

Non-Confidential Version

Joint Venture Shareholders Agreement

GrainCorp Operations Limited

ABN 52 003 875 401

AWB Limited

ABN 99 081 890 459

Export Grain Logistics Pty Ltd

ACN 109 812 197

Draft: 27 September 2004

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JOINT VENTURE SHAREHOLDERS AGREEMENT

DATE

PARTIES

GrainCorp Operations Limited ABN 52 003 875 401 (**GrainCorp**)

AWB Limited ABN 99 081 890 459 (**AWB**)

Export Grain Logistics Pty Ltd ACN 109 812 197 (**JV Company**)

RECITALS

GrainCorp and AWB established the JV Company to (subject to certain conditions) operate as a joint venture company for the purpose of independently contracting supply chain services for and management and co-ordination of export Grain in bulk or in containers in Queensland, NSW and Victoria. This document sets out the terms on which they will operate the joint venture.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

ACCC means the Australian Competition & Consumer Commission.

Access Deed means the agreement of that name between GrainCorp and AWB dated on or about the date of this document.

AWBI means AWB (International) Limited ABN 14 081 890 413.

AWB Group means AWB and its controlled entities.

AWB Services means AWB Services Limited ABN 83 104 207 847.

AWB Supply Agreement means a document between AWB Services and the JV Company for the supply of services by the JV Company to AWB Services. This document includes an obligation of AWB to use the JV Company for the transport of its export grain.

Bank Bill means a bill of exchange that has been accepted by any bank authorised under a law of the Commonwealth or any State to carry on banking business.

Bank Bill Rate means the 90 day Bank Bill rate being:

- (a) the rate, expressed as yield per cent per annum (rounded upwards to 4 decimal places) quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page which replaces that page) at about 10.30 am (Melbourne time) on the first day of that period, for Bank Bills having a 90 day period (or no more than 2 Business Days shorter or longer than a 90 day period); or

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- (b) if no average bid rate is published for 90 day Bank Bills in accordance with paragraph (a), the bid rate available to the Seller at about 11.00 am (Melbourne time) on that day, as conclusively determined in good faith by the Seller.

Board means the board of directors of the JV Company.

Business means, subject to clause 4.9, the business of the JV Company being the contracting of supply chain services for and management and co-ordination of Grain for export in bulk or in containers from silos in Queensland, NSW and Victoria.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne.

Business Plan and Budget means the business plan and budget adopted by the JV Company in accordance with clause 6.2.

Change of Control means for a corporation, a change in:

- (a) Control of the composition of the board of directors of the corporation;
- (b) Control of more than half the voting rights attached to shares in the corporation; or
- (c) Control of more than half the issued shares of the corporation (not counting any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

but does not include:

- (d) a change resulting from a solvent corporate or capital reconstruction of AWB or GrainCorp Parent; or
- (e) a change resulting from or in connection with a redemption, repurchase, conversion, cancellation, vesting, acquisition or any other dealing in respect of the Foundation Share.

Claim means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Commencement Date means the day which is 5 Business Days after the condition in clause 2.1 is satisfied or any date that the Shareholders agree in writing.

Constitution means the constitution of the JV Company as amended.

Control means a power or control that is direct or indirect or that is, or can be, exercised as a result of, by means of or the revocation or breach of a trust, an agreement, practice, or combination of them, whether or not they are enforceable. It does not matter whether the power or control is express or implied, formal or informal, exercisable alone or jointly with someone else.

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

Deadlock is where the number of votes for a proposed resolution is equal to the number of votes against that resolution.

Deadlock Notice means a notice in writing conforming with clause 14.4.

Director means a person who is, for the time being, a director of the JV Company.

Event of Default means an event or circumstance described in clause 15.1.

Export Grain Logistics Business means any business or operation which competes with the Business in either Queensland, New South Wales or Victoria.

Financial Year means each 12 month period ending on 30 September each year except that the first Financial Year is the period starting on the Commencement Date and ending on the next occurring 30 September.

Foundation Share means the convertible preference share in GrainCorp Parent referred to as the GGA Foundation Share in the Constitution of GrainCorp Parent and currently held by Grain Growers Association Limited (ACN 000 245 269).

Government Agency means:

- (a) a government or government department or other body;
- (b) a government, semi-government or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of the law.

Grain means the seed of any crop or pasture species.

Grain Consolidation Facilities means rail transfer facilities at Werris Creek and/or Stockinbingal built and owned by Pacific National.

GrainCorp Group means GrainCorp and its controlled entities.

GrainCorp Parent means GrainCorp Limited ACN 057 186 035.

GrainCorp Supply Agreement means a document between GrainCorp (or a related body corporate) and the JV Company in relation to the supply of services by the JV Company to GrainCorp. This document includes an obligation of GrainCorp to use the JV Company for the transport of its export grain.

Grain Volume of a Shareholder for a Financial Year means:

- (a) for AWB, the volume of Grain which the JV Company handles under the AWB Supply Agreement during that Financial Year; and
- (b) for GrainCorp, the volume of Grain which the JV Company handles under the GrainCorp Supply Agreement during that Financial Year.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and

any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

GST Law means the same as "GST law" in the *A New Tax System (Goods and Services Tax) 1999* (Cth).

Initial Business Plan and Budget means the initial business plan and budget for the JV Company for the period from the Commencement Date until 30 September 2005 to be agreed by the parties and adopted by the Commencement Date in accordance with clause 4.4(b).

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Intellectual Property means business names, copyrights, patents, trademarks, service marks, trade names, designs, customer information, confidential information and similar industrial, commercial and intellectual property.

Interest Rate means the Bank Bill Rate plus 1% per annum.

Joint Venture means the joint venture between the Shareholders in relation to the Business as provided in this document.

Loss means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Pacific National means Pacific National Pty Ltd ACN 098 060 550 or any of its related bodies corporate.

Rail Assets means wagons and/or locomotives used to haul Grain.

Relevant Area means:

- (a) Queensland;
- (b) New South Wales;

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- (c) Victoria;
 - (c) Queensland and Victoria;
 - (d) New South Wales and Victoria;
 - (d) Queensland and New South Wales; and
 - (e) Queensland, New South Wales and Victoria.

Ring-fenced Information means the information set out in schedule 2 and any other information that the parties agree in writing is to be treated as Ring-fenced Information for the purposes of this Agreement.

Security Interest means a fixed and floating charge created to secure borrowings or other financial accommodation for the Shareholder's entire business but does not include a fixed charge or encumbrance solely relating to the interest of the Shareholder in the Joint Venture.

Service Contract means any agreement entered into by the JV Company for the acquisition of rail freight and road transport and ancillary storage and handling services required by the JV Company to enable it to perform its obligations under the GrainCorp Supply Agreement or the AWB Supply Agreement.

Share means an issued share in the capital of the JV Company.

Shareholder means each of AWB and GrainCorp (while each holds Shares) and any other person who holds Shares.

Share Proportion means the proportion (expressed as a percentage) which the number of Shares held by a Shareholder bears to the total number of issued Shares.

Supply Agreement means either the AWB Supply Agreement or the GrainCorp Supply Agreement and **Supply Agreements** means both of them.

Supply Agreement Excess means in respect of a Financial Year, the net amount (if any) by which bonuses derived by the JV Company under the Supply Agreements exceed liquidated damages payable under the Supply Agreements.

Supply Agreement Shortfall means in respect of a period of time, the net amount (if any) by which liquidated damages payable under the Supply Agreements exceed bonuses derived by the JV Company under the Supply Agreements.

Tonnage Proportion in respect of a Shareholder for a Financial Year means the proportion which that Shareholder's Grain Volume bears to the total volume of Grain handled by the JV Company during that Financial Year.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Transaction Documents means:

- (a) this document;
- (b) the Constitution;
- (c) the AWB Supply Agreement; and
- (d) the GrainCorp Supply Agreement.

Transport Excess means, in respect of a Financial Year, the net amount (if any) by which the transport costs provided for in the annual budgets for services agreed with AWB Services and GrainCorp Marketing under the Supply Agreements exceed actual transport costs of the JV Company for that Financial Year.

Transport Shortfall means, in respect of a period of time, the net amount (if any) by which actual transport costs of the JV Company exceed the transport costs provided for in the annual budgets for services agreed with AWB Services and GrainCorp Marketing under the Supply Agreements for that Financial Year.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A recital, schedule, annexure or a description of the parties forms part of this document.
- (d) A word which suggests one gender includes the other genders.

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- (e) If a word is defined, another part of speech has a corresponding meaning.
 - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (h) The words **subsidiary, holding company and related body corporate** have the same meanings as in the Corporations Act.

1.3 Business Days

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

- (a) if the act involves a payment that is due on demand, 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.

1.4 Shareholders to ensure Company and Board performance

Subject to any overriding obligations imposed by law, if any provision of this document imposes an obligation on the JV Company, a Director or the Board, each Shareholder must do everything in its power to ensure that the JV Company, a Director nominated by it or the Board (as the case may be) performs that obligation.

2. CONDITIONS PRECEDENT

2.1 Conditions precedent to agreement

The formation of a binding contract by this document and any rights and obligations arising under it (except for this clause and clauses 1, 4.1, 14, 17, 19 and 23) are subject to fulfilment of the following conditions:

- (a) either:
 - (i) the parties have received a letter from the Australian Competition and Consumer Commission (ACCC) confirming that the ACCC does not propose to intervene in any of the transactions contemplated by the Transaction Documents and the Access Deed or authorising the transactions contemplated by the Transaction Documents and the Access Deed for which authorisation was sought (as the case requires); or
 - (ii) the parties agree in writing that that no such letter or authorisation is necessary; and
- (b) the relevant parties have executed the AWB Supply Agreement and the GrainCorp Supply Agreement.

2.2 **Obligation to satisfy conditions**

Each party must use its best endeavours to ensure that the conditions referred to in clause 2.1 are fulfilled.

2.3 **Failure of conditions precedent**

If the conditions referred to in clause 2.1 have not been satisfied or waived by all the relevant parties by 1 April 2005, or such later date as the parties may agree in writing, this document is cancelled and has no further effect, but without prejudice to any rights or remedies which any party may have against any other party which have already arisen and clause 13.2 will apply.

3. **AGREEMENTS**

3.1 **New Service Contracts**

- (a) The JV Company must use reasonable endeavours to negotiate and enter into all necessary Service Contracts promptly after the Commencement Date (and, in any case, in time for the JV Company to comply with its obligations under the GrainCorp Supply Agreement and the AWB Supply Agreement). The JV Company must use its reasonable endeavours to ensure that each Service Contract includes specific details of fees and charges, includes the terms and reflects the principles set out in Parts A and B of schedule 1.
- (b) AWB and GrainCorp must enter into a contract in relation to the supply by GrainCorp to the AWB Group of storage and handling and port services which includes the provisions set out in Part C of schedule 1.

3.2 **Existing Service Contracts**

- (a) The Shareholders must use their reasonable endeavours to ensure that the JV Company obtains the full benefit of their existing contracts for acquisition of rail freight and road transport, services promptly after the Commencement Date by either assignment or novation to the JV Company of those existing contracts between members of the AWB Group and the GrainCorp Group on the one hand and service providers on the other.
- (b) The Shareholders must use their reasonable endeavours to obtain a consent or waiver from any counterparty to their existing rail freight and road transport, contracts to the assignment or novation of those contracts. If a counterparty refuses to provide a consent or waiver as required, the Shareholders must use their reasonable endeavours to procure that the relevant members of the GrainCorp Group or AWB Group (as the case may be) either:
 - (i) appoint the JV Company to perform on their behalf; or
 - (ii) perform,the existing contracts and enable the JV Company to receive the benefit of those contracts to the extent that they relate to the Business.

4. ESTABLISHMENT OF THE JOINT VENTURE

4.1 Establishment of Joint Venture

The Shareholders agree:

- (a) to establish the Joint Venture through the JV Company to carry on the Business with effect from the Commencement Date; and
- (b) the JV Company's principal place of business shall be located in Sydney, New South Wales.

4.2 This document to prevail over Constitution

If there is any inconsistency between this document and the Constitution, this document prevails.

4.3 Name of Company and Intellectual Property

- (a) The name *Export Grain Logistics Pty Limited* is the property of the JV Company.
- (b) Subject to clause 14.2(b)(iv), all Intellectual Property developed by the JV Company remains the property of the JV Company and the Shareholders must not use it without the written consent of the JV Company and each other Shareholder.
- (c) The parties agree that any Intellectual Property which is:
 - (i) owned by a Shareholder; and
 - (ii) which that Shareholder licenses or permits the JV Company to use, remains the property of the Shareholder that licensed or permitted the JV Company to use it.

4.4 Obligations on Commencement Date

On the Commencement Date the Shareholders must ensure that the Board resolves:

- (a) to appoint Ernst & Young as the JV Company's auditors;
- (b) to adopt the Initial Business Plan and Budget;

4.5 General Manager

Promptly after the Commencement Date, the Shareholders agree to:

- (a) jointly appoint a General Manager elect whose cost will be equally shared between the parties, to undertake associated work to set up the Business including staffing, systems and office arrangements; and
- (b) arrange for that General Manager, on behalf of the JV Company, to commence negotiations with rail providers for rates and terms for the 2004/05 season.

4.6 Staffing

- (a) As soon as possible following the Commencement Date GrainCorp and AWB must negotiate in good faith and agree with the JV Company which employees of the GrainCorp Group and the AWB Group respectively will be offered employment by the JV Company and:
- (i) enter into all necessary consultations with those employees and any relevant unions regarding the arrangements proposed under this clause; and
 - (ii) cause the JV Company to offer employment to the relevant employees of GrainCorp and AWB on equivalent terms and conditions to those on which they were employed immediately prior to the Commencement Date and, subject to clause 4.6(c), AWB and GrainCorp agree to use all reasonable efforts (excluding payment of money) to encourage those employees to accept such offers (including without limitation causing the required notice to be given to release them from their employment with GrainCorp or AWB to be given).
- (b) In relation to any employee of the GrainCorp Group or the AWB Group choosing to accept an offer of employment from the JV Company ("**Transferring Employee**"):
- (i) GrainCorp and AWB will procure that the Transferring Employee retains his or her accrued annual and long service leave entitlements and the relevant employer pays to the JV Company an amount equal to the full value of those entitlements including any associated on-costs for Transferring Employees previously employed by it calculated in accordance with Australian Accounting Standards at the time of transfer;
 - (ii) the JV Company must arrange for the Transferring Employee to be offered membership of a superannuation fund ("**New Fund**") which will provide to the Transferring Employee benefits no less favourable than those conferred by the fund of which the Transferring Employee was a member while in the employ of the relevant GrainCorp Group or AWB Group employer ("**Former Fund**"); and
 - (iii) if a Transferring Employee accepts membership of the New Fund, the relevant GrainCorp Group or AWB Group employer must use its best endeavours to procure that the trustee of the Former Fund pays to the New Fund all moneys held on behalf of the relevant Transferring Employee.
- (c) In no circumstances will the JV Company have any liabilities in relation to the entitlements of GrainCorp Group or AWB Group employees who do not become Transferring Employees.

4.7 Principles and objectives of Joint Venture

Each party agrees to use its reasonable endeavours:

- (a) to procure that the JV Company conducts the Business commercially, efficiently and in accordance with good business practice, this document and the Business Plan and Budget to achieve the objectives of:
 - (i) managing export supply chain activities to achieve efficient coordination of those activities, provide transparent transport pricing signals, provide common and transparent supply chain transport criteria for storage providers, facilitate efficient investment by industry participants and meet prescribed cost reductions;
 - (ii) reducing supply chain costs (including indirect infrastructure costs) for delivery of grain for export in Queensland, New South Wales and Victoria over the medium to long term;
 - (iii) managing the export grain supply chain from all silos (including AWBI ex-farm storage arrangements) to all port terminals, metropolitan distribution centres and export container packing facilities in Queensland, New South Wales and Victoria;
 - (iv) contracting rail services and road services for export grain (including inter-modal movements) and operational inventory and stock management services;
 - (v) logistics planning and co-ordination services including grain allocation and optimisation, cargo aggregation, service provider management and monitoring of performance and operational management; and
 - (vi) handling the payment of all contracted rates under the Service Contracts with the objective of minimising the costs to AWB and GrainCorp under the Supply Contracts of all services which are calculated on a basis other than tonnage; and
- (b) to procure that the JV Company:
 - (i) operates as a neutral and independent entity and enters transactions on an arms length basis;
 - (ii) in its capacity as a supplier of services, does not prefer AWB over GrainCorp or GrainCorp over AWB and treats them equally; and
 - (iii) provides AWB and GrainCorp rail rates (including any associated terms, criteria and conditions for rail and ancillary storage) on equal terms irrespective of the tonnage of Grain provided or to be provided by AWB or GrainCorp; and

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- (c) to contribute its expertise for the benefit of the JV Company in accordance with this document and to do everything in its power to give effect to and support the Joint Venture.

4.8 Supply Agreements

The Shareholders acknowledge and agree that under the Supply Agreements:

- (a) the JV Company will be responsible for selecting the rail provider for their Grain; and
- (b) the JV Company will allocate to AWB Services and GrainCorp on a reasonable basis charges it incurs under Service Contracts which are calculated on a basis other than tonnage. The JV Company may charge AWB Services and GrainCorp a margin on these amounts.

4.9 Scope of Business

The JV Company will implement the functions of the Joint Venture which are described in clause 4.7.

4.10 No partnership, fiduciary relationship or agency

Nothing in this document is to be treated as creating a partnership or fiduciary relationship. Except as specifically provided in this document, no party may act as agent of or in any way bind another party to any obligation.

4.11 Action against Shareholders

The parties and their nominee Directors will procure that the JV Company enforces and takes all action necessary to enforce its rights under any contract with a Shareholder or a Shareholder's related body corporate.

5. THE BOARD

5.1 Appointment of Directors

- (a) Each Shareholder must appoint 2 Directors (or any other number of Directors that the Shareholders agree), and each, while it remains a Shareholder, may replace these Directors in accordance with the Constitution.
- (b) Each Shareholder must procure that each Director appointed by it acts in the best interests of the JV Company (even where those interests conflict with the interests of the Shareholder) and in good faith. To avoid doubt, each Shareholder must not procure the Directors appointed by it to act at the direction of the Shareholder except where expressly stated otherwise in this document.

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- (c) Each Shareholder must enter into a deed with each Director appointed by it which, to the extent permitted by law:
 - (i) indemnifies that Director in respect of acts and omissions of that Director in its capacity as a Director of the JV Company; and
 - (ii) releases that Director from any liability he or she may have to the Shareholder as a result of acting in the best interests of the JV Company (instead of in the interests of the Shareholder).
 - (d) If a Shareholder ceases to own any Shares it must immediately ensure that each Director appointed by it resigns.

5.2 The first Directors

The first Directors are:

- (a) Jill Gillingham and another person to be appointed by AWB; and
- (b) Joe Di Leo and another person to be appointed by GrainCorp,

subject to their first having consented in accordance with the Corporations Act and being eligible to act.

5.3 Chairman of Directors

- (a) The Shareholders must ensure that the Board resolves to appoint one of the Directors as chairman of the Board.
- (b) The first chairman is to be a Director appointed in accordance with the Constitution by the Directors at their first meeting after the Commencement Date.
- (c) The term of each appointment as chairman is for 1 year, except that the first chairman holds office until the first anniversary of the Commencement Date. Unless otherwise agreed by the Shareholders, the chairmanship will be rotated from year to year between the nominated Directors of each Shareholder.
- (d) The chairman does not have a casting vote at Board meetings.

5.4 Meetings

(a) Monthly board meetings

A meeting of the Board must be held monthly unless both the Shareholders otherwise agree.

(b) Quorum

- (i) The quorum for a Board meeting is one Director appointed by each Shareholder and a quorum must be present for the whole of a meeting.

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- (ii) A quorum will not lapse if a Director is prohibited by law, this document or any other document to which a party is bound, from being present at all or part of a Board meeting.

5.5 **Majority decisions**

Decisions of the Board and Shareholders must be by majority vote (except if otherwise required by the Corporations Act).

5.6 **Votes of Directors**

Each Director present at a meeting of the Board is entitled to exercise 1 vote on his or her own behalf and:

- (a) 1 vote for each Director on whose behalf he or she acts as alternate; and
- (b) 1 vote for each Director who is not present (in person or by alternate) and who is appointed by the Shareholder who appointed the Director,

on resolutions of the Board.

6. **MANAGEMENT OF THE JV COMPANY**

6.1 **Board and General Manager**

- (a) Management of the JV Company is vested in the Board.
- (b) Subject to a resolution of the Board, no Director, acting individually, has authority to enter the agreements, incur expenditure on behalf of or otherwise commit the JV Company.
- (c) The Board must appoint a person to be the General Manager of the JV Company. The Board must instruct the General Manager to act independently of the Shareholders. The identity and position description of the General Manager must be approved by each Shareholder.
- (d) The Board may outsource certain support functions where it considers to do so is cost efficient, consistent with the principles and objectives outlined in clause 4.6 and in the best interests of the JV Company.

6.2 **Business Plan and Budget**

- (a) The Initial Business Plan and Budget will apply as the Business Plan and Budget for the period ending 30 September 2005 provided that the Board may amend the Initial Business Plan and Budget from time to time.
- (b) At least 2 months before the commencement of each Financial Year (starting with the Financial Year commencing on 1 October 2005) the JV Company must prepare and distribute to the Directors a draft Business Plan and Budget for the following Financial Year.

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- (c) The Directors must consider the draft Business Plan and Budget and adopt a Business Plan and Budget for the next Financial Year before the commencement of the relevant Financial Year.
- (d) The Business Plan and Budget must:
- (i) give Directors a soundly based view of the anticipated future financial position of the JV Company;
 - (ii) set out in detail particulars of proposed business activities;
 - (iii) provide details of expected revenue and expenditure;
 - (iv) contain forecast statement of financial performance, statement of financial position and statement of cash flows;
 - (v) identify the risk profile of the JV Company and the ways in which risks will be managed; and
 - (vi) specify the amount of additional capital (if any) required in the forecast period for the proper conduct of the Business and the JV Company.
- (e) If the Directors fail to adopt a Business Plan and Budget before the commencement of a Financial Year then:
- (i) each Shareholder must ensure that its appointed Directors continue to use their reasonable endeavours to adopt a Business Plan and Budget for the Financial Year;
 - (ii) the Business Plan and Budget for that Financial Year will consist of:
 - (A) that part of the Business Plan and Budget for the previous Financial Year that applies to the current Financial Year; and
 - (B) a continuation of the Business and the business activities proposed in the Business Plan and Budget for the previous Financial Year.

6.3 Management reports

The Shareholders must ensure that the JV Company provides Directors with enough management and financial information and reports to allow them to know and understand the financial affairs of the JV Company and to control the efficient operation of the JV Company including the following:

- (a) a monthly operational performance report on performance against the operational metrics under the JV Company's contracts within a period specified by the Directors;
- (b) within 20 Business Days after the end of each quarter, a statement of financial performance, statement of financial position and statement of cash flows for the JV

Company as at the end of that quarter and for the Financial Year to date prepared in accordance with applicable accounting standards;

- (c) an explanation of any significant variances in the documents referred to in 6.3(a) and 6.3(b) from the Business Plan and Budget;
- (d) details of any factors likely to or having the potential to affect the projections contained in the Business Plan and Budget for the remainder of the Financial Year; and
- (e) all other matters necessary or appropriate for the Directors to be fully and properly informed about the management, operation and activities of the JV Company and the Business.

7. SHARE ISSUES

If the JV Company resolves to issue further Shares to all Shareholders, each Shareholder must subscribe for its Share Proportion of the total number of Shares to be issued on the terms resolved.

8. SHAREHOLDER LOANS

8.1 Working Capital

The Shareholders must ensure that the Board sets the JV Company's payment terms for rail charges in a manner that minimises the JV Company's need for working capital.

Each Shareholder must ensure that any invoices owing to the JV Company for services provided to them are paid punctually and on time.

8.2 Funding of Business

In the absence of agreement on loans from third parties, each Shareholder will loan and the JV Company will borrow sufficient sums of money to enable the JV Company to meet the liabilities and commitments set out in the Business Plan and Budget adopted pursuant to clause 6.2(c) or continued pursuant to clause 6.2(e) in a timely manner. The JV Company will endeavour to restrict its calls for such funds to no more frequently than quarterly.

8.3 Terms of Shareholder loans

This clause applies in respect of loans for working capital requirements of the JV Company excluding Supply Agreement Shortfalls and Transport Shortfalls. If the JV Company borrows money from the Shareholders, each Shareholder must enter into an identical agreement and unless otherwise agreed by the JV Company such loans will be made on the following terms:

- (a) each Shareholder will lend to the JV Company its Share Proportion of the total amount the JV Company has resolved or is obligated to borrow from Shareholders;
- (b) the loan is unsecured;

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- (c) the loan is non-assignable;
 - (d) the loan will be repayable upon the earlier of termination of this document pursuant to clause 13 and a date to be specified by the JV Company before the loan is entered into; and
 - (e) the loan bears interest (if any) as resolved by the Board.

In respect of any repayment, each Shareholder must be paid that Shareholder's Share Proportion of the total amount repaid and both Shareholders must be paid at the same time.

9. APPLICATION OF MONEY

The parties agree that any Supply Agreement Excess and any Transport Excess will be applied by the JV Company to the following (in order of priority):

- (a) first, to the working capital requirements of the Business as determined by the Directors in the Business Plan and Budget from time to time;
- (b) second, to payment of amounts payable to AWB Services under the AWB Supply Agreement; and
- (c) third, to rebates payable to AWB Services and GrainCorp Marketing under the Supply Agreements, such rebates to be paid at the same time in accordance with the Tonnage Proportions of the Shareholders respectively; and
- (d) last, to repayment of the principal amount of all advances and all accrued but unpaid interest in respect of advances made under clause 8.3 at the end of each Financial Year.

10. SHAREHOLDER SUPPORT FOR ARRANGEMENTS WITH THIRD PARTIES

The JV Company must not undertake any activity, including entering into a contract or arrangement to provide or acquire services or obtaining external borrowings from a financial institution (or other third party), that requires any Shareholder to give a guarantee, bond, undertaking or other assurance without the prior written consent of each Shareholder. The Shareholders must not unreasonably withhold their consent and agree to provide a guarantee of the performance of the JV Company under any Service Contract (where it is reasonably requested by the service provider). Where the Shareholders agree to provide such assurance and the Shareholders agree with the financial institution or other third party that any liability under that assurance is to be assumed by them jointly, jointly and severally, or severally:

- (a) the amount of such liability will be apportioned between the Shareholders in their respective Share Proportions;
- (b) notwithstanding any agreement with or action by the beneficiary of such assurance, the Shareholders, between themselves, are liable to contribute to each other and indemnify each other so that any such liability is ultimately borne by the Shareholders in their respective Share Proportions; and