time after the occurrence of an event of default, everything that the *borrower* may lawfully authorise an agent to do in relation to any *relevant document*.

12.11 Set-off and combination

Subject to **clause 13**, the *Bank* may at any time set-off against, or combine with any money, any amount standing to the credit of the *account* in or towards satisfaction of any sum due but unpaid by the *borrower* to the *Bank*.

The *Bank* has no obligation to exercise its rights under this clause.

To the extent legally permissible, the *borrower* may not exercise against the *Bank* any right of set-off available to it.

12.12 Governing law

These terms and the *agreement* are governed by the laws of the jurisdiction of South Australia and the *borrower* submits to the non-exclusive jurisdiction of the courts of that place.

12.13 Partnership

If the *borrower* enters into a *relevant document* as partners:

- each partner as a separate, independent, principal and personal obligation must pay to the *Bank* all amounts due under the *harvest facility* whether or not the *Bank* may recover any sum from the partnership assets;
- and the partnership is dissolved:
 - the *borrower* must immediately give written notice of that event to the *Bank*; and
 - each partner must act in relation to the administration of the partnership assets in the manner (if any) directed by the *Bank*;
- a retiring partner is not discharged from any liability to the *Bank* as a result of an agreement between the then existing partners; and
- the obligations of a retiring partner to the *Bank* under any *relevant document* are not affected by anything which might otherwise affect them at law or in equity.

12.14 Authorisation

The *borrower* authorises the *Bank* to provide a copy of any *relevant document* to any *government body* in any jurisdiction in which the *securities* are to be stamped, lodged, filed or registered.

12.15 Authorised officers

A determination by, or an opinion of, an *authorised officer* given to the *borrower* is deemed to be a determination by, or an opinion of, the *Bank*.

12.16 Rights cumulative

The rights of the *Bank* under the *relevant documents* are cumulative and are in addition to any other rights of the *Bank*.

12.17 Disclosure

The *Bank* may disclose to any person any information in its possession relating to the *borrower* and the *relevant documents* if:

- the *borrower* consents (which consent may not be unreasonably withheld or delayed);
- it is legally required or permitted to do so;
- it is otherwise permitted under the *relevant documents* to do so;
- it is publicly available;
- it is in accordance with any directive or request of a *government body*;
- that person proposes to enter, or has entered into a contract or dealing with the *Bank* in connection with the *relevant documents* or the subject matter of the *relevant documents* including any risk management agreement, securitisation or receivable transaction or underwriting agreement entered into by the *Bank* in connection with its exposure under any *harvest facility*; or
- that disclosure is necessary or desirable to enable the *Bank* to exercise or deal with its rights or obligations under the *relevant documents*.

12.18 Illegality

If the *Bank's* compliance with its obligations under the *relevant documents* becomes illegal, the *Bank* may by written notice cancel the *harvest facility*. Upon receipt of such notice of cancellation the *borrower* must immediately pay to the *Bank* all moneys owing (actually or contingently) by it to the *Bank* in connection with that *harvest facility*.

12.19 Increased costs

If, as a result of any change of law or directive or change of interpretation of any law or directive, the *Bank* determines (in good faith) that the cost to the *Bank* of providing the *harvest facility* is increased or the *Bank's* return is reduced, the *borrower* must on demand pay to the *Bank* the amount certified by the *Bank* as being necessary to compensate it for such increased cost or foregone return.

12.20 Business days

If:

- the day on which any payment is due under a *relevant document* is not a *business day*, that payment must be made on the preceding *business day*; and
- the day on which any other thing is to be done under a *relevant document* is not a *business day*, that thing must be done on the following *business day*.

12.21 Independence and survival

Each indemnity in a *relevant document* is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives the termination of that *relevant document*.

Note 13:

This clause 13 applies to each *harvest facility*.

13. LIMITED RECOURSE

13.1 Repayment

In connection with each *harvest facility* and subject to **clause 13.2**, if the moneys received by the *Bank* from distributions made by *AWBI* under a *wheat pool contract* relating to the *mortgaged property* or by exercising its rights under any *security* in relation to that *wheat pool contract* are insufficient to repay all moneys owing (actually or contingently) under the *agreement* which relates to that *wheat pool contract*, then the *Bank* may not:

- bring legal proceedings against the *borrower* to recover the shortfall; or
- take any proceedings to have the *borrower* wound up or made bankrupt.

13.2 Exceptions

The limitations on the *Bank's* rights contained in **clause 13.1** do not apply:

- if, and to the extent that, *AWBI* reduces the amount of a *wheat pool* distribution under a *wheat pool contract* as a result of the *borrower* failing to meet *AWBI's* receival standards or because of pesticide residues in the relevant wheat;
- if, and to the extent that, *AWBI* reduces the amount of a *wheat pool* distribution under a *wheat pool contract* as a result of any overpayment made to the *borrower* by *AWBI* under any other *wheat pool contract* or other arrangement between the *borrower* and *AWBI*;
- if, and to the extent that, after receipt by the *Bank* of a *wheat ticket* it becomes clear that the *wheat ticket* is incorrect or the *facility limit* or the *amount of available advances* were incorrectly calculated;
- an *event of default* (other than the occurrence of any *insolvency event* in relation to the *borrower*) occurs; or
- if, and to the extent that, a surplus exists in relation to distributions made in connection with another *wheat pool contract*.