

# Rules of CBH Mutual Fund

## BACKGROUND

- A. The Trustee is the trustee of the Fund.
- B. The Trustee has established the Fund to assist Members manage the financial consequences of events which may give rise to Claims. Subject to these Rules and the Trustee exercising its discretion in favour of Members, the Trustee may acquire and maintain Insurance Policies on behalf of the Members and Members may be indemnified against certain costs associated with a Claim.
- C. The rights and obligations of the Members in relation to the Fund will be governed by these Rules.

## OPERATIVE PART

### Part 1 - Preliminary

#### 1. Definitions

In these Rules:

**Annual Fund** means a Category of the Fund established, subject to these Rules, for the purpose of granting assistance to Members for an event giving rise to a Claim which accrues in a relevant Fund Year;

**APRA** means the Australian Prudential Regulation Authority;

**Business Day** means any day except a Saturday, Sunday or other public holiday in Western Australia;

**Capital** has the same meaning given to that term as in the Constitution;

**Category** has the same meaning given to that term as in the Constitution;

**CBH** means Co-operative Bulk Handling Limited ABN 29 256 604 947;

**Claim** means any claim made by a Member for compensation by the Fund;

**Constitution** means the Constitution of the Fund comprising deed poll dated 31 March 2011;

**Contribution** means such amount as may be determined by the Trustee as being payable by a Member in accordance with **Rule 18** for the purpose of establishing an Annual Fund;

**Deductible** means the first level of cost in respect of a Claim, for which a Member will not receive a payment out of the Fund;

**Eligibility Criteria** means the criteria for membership of the Fund specified in **Rule 7.1** ;

**Eligible Person** has the meaning given in **Rule 7.1**;

**Expired Annual Fund** means an Annual Fund in respect of which 2 years have expired since the date of its establishment;

**Extraordinary Resolution** has the same meaning given to that term as in the Constitution;

**Financial Year** has the same meaning given to that term as in the Constitution;

**Founding Member** means CBHor such other Eligible Person as the Founding Member from time to time nominates in writing as a replacement Founding Member provided the replacement Founding Member accepts the nomination in writing;

**Fund** means the mutual discretionary fund established by the Constitution;

**Fund Year** means:

- (a) for the first year of the Fund, the period commencing at the instant after 4.00 pm on 3 April 2011 and ending at 4.00 pm on 31 March 2012; and
- (b) subsequently, each period of 12 months commencing at the instant after 4.00 pm on 31 March and ending at 4.00 pm on 31 March next,

or such other period as the Trustee may at any time determine;

**Income** has the same meaning given to that term as in the Constitution;

**Insolvency Event** means in relation to a person:

- (a) if the person is a body corporate, that person becoming an externally administered body corporate within the meaning of the *Corporations Act 2001 (Cth)*;
- (b) if that person is a natural person, that person becoming an insolvent under administration within the meaning of the *Bankruptcy Act 1966 (Cth)*; or
- (c) any circumstances in which someone takes control of that person's property for the benefit of one or more of that persons creditors because that person is, or is likely to become, insolvent;

**Insurance Policy** means any policy of insurance purchased by the Trustee for the benefit of the Members or any of them from time to time pursuant to these Rules;

**Loss** means any loss or damage incurred by a Member which:

- (a) would be indemnified under the terms and conditions (including exclusions) of any Insurance Policy obtained by the Trustee for and on behalf of that Member, if a nil retention or deductible applied under that Insurance Policy; and
- (b) is not covered by any other insurance;

**Member** means the Founding Member (provided the Founding Member applies for membership of the Fund) and each other person who has signed and delivered to the Trustee an application for membership of the Fund and has been accepted as a Member by the Trustee pursuant to **Rule 7**;

**Offer** has the meaning given in clause 7.2;

**Potential Member** means an Eligible Person pursuant to **Rule 7.1** that has not yet been admitted as a Member of the Fund;

**Product Disclosure Statement** has the same meaning given to that term as in the *Corporations Act 2001 (Cth)*;

**Registered Scheme** has the same meaning given to that term as in the Constitution;

**Related Body Corporate** has the same meaning given to that term as in the *Corporations Act 2001 (Cth)*;

**Relevant Annual Fund** means an Annual Fund in respect of which an event giving rise to a Claim has accrued in the Fund Year to which that Annual Fund applies;

**Rule** means a rule contained in these Rules;

**Special Resolution** has the same meaning given to that term as in the Constitution;

**Termination Date** has the same meaning given to that term as in the Constitution;

**Trustee** means Willis Australia Limited ABN 90 000 321 237, AFS Licence 240600 or any subsequent trustee of the Fund;

## 2. Interpretation

In this Deed, unless the context otherwise requires:

- (a) singular includes plural and plural includes singular;
- (b) words of one gender include both other genders;
- (c) reference to legislation includes any amendment to it, any legislation substituted for it, and all statutory instrument issued under it and in force;
- (d) reference to a person includes a corporation, firm and any other entity;
- (e) reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- (f) if a party comprises more than one person, each of those persons is jointly and severally liable under these Rules;
- (g) a reference to a board of a trust means the board in that capacity;
- (h) a power of the board must not be read down by reference to another power;
- (i) headings do not affect interpretation.

## Part 2- Establishment

### 3. Trust

The Fund has been established by and is held on trust by the Trustee pursuant to the terms of the Constitution.

### 4. Related Documentation

- (a) Membership of the Fund is governed by these Rules and any applicable provision contained in the Constitution.
- (b) In the event of any inconsistency between these Rules and the Constitution, the Constitution will prevail to the extent of any such inconsistency.

### 5. Name

The name of the Fund is the CBH Mutual Fund.

### 6. Purpose

The purpose of the Fund is to provide for:

- (a) the promotion of risk management amongst the Members;
- (b) the management of, and granting assistance and payments against, Claims made by Members; and

- (c) the purchase and maintenance of Insurance Policies for the benefit of the Members.

## 7. Membership

- 7.1 To be eligible for membership of the Fund (**Eligible Person**), a person must be:
  - (a) the owner, occupier or user of a farm located in the State of Western Australia; and
  - (b) nominated by the Founding Member to the Trustee from time to time.
- 7.2 The Trustee may from time to time during the life of the Fund, offer membership of the Fund to any Eligible Person (**Offer**).
- 7.3 Subject to **Rule 7.4**, membership of the Fund will be open to the Founding Member and Eligible Persons provided they meet the entrance criteria set out in these Rules and such other criteria as may be nominated in writing by the Trustee from time to time.
- 7.4 The Trustee has an absolute and unfettered discretion to refuse membership to any person without giving any reasons for that decision.
- 7.5 An Offer must be in writing and made by way of providing a Potential Member with at least the following documents:
  - (a) a letter of offer;
  - (b) a Product Disclosure Statement (if required);
  - (c) a copy of these Rules;
  - (d) an application to become a Member; and
  - (e) a copy of the Constitution.
- 7.6 If the Trustee provides a document set out in Rule 7.5 to a person who certifies to the Trustee that the person is a duly authorised agent of one or more potential Members, the Trustee will be taken to have provided the document to every such potential Member without the need to provide a separate document to each such potential Member or the agent.
- 7.7 Without limiting **Rule 7.5**, the Trustee must ensure that any Offer informs a potential Member that:
  - (a) the Trustee is neither authorised under, nor subject to the provisions of the Insurance Act 1973 (Cth);
  - (b) the Trustee is not regulated by APRA;
  - (c) the indemnification and payment of any Claim out of the Fund on behalf of a Member is in the absolute discretion of the Trustee; and
  - (d) the Fund may not have the financial capacity to pay future Claims made by Members.
- 7.8 A person may apply to become a Member by signing and delivering to the Trustee an application to become a Member.
- 7.9 On receipt of an application to become a Member, the Trustee has the discretion to accept or reject such application and request any further information from the applicant for the purpose of assessing the application.

- 7.10 An applicant must be advised of the determination by the Trustee within a reasonable period.
- 7.11 On becoming a Member, the Member is bound by the provisions of these Rules.
- 7.12 The date of effect of the applicant becoming a Member must be advised in writing to the Member by the Trustee.
- 7.13 Membership of the Fund commences on the date advised in writing to the Member by the Trustee in accordance with **Rule 7.12** and, unless terminated earlier in accordance with these Rules, terminates on the Termination Date.

## **8. Withdrawal or Cancellation of Membership**

- 8.1 A Member may cease to be a Member by giving the Trustee 60 days notice in writing of the Member's intention to that effect. The Member's resignation takes effect 60 days after the date of receipt of the notice by the Trustee.
- 8.2 The Trustee may at any time in its absolute discretion, immediately cancel the membership of a Member by written notice to the Member to that effect where the Member has:
  - (a) ceased to meet the Eligibility Criteria for membership specified in these Rules;
  - (b) failed to remedy any breach of these Rules within 20 Business Days of the date of a notice in writing from the Trustee to remedy same;
  - (c) suffered an Insolvency Event; or
  - (d) made a fraudulent Claim against the Fund.
- 8.3 Subject to **Rules 8.4** and **8.5**, a Member exiting or expelled from the Fund will have no vested or contingent interest in the Fund and will not be entitled to a refund of any money paid into the Fund under any circumstances.
- 8.4 Nothing in this **Rule 8** will affect the rights of a person, who has ceased to be a Member to Income or Capital to which such person became entitled as a result of any determination of the Trustee prior to such cessation.
- 8.5 The Trustee may, in its absolute discretion, refund all or part of the Contributions made by a Member who ceases to be a Member. The refund may be on conditions.

## **9. Founding Member**

- 9.1 The Trustee is responsible for the management and administration of the Fund.
- 9.2 The Founding Member may review issues relevant to the administration and operation of the Fund and make recommendations to the Trustee.
- 9.3 The Trustee may, in its absolute discretion, choose to implement or disregard any recommendation of the Founding Member.
- 9.4 The Founding Member has the powers and functions set out in Annexure 1.
- 9.5 The Trustee must prepare and provide to the Founding Member a single copy of the following reports:

- (a) summary of total Claims outstanding and the amount assessed as the likely total liability for those Claims, to be provided at least monthly;
- (b) annual report on all Claims paid in a Fund Year, to be provided within 90 days of the end of each Fund Year;
- (c) an annual report on all financial benefits (including any commissions and volume bonuses) received by the Trustee in respect of any Insurance Policy;
- (d) annual audited financial statements for the Fund, to be provided within 90 days of the end of each Fund Year including detail of expenses paid by the Fund in that Fund Year;
- (e) annual report on performance of the Fund (including reports on performance against the objectives and activities of the Fund and such other information as the Founding Member reasonably requires), to be provided within 90 days of the end of each Fund Year; and
- (f) a budget for each Fund Year (including budgets for Contributions receivable, expenses payable, Claims payable and such other information as the Founding Member reasonably requires), to be provided at least 30 days before the start of each Fund Year.

### **Part 3 – Claims Against the Fund**

#### **10. Payments from the Fund**

At the discretion of the Trustee and subject to any provision of these Rules to the contrary, Members may be granted assistance through payments out of the Fund for events giving rise to a Claim during the term of their membership.

#### **11. Handling of Claims**

11.1 A Member must promptly notify the Trustee in writing of any Claim and any circumstance, event or occurrence which is likely to give rise to a Claim.

11.2 Upon receiving notification pursuant to **Rule 11.1**, the Trustee must:

- (a) investigate the Claim;
- (b) make an assessment as to whether and, if so, the extent to which the claiming Member may be granted assistance by a payment of the Fund against the Claim;
- (c) determine which Annual Fund applies to the Claim and the amount available in that Annual Fund to meet the Claim;
- (d) report the Claim to the Founding Member together with the findings of its investigations and its assessment as to whether the claiming Member may be granted assistance by the Fund in respect of the Claim;
- (e) if applicable, make an appropriate claim under any relevant Insurance Policy; and
- (f) provide the Founding Member with such other information and advice as the Founding Member reasonably requires in relation to the Claim.

11.3 A Member must provide all information and assistance in respect of a Claim as may be reasonably requested by the Trustee.

- 11.4 The Founding Member may make a recommendation to the Trustee as to whether the Claim should be paid and if so to what extent.

## **12. Payment of Claims**

- 12.1 As soon as practicable after receipt of notification of a Claim from a Member, the Trustee must notify the Member whether it will, or will not, pay an amount out of the Fund in respect of the notified Claim.
- 12.2 If the Trustee notifies a Member that it will pay an amount out of the Fund in respect of the notified Claim, the Trustee will be subrogated to the rights of the Member in respect of such Claim and will be entitled to take over the conduct of any defense or claim for any indemnity, damages or otherwise against any third party on behalf of the Member and will have full discretion in the conduct of any negotiations or proceedings and the settlement of any Claim for the benefit (to the extent of the payment made to the Member out of the Fund) of the Fund.
- 12.3 In the conduct of any claim by the Trustee, the Member must provide such advice and assistance as may be reasonably requested by the Trustee, or any loss adjuster, solicitor or other agent appointed by the Trustee with respect to the conduct of the claim.
- 12.4 The Trustee may, in respect of any payment to a Member out of the Fund, set off the amount of any benefit against:
- (a) any Contributions or other payments due at the date of the payment but unpaid by the claiming Member; and
  - (b) any loss or expenses incurred by the Fund arising from or directly or indirectly associated with, a breach of these Rules.
- 12.5 If the Trustee notifies a Member that it will not make a payment out of the Fund in respect of the notified Claim, the Trustee will not be required to provide reasons for its decision.
- 12.6 No course of conduct in relation to the Trustee making payments out of the Fund to Members will create any right for another Member to a payment out of the Fund (whether or not the circumstances of the other Member's Claim are the same or similar to Claims in respect of which payments have been made).

## **13. Payment out of Fund only**

- 13.1 The granting or refusal of a payment out of the Fund is in the absolute discretion of the Trustee.
- 13.2 A Member will not have recourse to the Trustee, another Member, or any other person associated with the conduct of the Fund in respect of a Claim and in no circumstances will the Trustee, the Founding Member, a Member or any other person have any liability or obligation to make a payment in respect of a Claim.

## **14. Limitation of Assistance**

- 14.1 The grant of any assistance and payment in respect of a Claim under these Rules will be limited to the extent to which there are sufficient funds in the Relevant Annual Fund to meet that Claim.
- 14.2 To the extent that there are insufficient funds in the Relevant Annual Fund to make full payment to a Member in respect of a Claim, subject to **Rule 14.3**, that Member will not be entitled to be paid out of the funds of any other Annual Fund.

- 14.3 To the extent that a Claim accrues in respect of a period covered by two Annual Funds, the Trustee will be entitled to make payment to the claiming Member from each Relevant Annual Fund.

#### **Part 4 – Contributions from Members**

### **15. Annual Funds**

- 15.1 The Trustee must establish an Annual Fund for each Fund Year.
- 15.2 The Members and the Trustee agree that each Annual Fund is a separate and distinct fund vested in and held by the Trustee in trust pursuant to the terms of the Constitution, to be applied for the benefit of the Members in respect of any Claim arising from an event accruing in the relevant Fund Year for which the Trustee may grant assistance through a payment by the Fund.

### **16. Annual Contributions**

- 16.1 Before, or as soon as practicable after, the beginning of each Fund Year, the Trustee, in consultation with the Founding Member, must, in relation to each Annual Fund, determine the Contribution rates to be applicable to each Member or Potential Member upon written application for cover for that Fund Year having regard to:
- (a) the budget for promoting risk management;
  - (b) the recommendations of the Founding Member;
  - (c) risk factors attributable to each Member;
  - (d) historical claims records of Members;
  - (e) the aggregate amount of potential claims retained by the Fund under any Insurance Policies;
  - (f) the Deductible applicable to the Member under the Fund for that year;
  - (g) the administrative and management charges (including legal and other costs incurred in relation to management and resolution of Claims) anticipated to be payable from the Annual Fund;
  - (h) taxes and other charges anticipated to be payable by or from the Annual Fund;
  - (i) any surpluses from previous Annual Funds;
  - (j) the right of the Trustee to make further calls for Contributions during the Fund Year; and
  - (k) such other matters as the Trustee considers relevant.
- 16.2 The Trustee is entitled to determine different levels of Contributions and different Deductibles for Members or classes of Members based on factors which the Trustee determines, including:
- (a) the risk management measures taken by Members or classes of Members; and
  - (b) the claims experience of Members or classes of Members.

## **17. Further Contributions**

- 17.1 At any time after the initial Contributions in respect of an Annual Fund are paid, the Trustee may determine that further Contributions are to be made in respect of the Annual Fund.
- 17.2 If there is or will be a deficit in an Annual Fund at any time, the Trustee may in its absolute discretion, after having regard to the matters referred to in **Rule 16**, require further Contributions from the Founding Member and any other Member. The further Contributions may be of an aggregate amount sufficient to ensure that there is or will be no such deficit.
- 17.3 For the avoidance of doubt, further Contributions may be required from the Founding Member and any other Member in respect of a former Member who was a Member at any time during the Fund Year to which the Annual Fund relates.
- 17.4 Despite any other provision of these Rules or the Constitution, regardless of whether there is or will be a deficit in an Annual Fund at any time, the maximum aggregate further Contributions that may be required to be paid by the Founding Member and any other Member in respect of a Fund Year will be agreed between the Trustee and the Founding Member from time to time.

## **18. Payment of Contributions**

- 18.1 Promptly after the Trustee has determined that a Contribution (including a further Contribution under **Rule 17**) is payable by Members and/or the Founding Member (as applicable), the Trustee must issue to each Member and/or the Founding Member (as applicable) a notice requiring a Contribution or further Contribution. The notice must specify the amount and manner of payment of the relevant Contribution or further Contribution.
- 18.2 Each Member and/or the Founding Member (as applicable) must pay the Contribution or further Contribution to the Trustee within 20 Business Days of the date of the notice.
- 18.3 If a Member does not pay a Contribution or further Contribution when due, the Trustee may, at its absolute discretion, require the Member or the Founding Member (as applicable) to pay interest on the amount unpaid calculated on daily balances (and compounding semi-annually) at the 3 year BBSY swap rate published by the Commonwealth Bank of Australia from the due date to the date of actual payment. If there is no such published rate, the rate will be as determined by the auditor of the Fund as a comparable rate. An unpaid Contribution or further Contribution constitutes a debt payable by the relevant Member or the Founding Member (as applicable) to the Fund.
- 18.4 The Trustee may in its absolute discretion take any action to recover unpaid Contributions or further Contribution from a Member or the Founding Member (as applicable) at any time after giving the Member or the Founding Member (as applicable) a further 5 Business Days' demand for payment of the Contribution or further Contribution.
- 18.5 A Member or the Founding Member (as applicable) may not set-off a Contribution or further Contribution payable to an Annual Fund against any amount payable to it out of the Annual Fund.

## **19. Annual Fund Surplus Rollover**

At the expiration of 2 years from the date of establishment of an Annual Fund, the Trustee, may, in its absolute discretion, determine to:

- (a) roll the amount of any surplus which exists in an Expired Annual Fund into any other Annual Fund;

- (b) use such surplus in the Expired Annual Fund for the purpose of granting assistance to any Member in respect of a Claim;
- (c) making a Capital Determination in favour of another entity with similar purposes as the Fund chosen by the Founding Member; or
- (d) make a discretionary distribution of such surplus to the Members or any one or number of them, pursuant to the Constitution.

## **Part 5 – Deductibles and Insurances**

### **20. Objective**

The objective is that:

- (a) the Fund will promote risk management amongst the Members;
- (b) each Member who makes a Claim will bear a portion of the Claim by way of a Deductible; and
- (c) the Fund may obtain and maintain Insurance Policies to minimise the amount of Contributions required to be paid by Members in any Fund Year.

### **21. Risk Management Program**

The Trustee, acting reasonably, will determine a risk management program which Members must comply with to minimise Claims for payment from the Fund.

### **22. Deductibles (Level of Cover)**

- 22.1 The Trustee will determine a policy for the level of Deductibles which a Member or class of Members may seek approval for (**Deductible Policy**). Unless otherwise determined by the Trustee, the level of Deductibles will be determined by the level of cover offered.
- 22.2 Subject to the Trustee's Deductible Policy, each potential Member must notify the Trustee when lodging the application and before the beginning of a Fund Year (or such later time as the Trustee may agree) of the Deductible (level of cover) which it wishes to apply to it for that Fund Year (**Deductible Request**).
- 22.3 The Trustee may, in its absolute discretion, accept or reject a Deductible Request (level of cover offered), or determine an alternative Deductible to apply to any Member for a Fund Year.
- 22.4 If a Member fails to apply to the Trustee in accordance with this **Rule 22**, a Deductible (level of cover) as determined by the Trustee will be offered.

### **23. Insurances**

- 23.1 For each Fund Year, the Trustee may determine the amount and terms of any Insurance Policy to be purchased for the benefit of the Members in the name of the Fund in respect of that Fund Year.
- 23.2 In making such determination, the Trustee must take into consideration any recommendation of the Founding Member and such other matters as it considers appropriate.

## Part 6 – Trustee’s Obligations and Fees

### 24. Compliance

The Trustee must comply with all laws and obtain and maintain all permits, licences, registrations, waivers and approvals necessary for the performance of its functions as Trustee of the Fund and the operation of the Fund in a manner which is consistent with the purposes of the Fund specified in **Rule 6**.

### 25. Trustee’s Fees

- 25.1 The Trustee is entitled to a management fee in respect of each Fund Year to be negotiated with and agreed to by the Founding Member depending on the time spent by the Trustee in administering the Fund.
- 25.2 The fees payable to the Trustee accrue daily.
- 25.3 All fees payable to the Trustee are exclusive of GST.
- 25.4 Where a fee is payable in respect of a period and the fee commences or ceases to be payable during the period, the fee must be adjusted on a proportionate basis.
- 25.5 Where permitted by law, the Trustee will be paid or reimbursed out of the Fund on a full indemnity basis for all expenses and liabilities which it reasonably incurs in the proper performance of its rights and responsibilities in connection with the Fund or in performing its obligations or exercising its powers under the Constitution or these Rules including in connection with the following matters:
- (a) cheques, certificates, investment advices, accounts, distribution statements, and other communications;
  - (b) registers, accounting and other records;
  - (c) meetings of Members;
  - (d) any transaction or proposed transaction in respect of the Fund;
  - (e) management of the Fund;
  - (f) accounts;
  - (g) taxes, rates, charges (including bank charges), duties and other imposts, including any GST collectable from, or incurred or payable by, the Trustee in connection with the Fund, or the management or administration of the Fund (including taxes payable by the Trustee in respect of its fees and reimbursable expenses (other than tax on the Trustee’s income);
  - (h) regulatory compliance;
  - (i) any restructuring of the Fund;
  - (j) offers or invitations, to apply for membership of the Fund;
  - (k) delegates, agents, consultants, experts, advisers and other persons retained or appointed by the Trustee, including legal and accounting advisers and members of any compliance committee;
  - (l) custody of assets of the Fund;
  - (m) any court proceedings, arbitration or dispute;
  - (n) retirement or removal of the Trustee;

- (o) preparing documentation in relation to the Fund or assets of the Fund;
- (p) insurances, including insurance premiums payable in respect of insurance policies for assets of the Fund, for the Trustee, its directors, and compliance committee members;
- (q) promoting the Fund to, or communicating with, Members, potential Members and their advisers;
- (r) Member complaints resolution;
- (s) provision of guarantees and indemnities by the Trustee (including any indemnity given to a retiring Trustee of the Fund); and
- (t) travel and accommodation expenses.

## **Part 8 – Obligations of Members**

### **26. Minimisation of risk of Claims**

Members must manage their grain production so as to minimise the risk of Claims for payment from the Fund.

### **27. Information supplied by Members**

Each Member must ensure that:

- (a) all information provided by the Member to the Trustee in the Member's application for membership of the Fund, pursuant to Rule 11.1 and otherwise in connection with the applicable Annual Fund or any Claim or potential Claim is true and correct when provided; and
- (b) all grain yield estimates provided by the Member to the Trustee are made in good faith and on a reasonable basis.

### **28. Disclosure of Risk**

Not less than 30 days before the commencement of each Fund Year, each Member and Potential Member must promptly give to the Trustee a full application in writing declaring particulars for the risk and required level of cover. The Trustee may require the Member to pay an additional Contribution in respect of the then current or any previous Fund Year and comply with any other of its reasonable requirements.

### **29. Duty to act fairly and in good faith**

Notwithstanding any other provision of these Rules, the Founding Member must ensure that its representatives (if any), act fairly and in good faith in relation to the Fund.

## **Part 9 – Administration of these Rules**

### **30. Variation**

- 30.1 Subject to any law to the contrary that cannot be excluded, the Trustee may, acting reasonably and in the interests of the Members, vary these Rules at any time on notice in writing to the Members to that effect.
- 30.2 Any amendment or variation of these Rules will take effect from such date as may be notified in writing by the Trustee.

- 30.3 The addition or variation may apply retrospectively, if expressed to do so.
- 30.4 Members may amend these Rules by a Special Resolution.
- 30.5 The Trustee may only amend these Rules if the Trustee reasonably considers the change will not adversely affect the Members' rights.

### **31. Complaints Handling and Resolution of Disputes**

- 31.1 The Trustee must be a member of an external dispute resolution facility and must, in respect of any complaint or dispute involving a Member, comply with its obligations as a member of that service.
- 31.2 Subject to law, the Trustee may change the external dispute resolution facility of which it is a member. The first external dispute resolution facility is operated by Financial Ombudsman Service Limited.
- 31.3 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of these Rules (**Dispute**) unless it has complied with this **Rule 31**.
- 31.4 A party claiming that a Dispute has arisen must notify each other party to the Dispute giving details of the Dispute.
- 31.5 During the 30 days period after a notice is given under **Rule 31.4** (or longer period agreed in writing by the parties to the Dispute) (**Initial Period**) each party to the Dispute (**Disputant**) must use its best efforts to resolve the Dispute.
- 31.6 If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred for mediation at the request of any Disputant, to:
- (a) a mediator agreed on by the Disputants; or
  - (b) if the Disputants are unable to agree on a mediator within 7 days after the end of the Initial Period, a mediator nominated by the then chairman of the Institute of Arbitrators and Mediators Australia or the chairman's nominee.
- 31.7 The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.
- 31.8 Any information or documents disclosed by a Disputant under this **Rule 31**:
- (a) must be kept confidential; and
  - (b) may not be used except to attempt to resolve the Dispute.
- 31.9 Each Disputant must bear its own costs of complying with this clause and the Disputants must bear equally the costs of any mediator engaged.
- 31.10 After the Initial Period, a Disputant that has complied with **Rules 31.4, 31.5** and **31.6** may terminate the Dispute resolution process by giving notice to each other Disputant.
- 31.11 If, in relation to a Dispute, a Disputant breaches any provision of Rules **31.1** to **31.5**, each other Disputant need not comply with Rules **31.1** to **31.5** in relation to that Dispute.

### **32. Termination of the Fund**

- 32.1 The Members may vote to wind up the Fund by Extraordinary Resolution.

- 32.2 In the event of a resolution of Members to terminate the Fund in accordance with **Rule 32.1**, the Trustee must, as soon as reasonably practicable, determine to vest the Fund in accordance with the terms of the Constitution.

## **Part 9 – General Provisions**

### **33. Audit of Fund**

The Fund must in each Fund Year, be audited by an auditor appointed by the Trustee (in consultation with the Founding Member), and the audit report must be made available to the Members.

### **34. Member compliance audit**

CBH may, on the Trustee's behalf, audit a Member's compliance with the terms of these Rules and the Constitution including, without limitation, the accuracy of information provided by the Member in the Member's application for membership of the Fund and all information supplied by the Member to the Trustee in connection with a Claim. The Member irrevocably consents to CBH conducting a full on-farm audit of the Member for this purpose and must provide all reasonable assistance, access and co-operation necessary for CBH to conduct the audit.

### **35. Differences in Fund Year and Financial Year**

If a Fund Year and Financial Year do not coincide, the Trustee may exercise the powers under these Rules in respect of part of a Fund Year or part of a Financial Year as the Trustee thinks fit.

### **36. Taxation Responsibilities**

A Member is responsible for any taxes imposed by any governments or governing authorities arising out of or incidental to participation in the Fund.

### **37. Assignment of Rights and Obligations**

A Member may not assign or purport to assign any of the rights and obligations under these Rules without the prior written consent of the Trustee. The Trustee may delegate its obligations or assign its rights under these Rules without the consent of the Members.

### **38. Governing Law and Jurisdiction**

These Rules will be governed and construed in accordance with the laws of Western Australia for the time being in force. Members submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

### **39. Notices**

All notices relating to these Rules must be in writing and may be given by being sent to the party's last known address by pre-paid ordinary mail or facsimile to the party's current facsimile number for service. If a notice is given by post it will be deemed received three business days after posting and if given by facsimile it will be deemed received upon receipt of a successful transmission report from the sender's facsimile machine. If the Trustee provides a notice to a person who has previously certified to the Trustee that the person is a duly authorised agent of one or more Members, the Trustee will be taken to have provided the notice to every such Member without the need to provide a separate notice to each such Member or the agent.

### **40. Waiver**

Failure or omission of a party at any time to enforce or require the strict observance of or

compliance with any provision of these Rules or any exercise or discretion under these Rules will not operate as a waiver of them or the rights of a party, whether express or implied, arising under these Rules.

#### **41. GST**

If any payment made by one party to any other party under or relating to these Rules constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This **Rule 41** is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, these Rules.

#### **42. Party Acting as Trustee**

If a party enters into a Member Accession Deed or any other transaction with the Trustee as Trustee of a trust, that party and its successors as trustee of the trust will be liable under the Member Accession Deed or any other transaction with the Trustee in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of the Member Accession Deed or any other transaction document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by the Member Accession Deed or any other transaction document on behalf of the trust and that the Member Accession Deed or any other transaction document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

## **ANNEXURE 1**

### **Powers and Functions of the Founding Member**

#### **1. Functions of the Founding Member**

- (a) The Founding Member may make recommendations to the Trustee in respect of:
  - (i) the purchase or maintenance of any Insurance Policy by the Trustee on behalf of the Members in respect of each Fund Year;
  - (ii) Contributions in respect of any Fund Year;
  - (iii) Claims;
  - (iv) Risk management;
  - (v) Investment options; and
  - (vi) other relevant management issues.
  
- (b) A decision or resolution of the Founding Member in respect of any matter will not be binding on the Trustee.