

## Annexure C

### NQBE's conditional cane supply agreement

ANNEXURE C  
NQBE Conditional Cane Supply Agreement

Date/Year

Nth. Qld. Bio-Energy Corporation Pty Ltd

The Person/Entity identified in Schedule 1

**Nth. Qld. Bio-Energy  
Corporation Pty Ltd  
Cane Supply  
Agreement**

# Contents

<b>1</b>	<b>Interpretation</b>	<b>2</b>
1.1	Definitions and Abbreviations	2
1.2	Construction	5
1.3	Headings	6
<b>2</b>	<b>Term</b>	<b>6</b>
2.1	Commencement	6
2.2	Term	6
2.3	Farm Sale or Lease to another Grower	6
2.4	Farm sale or lease to a non-grower	6
<b>3</b>	<b>Crushing Season</b>	<b>7</b>
3.1	Crop Estimate	7
3.2	Mode of Operation	7
3.3	Principles for Determining Commencement of Crushing	7
3.4	Crushing Delays	8
3.5	Termination of Harvesting and Crushing	8
<b>4</b>	<b>Cane supply obligations</b>	<b>9</b>
4.1	Grower's Supply Obligation in relation to Contract Area	9
4.2	Notifications Relating to Supply Obligations	9
<b>5</b>	<b>Harvesting and Transport</b>	<b>10</b>
5.1	Responsibility	10
5.2	Harvesting Groups	10
5.3	Harvesting Roster Development	10
5.4	Bin Delivery Schedules	10
5.5	Bin Allotment	11
5.6	Harvesting & Transport Operations	11
5.7	Minimisation of Delays	12
5.8	Cane Consignment	12
5.9	Separate Consignment Notes	12
5.10	Corrections	12
5.11	Cleaning of Delivery Point	13
5.12	Workplace Health and Safety	13
5.13	Harvesting Management & Transport Operations Review Committee	13
5.14	Principles for Harvesting Reform	14
<b>6</b>	<b>Cane acceptance obligations</b>	<b>14</b>
6.1	Acceptance Obligation	14
6.2	Refusal	14
6.3	Title and Risk	14
6.4	Delivery	15
6.5	Cane Quality	15
6.6	Billet Quality	15
6.7	Extraneous Matter in Delivery	15

6.8	Extraneous Matter Causes Damage	16
<b>7</b>	<b>Payment for Cane</b>	<b>16</b>
7.1	Application	16
7.2	Cane Weighing, Sampling and Analysis	17
7.3	Spilled Cane	17
7.4	Base Cane Value Formula (Daily Relative CCS Scheme)	17
7.5	Payment CCS and Relative Cane Payment	18
7.6	Deliveries with less than 7 CCS units	18
7.7	Timing of Payments	18
7.8	Incentive Payments and Allowances	19
7.9	Grower Payment Deductions	24
7.10	Payment Advices	24
7.11	Recovery of Overpayments	24
<b>8</b>	<b>Goods and Services Tax</b>	<b>25</b>
8.1	Definitions and Interpretation	25
8.2	Consideration GST Exclusive	25
8.3	Payment of GST	25
8.4	Timing of GST Payment	25
8.5	Adjustment Event	25
8.6	Recipient Created Tax Invoice (RCTI)	26
8.7	Reimbursements	26
<b>9</b>	<b>Value Adding from Cane</b>	<b>26</b>
<b>10</b>	<b>Mill Sale or Closure</b>	<b>26</b>
<b>11</b>	<b>Dispute Resolution</b>	<b>27</b>
<b>12</b>	<b>Access and Information</b>	<b>28</b>
12.1	Access	28
12.2	Information to Grower's Representative	28
12.3	Information General	29
<b>13</b>	<b>Force Majeure</b>	<b>29</b>
13.1	Force Majeure occurrence	29
13.2	Termination	30
13.3	Definition of "Force Majeure"	30
<b>14</b>	<b>Confidentiality</b>	<b>30</b>
<b>15</b>	<b>Independent advice</b>	<b>30</b>
<b>16</b>	<b>Notices</b>	<b>31</b>
16.1	General	31
16.2	How to give a communication	31
16.3	Particulars for delivery of notices	31
16.4	Communications by post	31
16.5	Communications by fax	31
16.6	After hours communications	31

16.7	Process service	32
<b>17</b>	<b>Variation of Agreement</b>	<b>32</b>
<b>18</b>	<b>General</b>	<b>32</b>
18.1	Legal costs	32
18.2	Waiver and exercise of rights	32
18.3	Rights cumulative	32
18.4	Consents	32
18.5	Further steps	32
18.6	Governing law and jurisdiction	32
18.7	Assignment	33
18.8	Liability	33
18.9	Counterparts	33
18.10	Entire understanding	33
18.11	Relationship of Parties	33
<b>19</b>	<b>Conditions Precedent</b>	<b>33</b>

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**Schedule 1 – Grower Details and Relevant Seasons**

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Dated this.....day of.....20...

## Parties

**Nth. Qld. Bio-Energy Corporation Pty Ltd** (ABN 57 108 877 872) of 73-81  
Lannercost Street, Ingham, Queensland (**NQBE**)

**The Person(s)/Entity(s) identified in Schedule 1 (Grower)**

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## Background

- A NQBE intends to operate a sugar/ethanol and co-generation factory in the Herbert River District ("the Factory").
  - B Subject to commission of the Factory, the Grower wishes to supply sugar cane to NQBE and NQBE wishes to purchase that Cane on the terms and conditions set out in this Agreement.
  - C Each of them the Grower and NQBE are responsible for their relevant performance obligations specified in this Agreement.
  - D This Agreement has the following objectives:
    - (a) to establish commercial arrangements under which the Grower and NQBE will work co-operatively for their mutual benefit;
    - (b) to provide confidence for the Grower and NQBE to plan and operate their current and future business activities;
    - (c) to provide an optimal schedule for a constant and sufficient daily supply of Cane to NQBE for the Relevant Seasons.
  - E This Agreement is an individual cane supply contract as defined in section 32 of the Act.
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# Agreed Terms

## 1 Interpretation

### 1.1 Definitions and Abbreviations

In this Agreement:

**Act** means the Sugar Industry Act 1999 as amended from time to time during the term of this Agreement. Where a word is defined both in the Act and in this Agreement, the definition in this Agreement will take precedence over the definition in the Act to the extent of any inconsistency.

**Bin** means a cane railway bin.

**Block** means a delineated area being cultivated for Cane production where the area contains Cane considered to be of the same Cane class (ratoon age) and variety as indicated by the Grower. Each Block recorded for a Farm has a numeric code (in the form 1-2) unique to that Farm and a calculated area in hectares.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Ingham or Brisbane.

**Cane** means sugar cane (being the outer rind and all components of the sugar cane) to be supplied by the Grower, other Growers and Suppliers.

**Cane Analysis** means the procedures for determining CCS and other characteristics as described in the Cane Analysis Program.

**Cane Analysis and Audit Committee** means the Committee constituted under this Agreement to oversee the Cane Analysis Program.

**Cane Analysis Auditor** means a person as defined in the Cane Analysis Program.

**Cane Analysis Program** means the procedures recorded in Annexure 1 – Cane Analysis Program.

**Cane Block Layer** means the spatial delineation (map) of every Cane Block in the District, whether fallow or growing Cane, recorded by HCPSL as being cultivated for the supply of Cane to NQBE, and includes attributes relating to each Block as advised by the Grower or Supplier or determined by HCPSL.

**CCS** means, for any Delivery, the commercial cane sugar determined in accordance with the Cane Analysis Program.

**Commencement Date** means the 2012 sugarcane harvesting season for the Herbert River District, subject to the conditions precedent outlined in Clause 19.

**Consignment Note** means the printed form provided by NQBE to the Grower to identify and provide details relating to every Delivery of Cane.

**Contract Area** means the aggregate area of all Blocks for each unique Farm as shown in Schedule 1 as amended.

**Crop** means the aggregate tonnes of Cane growing on the Lands of all Growers for harvest during the Relative Season.

**Delivery** means the harvested Cane contained in the Bins whose numbers are recorded on a particular Consignment Note, whether this information be provided or amended by the Grower, his agent or NQBE. A Delivery may subsequently be divided for juice sampling in accordance with the Cane Analysis Program.

**Delivery Point** means the location at which NQBE accepts responsibility for the further transportation and crushing of Cane from the Grower, being the location(s) at which the Grower delivered Cane to a Miller in the previous crushing season, unless otherwise agreed in writing by NQBE and the Grower.

**District** means land in the Herbert River region that is cultivated for the production of Cane as recorded on the Cane Block Layer as amended.

**District Cane** means Cane in the District supplied to NQBE under all supply contracts for a Relevant Season.

**EFT** means Electronic Funds Transfer by way of the gateway system operated by Australian financial institutions as a means used by NQBE for making payments to the Grower.

**Extraneous Matter** means Cane plant material unsuitable for the production of raw sugar such as tops, trash, dried-up, diseased or decayed Cane as well as dirt, rocks and any other non-cane or foreign matter included with Cane supplied in Bins.

**Farm** means the aggregate of Blocks that the Grower has indicated will constitute each discrete supply unit as shown in Schedule 1 by its unique Farm number identifier and the Contract Area for cultivation.

**Forward Price Agreement** means a separate agreement between a Grower and NQBE pursuant to which the Grower forward prices a portion of the Grower's Cane to be supplied to NQBE pursuant to this Agreement.

**Grower** means the person/entity who has signed this Agreement to supply Cane to NQBE and, subject to clause 2.4, is a shareholder of NQBE.

**Growers** mean all persons who have signed an Agreement to supply Cane to NQBE.

**Grower's Representative** means the person or entity nominated by the Grower (in writing, signed by the Grower and delivered to NQBE prior to the commencement of the 2012 Cane harvesting season) who will represent the Grower's interests. In the event that the Grower fails to provide to NQBE by the commencement of the 2012 Sugar harvesting season a nomination of the Growers Representative in writing signed by the Grower then for the purpose of this Agreement Grower's Representative means the Grower

**GST** means the Goods and Services Tax referred to in *A New Tax System (Goods and Services Tax) Act 1999* as amended.



**Harvesting & Transport Handbook** means the document titled *NQBE Harvesting & Transport Handbook*.

**Harvest Day** means a calendar day on which a Delivery is harvested during a period of no less than 8 hours on that day.

**Harvesting Group** means a group comprising the Grower, other Growers and other Suppliers whose Lands are to be harvested together in an agreed manner.

**Harvesting Group Spokesperson** means the person selected by the members of a Harvesting Group to confer with NQBE and others regarding Harvesting Group matters.

**HMTORC** means Harvest Management and Transport Operations Review Committee as defined in clause 5.13

**HCPSL** means Herbert Cane Productivity Services Limited, (ABN 71 100 551 826).

**IPS** means International Pol Scale as adopted by the Australian Sugar Industry as a standard means of assessing the value of raw sugar.

**Land** means the land upon which the Grower has agreed to grow Cane or all land upon which Growers and other Suppliers have agreed to grow Cane, as the context requires.

**Mill** means the Factory.

**NQBE** means Nth. Queensland Bio-Energy Corporation Pty Ltd (ABN 57 108 877 872) and its related bodies corporate

**Productivity Zones** means the 26 areas of the District to which all Blocks have been designated through common geographic characteristics and location in a database held by HCPSL (and to be held by NQBE) for purposes of a regional industry productivity initiative.

**QSL** means Queensland Sugar Limited, (ABN 76 090 152 211)

**QSL Sugar Value** means QSL Discretionary Pool value for a Relevant Season as advised to NQBE from time to time expressed in dollars per tonne IPS sugar exclusive of GST and exclusive of any sugar quality premium or discount applied by QSL or payments made in relation to the manufacture of particular brands of sugar.

**QSL Discretionary Pool** means a pool containing an entitlement for NQBE being revenues managed by QSL in its discretion, from raw sugar so allocated by NQBE, and sold under the Australian US quota, any long term contracts, EU quota and New York Board of Trade No.11 Contract proceeds and associated currency dealings, less costs attributable to that pool of revenue for a Relevant Season.

**Relevant Season** means each of the cane harvesting and crushing seasons during the term of this Agreement and as listed in Schedule 1.

**Suppliers** means all persons supplying Cane in the District to NQBE in accordance with other supply contracts in a Relevant Season and Supplier has a corresponding meaning.

## 1.2 **Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation, trust and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Brisbane;
  - (vii) "\$" or "dollars" is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (x) this document includes all schedules and annexures to it; and
  - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and

- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

**1.3 Headings**

Headings do not affect the interpretation of this document.

**2 Term**

**2.1 Commencement**

- (a) Subject to clauses 2.1(b) and 19, this Agreement will commence on the date upon which it has been signed by NQBE and the Grower.
- (b) This Agreement will not be binding until signed by NQBE.

**2.2 Term**

This Agreement will terminate when the final payment is made to the Grower for Cane supplied in respect of the last Relevant Season, as referred to in Schedule 1.

**2.3 Farm Sale or Lease to another Grower**

- (a) In the event of a sale or lease by the Grower of the Land to which this Agreement applies or any part thereof, to another Grower ("the Other Grower") the Grower shall complete and sign a Notification of Change of Contract Area ("the Notice") a copy of which will be available at the offices of NQBE.
- (b) Provided that the Other Grower signs the Notice and delivers the Notice to NQBE and the Grower is not a party to a Forward Price Agreement, then the Notice shall be deemed to be an assignment to the Other Grower of the obligations and interests of the Grower under this Agreement and thereupon:-
- (i) NQBE shall be deemed to have consented to the assignment and to be bound to the Other Grower for the unexpired term of this Agreement insofar as relates to the Contract Area particularised in the Notice with the same effect as though the Other Grower was a signatory as a Grower to this Agreement.
- (ii) The Other Grower shall be deemed to be bound to NQBE for the unexpired term of this Agreement insofar as relates to the Contract Area particularised in the Notice to the same effect as though the Other Grower was a signatory as Grower to this Agreement.
- (c) All rights and obligations of and by NQBE and the Grower to the other of them insofar as relates to the unexpired term of this Agreement shall be extinguished insofar as applies to the Contract Area particularised in the Notice.

**2.4 Farm sale or lease to a non-grower**

- (a) In the event that the Grower is, during the term of this Agreement, desirous of selling or leasing the Land to which this Agreement applies or any part thereof, to a party who is not a Grower, will not be a Grower or

to whom clause 2.4 does not or will not apply ("the non-Grower") then the Grower shall first offer in writing to sell or lease (as the case may be) the same to NQBE at the same price and on the same terms and conditions as the Grower is prepared to sell or lease (as the case may be) ("the Offer").

- (b) NQBE may by written notice to the Grower accept the Offer within 30 days from the date of receipt by NQBE of the Offer.
- (c) In the event that NQBE accepts the Offer within 30 days from the date of receipt by NQBE of the Offer, then the Grower and NQBE shall immediately enter into a formal Contract or Lease (as the case may be) in accordance with the Offer.
- (d) In the event that NQBE fails to accept the Offer within 30 days from the date of receipt by NQBE of the Offer, then the Grower may sell or lease (as the case may be) to the non-Grower for the price and on terms and conditions no less favourable to the Grower than those contained in the Offer.
- (e) Provided that the Grower has complied with the requirements of this clause, then all rights and obligations of and by NQBE and the Grower to the other of them insofar as relates to the unexpired term of this Agreement shall be extinguished insofar as applies to the Contract Area relevant to the sale or lease to the non-Grower.

### **3 Crushing Season**

#### **3.1 Crop Estimate**

To allow a preliminary estimate of the Crop to be prepared, the Grower is to advise HCPSL of changes to Farm map attributes (e.g. fallow, variety details for newly planted areas) for each Block by 14<sup>th</sup> February each year.

By 30th April each year the Grower is to confirm to HCPSL Cane variety and area details recorded on the Cane Block Layer and upon which the Crop estimate will be based.

#### **3.2 Mode of Operation**

Harvesting, transport and crushing operations will be undertaken to enable continuous 7 days per week Mill operations.

As a general principle, access by Growers to daily crushing capacity will be shared in the proportion that Cane remaining to be harvested bears to the estimated Crop tonnage remaining for harvest.

#### **3.3 Principles for Determining Commencement of Crushing**

- (a) The date for commencement of crushing is set to allow NQBE to plan and carry out maintenance and capital works, and to allow Growers to plan their farming activities including harvesting arrangements. Such date will be set to optimise industry profitability taking into account risks associated with traditional weather patterns and operational performance.

- (b) A nominal commencement date for harvesting and crushing will be the first Tuesday on or after the 15th June unless otherwise agreed between NQBE and the Grower's Representative through the following process:
  - (i) By 31<sup>st</sup> March each year, NQBE will provide a preliminary estimate of the Crop expected to be crushed in the Relevant Season.
  - (ii) NQBE will then develop a crushing schedule which makes allowance for planned cleaning intermissions, normally-expected wet weather and unplanned stoppages. This schedule will be used by NQBE and the Grower's Representative to set a tentative starting date and likely finish date for the Relevant Season.
- (c) The tentative starting date will be reviewed by NQBE and the Grower's Representative no later than the first week in May following completion of the Crop estimate. The official starting date set by this review may be further reviewed by NQBE and the Grower's Representative should relevant circumstances change.

#### 3.4 **Crushing Delays**

- (a) NQBE and the Grower acknowledge that crushing delays can occur as a result of weather and other factors outside the control of the Parties. Recommencement of crushing after a delay will take place as soon as practicable taking into account relevant factors including, without limitation:
  - (i) the moisture of the soil and the suitability for harvest so as to not unnecessarily damage the stool for subsequent seasons;
  - (ii) the ability of NQBE to obtain sufficient Cane supply; and
  - (iii) the anticipated finish date for the Relevant Season.
- (b) After a significant wet weather delay, NQBE will determine when the Mill should recommence crushing first taking into account supply distribution, transport logistics, bagasse stocks and other relevant factors.

#### 3.5 **Termination of Harvesting and Crushing**

- (a) With at least 14 days notice, NQBE shall notify the Grower in writing of the date on which it is expected harvesting will cease.
- (b) NQBE shall have the right to terminate harvesting and crushing in each Relevant Season:
  - (i) when Cane from all Growers has been crushed; or
  - (ii) when, following the expiration of the period of notification given in (a) above and after giving an additional day's notice, the District Cane supply for three consecutive days falls below fifty five percent of the average tonnage of Cane crushed per day for that Relevant Season to that date.
- (c) In the case of a termination pursuant to clause 3.5(b)(ii), NQBE will consult with the Grower's Representative prior to making any decision to terminate harvesting and crushing.

- (d) In extraordinary circumstances, NQBE and the Grower's Representative may agree to terminate harvesting and crushing earlier than contemplated in clause 3.5(b)(ii).

## **4 Cane supply obligations**

### **4.1 Grower's Supply Obligation in relation to Contract Area**

During the term of this Agreement and subject to clause 4.2, the Grower agrees to:

- (a) grow Cane on at least 80% of their Contract Area as nominated in Schedule 1 of this Agreement, including any hand-written amendment made by the Grower and accepted by NQBE at the time of execution;
- (b) grow only Cane varieties approved pursuant to the Plant Protection Act 1989;
- (c) deliver to NQBE such Cane other than that to be used for seed Cane for the planting of future crops to be supplied to NQBE; and
- (d) utilise sustainable agronomic practices in endeavouring to produce consistent annual crops of Cane of acceptable quality.

Clause 4.1(a) will be deemed to be satisfied where a Grower can demonstrate that Cane has been grown on 80% of the aggregate Contract Area of Farms managed in conjunction with each other as specified by the Grower in Schedule 1.

In the event the Grower sells or otherwise assigns his interest in the Land, the Grower must ensure that the buyer or assignee enters into a covenant with NQBE in such terms as may be reasonably required by NQBE pursuant to which the buyer or assignee will be bound to comply with the terms of this Agreement.

### **4.2 Notifications Relating to Supply Obligations**

- (a) Where additional Land is intended to be cultivated for Cane, the Grower may request that additional Contract Area be included on a particular Farm for later Relevant Seasons by providing a notice in writing to both NQBE and the Grower Representatives prior to planting such Land.
- (b) Where a Grower seeks to reduce his Contract Area during the term of this Agreement, such request outlining reasons must be made in writing to both NQBE and the Grower Representatives.
- (c) The Grower agrees not to cease producing Cane on the Land without first fulfilling the terms & conditions of this Agreement.
- (d) Should the Grower seek to be excused from his obligation under clause 4.1(c) and destroy or stand over Cane to the following season pursuant to clause 14 (Force Majeure), the Grower must advise NQBE of the area involved and the circumstances in writing at the earliest possible time and no later than the scheduled date of harvest for that Cane.

NQBE shall act reasonably in considering any request from the Grower pursuant to subclauses (b) and (d) above. For clarity, this does not mean that such a request will automatically be approved by NQBE.

## **5 Harvesting and Transport**

### **5.1 Responsibility**

NQBE will be responsible for scheduling the harvesting and transportation of all Suppliers' Cane including the Grower's Cane.

### **5.2 Harvesting Groups**

The Grower agrees to participate in a Harvesting Group selected by the Grower after consultation with NQBE for the efficient harvesting and transportation of Cane in accordance with the principles and deadlines stated in Harvesting & Transport Handbook (Principles and Structure of Zonal Limit System for Managing Harvester Group Migration). Any change proposed by a Grower to a Harvesting Group shall be advised to all relevant stakeholders and to affected Harvesting Groups by 28<sup>th</sup> February each year. Later notification may be accepted in extenuating circumstances.

The Grower agrees to participate in the nomination and selection of a Harvesting Group Spokesperson to act as a contact point for the purpose of communications between the Harvesting Group and NQBE. The Grower agrees that communications with and from the Group Spokesperson and NQBE shall be deemed to be communications between NQBE and all of the Growers in the relevant Harvesting Group.

The Parties agree to observe the communications protocols as outlined in the Harvesting & Transport Handbook.

### **5.3 Harvesting Roster Development**

In consultation with Growers and Harvesting Groups, NQBE shall prepare a set of harvesting roster patterns so that the days each Harvesting Group are not required to supply Cane are progressively rotated through the course of the season.

The development of harvesting rosters will take into consideration the size and distribution of the Crop, the quantity of Cane in the Harvesting Group, the capacity of the harvesting equipment, siding capacities, Cane transport schedules, the daily target capacity of the Mills and any other relevant factors.

The intent is that roster patterns nominated by Harvesting Groups and accepted by NQBE will remain effective throughout the season. Any requests for changes are to be referred to the Harvesting Management and Transport Operations Review Committee.

### **5.4 Bin Delivery Schedules**

In consultation with Harvesting Groups and the Grower's Representative, NQBE shall prepare a schedule of daily empty Bin delivery times and pick up times for Bins filled with harvested Cane so that, as close as reasonably practicable, Harvesting Groups may operate with a continual empty Bin supply

and the Mill may plan and operate a traffic system which has a reliable supply of harvested Cane. Communication of changed circumstances such as a breakdown beyond the reasonable control of either NQBE or the Grower that may affect delivery of empty Bins or harvested Cane prior to the scheduled delivery or pick up, as the case may be, will satisfy the mutual obligation relating to Bin supply and Cane delivery.

Harvest rosters and daily Bin delivery and pick up schedules should be organised by NQBE so that daily finishing times for Harvesting Groups are nominally 6 pm, or such other times as are agreed between the Grower, harvesting operator and NQBE.

The schedule may be altered by mutual agreement between NQBE and the Groups operating on a particular cane railway line or lines.

## **5.5 Bin Allotment**

### **(a) General Principle**

Harvesting allotments are to be administered on a District Cane basis with allotments determined across the District in proportion to estimates of remaining Crop and applicable harvest roster factors.

### **(b) Operational Application**

NQBE will notify the Harvesting Group or the Harvesting Group Spokesperson from time to time of the quantity of Cane (in tonnes) to be delivered to Delivery Points throughout each rostered day of harvesting for the relevant Harvesting Groups.

Where practicable, actual daily Bin allotments to rostered Harvesting Groups are to be adjusted consistently across the District, according to loading requirements for the Mills. Such daily allotments may be temporarily altered for reasons of wet weather, factory breakdowns, harvester breakdowns, accidental fires, transport logistics or other relevant circumstances.

In the event of a temporary cessation of crushing, including the circumstances outlined in clause 3.4, NQBE will notify the Group Spokesperson or harvesting contractor for the rostered Harvesting Groups, in which case each Grower in the affected Harvesting Groups will suspend all burning, harvesting and delivery of Cane until further notice.

## **5.6 Harvesting & Transport Operations**

Growers shall harvest in accordance with their Harvesting Group's rotation program and harvest roster with the objective of enabling the Harvesting Group to deliver its daily allotment by the scheduled delivery times.

All operations associated with harvesting and transport are to be conducted in accordance with the NQBE Harvesting & Transport Handbook.

The Grower agrees that a HCPSL supplied GPS unit will be operated at all times during the harvest of their Contract Area and that spatial harvesting data will be supplied to HCPSL in accordance with the requirements outlined in the NQBE Harvesting & Transport Handbook.



## **5.7 Minimisation of Delays**

NQBE commits to using its best endeavours to ensure that empty Bins are to be delivered daily according to the daily schedule, such that Harvesting Groups should have a maximum delay in operations of 30 minutes waiting for empty Bins to be available to fill with harvested Cane on one part; and Growers commit to using their best endeavours to ensure harvested Cane is delivered, consigned and Bins are available for collection by the scheduled pick up time.

NQBE further commits to developing a computer based system to enable the Harvest Management and Transport Operations Review Committee to monitor the performance of the cane railway system.

## **5.8 Cane Consignment**

The Grower agrees to ensure that a Consignment Note for each separate Block of Cane shall be attached to each Delivery of Cane supplied by the Grower to NQBE noting:

- (a) the day of harvest;
- (b) the harvest commencement time for the Delivery;
- (c) the Grower's Block number;
- (d) whether the Cane was burnt;
- (e) whether the Block is now completely harvested;
- (f) whether the Cane is standover; and
- (g) the number of each Bin used by the Grower in the correct sequence.

Any Delivery of less than 22 tonnes of Cane shall have no juice sample taken. Where a Grower has failed to ensure the consigned Deliveries exceed 22 tonnes of Cane, NQBE may combine such Deliveries where the Block number on each Consignment Note is the same.

In the case where a Consignment Note has been provided by a Grower without a valid Block number and it is not reasonable for HCPSL to correct the information by close of business Friday, NQBE may withhold payment for such Deliveries until a later week to allow for the correct information to be determined.

## **5.9 Separate Consignment Notes**

A separate Consignment Note is required where Cane is harvested from a different Block.

A separate Consignment Note is also required when the size of empty Bins available at the Delivery Point changes so that only Bins of one size are represented on a particular Consignment Note.

## **5.10 Corrections**

If Consignment Notes are incorrectly completed on a persistent basis, the Grower may be advised by NQBE in writing. If, after having provided written notification to the Grower, more than one further Consignment Note from the Grower contains incorrect information, NQBE may recover its administration

costs incurred in making necessary corrections by deducting the sum of those costs from amounts otherwise payable to the Grower under this Agreement. Details of the amounts deducted shall be provided by NQBE to the Grower.

#### **5.11 Cleaning of Delivery Point**

The Grower agrees to ensure that the Delivery Point is maintained in a clean and serviceable state to facilitate safe and efficient delivery and pick-up of Bins. This obligation includes the maintenance of delivery pads and accesses after the first year of operation of a particular siding. In accordance with the procedure contained in the Harvesting & Transport Handbook, delivery and pick-up of Bins may be suspended where Delivery Points are not clean and serviceable.

#### **5.12 Workplace Health and Safety**

The Grower acknowledges that a Delivery Point is considered a shared workplace for the purposes of the *Workplace Health and Safety Act 1995*. All persons normally involved with activities at a siding have obligations to ensure that the way they undertake their activities does not pose a risk to themselves, workers or others.

All cane hauling operators and principal contractors engaged by the Grower must:

- (a) prior to commencement of each Crushing Season, produce evidence to NQBE of completion of a siding induction within 2 years of the commencement of the Relevant Season. Delivery of Bins and pick up may be withheld if such evidence has not been provided;
- (b) comply with the Code of Practice for the Operations and Procedures at Cane Railway and Road Transport Delivery Points developed by the Sugar Industry; &
- (c) comply with the Harvesting & Transport Handbook. In particular, Growers shall not use the mainline to move Bins, allow the mainline to be obstructed in any way or allow equipment to encroach within 2.5 metres of any mainline track without NQBE's prior approval.

The Grower agrees to observe the requirements of the Harvesting & Transport Handbook which is incorporated into this Agreement by reference. Should such requirements not be observed, the reduction or suspension of the supply of empty Bins to a Group is expressly authorised by this Agreement.

#### **5.13 Harvesting Management & Transport Operations Review Committee**

To assist in ensuring continuity of Cane supply and the equitable and efficient harvesting of the Cane, a Harvesting Management & Transport Operations Review Committee (HMTORC) shall be constituted to review the operations of the harvesting and transport interface in accordance with the following provisions;

- (a) The HMTORC shall consist of Grower representatives, a representative nominated by Queensland Mechanical Cane Harvesting Association

Herbert River Branch, a representative from HCPSL and NQBE representatives.

- (b) A Grower representative shall act as Chairperson of the HMTORC.
- (c) The HMTORC shall meet at such times as the Chairperson considers necessary to review the relative position of all Harvesting Groups.
- (d) NQBE will make available to the HMTORC all relevant data required to fulfil its function.
- (e) The HMTORC has the express power to alter or cancel the allotment of Bins for any Harvesting Group or Groups, Grower or Growers supplying under this Agreement and to consider requests to change harvesting rosters.
- (f) The application of clause 5.13(e) includes the alteration of allotments on account of non-conformance with GPS data-card requirements or to remedy the adverse consequences of late Bin deliveries as outlined in the Harvesting & Transport Handbook in each case.

#### **5.14 Principles for Harvesting Reform**

The Parties agree to work consultatively on appropriate reform of harvesting and transport in the District with the aim of achieving longer term cost reductions to the industry. It is further agreed that benefits arising from reform measures should be shared equitably after recognising implementation costs and parties disadvantaged by reform.

## **6 Cane acceptance obligations**

### **6.1 Acceptance Obligation**

NQBE agrees to take delivery of Cane produced by the Grower from the Contract Area nominated by the Grower in Schedule 1 subject to such Cane being fit in the reasonable opinion of NQBE for the manufacture of sugar cane derived products of acceptable quality.

### **6.2 Refusal**

NQBE may refuse to accept Cane on the grounds that the Cane is not fit, in the reasonable opinion of NQBE, for the manufacture of sugar cane derived products of acceptable quality. NQBE shall as soon as practicable advise the Grower if it has refused to accept any Cane from the Grower. NQBE shall retain any refused Cane for a period of three days so that it may be inspected by the Grower or the Grower's Representative.

### **6.3 Title and Risk**

Title and risk of loss, other than rain on Bins, for the Cane supplied by the Grower shall transfer to NQBE upon delivery by the Grower to the Delivery Point. However, nothing in this clause affects NQBE's rights to reject Cane or NQBE's right to remove Extraneous Matter as provided for in clause 6.7.

#### **6.4 Delivery**

Cane is deemed to be delivered to NQBE when Bins are filled with billeted Cane, delivered to the Delivery Point and accompanied by a correctly completed Consignment Note in readiness for cane railway transportation. Deliveries shall be in accordance with the cane Bin supply schedule as supplied by NQBE to match daily crushing requirements of the Mill.

#### **6.5 Cane Quality**

Cane quality affects the ability of the NQBE to produce high quality sugar cane derived products. The manufacture of sugar cane derived products that meets customer requirements will be assisted by the following Cane quality attributes:

- (a) High sugar content (CCS)
- (b) Low dirt levels
- (c) Low ash levels
- (d) Low levels of floc
- (e) Low levels of Cane stool
- (f) Low level of Extraneous Matter
- (g) Cleanly cut billets

#### **6.6 Billet Quality**

Each Grower shall ensure that delivered Cane is cut cleanly with minimum damage into billets of a mean length not exceeding 300 millimetres and not less than 200 millimetres. Should the Grower fail to comply with this standard, NQBE may suspend or amend such Grower's Bin allotment.

The Grower shall ensure that harvested Cane is delivered on the day it is harvested in order to minimise delays. On each occasion that harvested Cane is held overnight in haul-out units and is delivered the next day, NQBE may cancel a subsequent allotment of empty Bins to the Grower provided the Grower is notified in advance.

In addition, the Delivery sample that includes such Cane that is delivered late in this way, shall not be eligible for treatment as a missed sample under the Cane Analysis Programme provided that the Cane Analysis Auditor has been advised in writing that such Cane has not been delivered in accordance with this Delivery requirement.

#### **6.7 Extraneous Matter in Delivery**

Each Grower shall endeavour to supply Cane with a minimum quantity of Extraneous Matter.

Where NQBE determines that a Cane Delivery contains an excessive quantity of Extraneous Matter, or may result in damage to Mill equipment, one of the following actions may be taken:

- (a) NQBE may accept such Cane and make a deduction of 30, 40 or 60 cents per tonne of Cane depending on the degree to which it is considered by NQBE and verified by the Cane Analysis Auditor to

contain an unreasonable quantity of Extraneous Matter. Provided that no such deduction shall be made, without the prior approval of a Cane Analysis Auditor who has supervised the inspection of the relevant Cane and provided further that no such deduction shall be made where clauses 6.7(b) or (c) is applied.

- (b) NQBE may withhold acceptance of such Cane until the Grower has cleaned it.
- (c) NQBE may return such Cane to the Grower at the Grower's expense and may by written notice withhold further acceptance until it has been cleaned.

While Bins are held up on account of any of these matters, NQBE may make a corresponding reduction in the daily allotment of Bins to the Grower. Thereafter, the Grower shall not have any right to a greater number of Bins than would otherwise have been allotted.

#### **6.8 Extraneous Matter Causes Damage**

If any Delivery containing Extraneous Matter supplied by the Grower causes damage to Mill equipment, then NQBE shall have the right to recover from that Grower NQBE's costs associated with repairs to the Mill as well as any other consequential costs and losses.

## **7 Payment for Cane**

### **7.1 Application**

- (a) This clause 7 operates to provide the Grower with regular payments for Cane supplied to NQBE based on the Grower's Delivery tonnes and the Grower's Delivery CCS relative to the daily Collective Cane average CCS. There are also adjustment payments provided for at various times based on increases in the QSL Sugar Value that is paid progressively to NQBE.
- (b) The provisions of this clause 7 shall apply to payments for all Cane supplied by the Grower during the term of this Agreement except where the Grower has elected to enter into a Forward Price Agreement with NQBE which may reference pricing arrangements through third parties.
- (c) Where a Grower elects to enter into a Forward Price Agreement with NQBE, the provisions of the Forward Price Agreement:
  - (i) will be deemed to be incorporated and form part of this Agreement and shall be reflected in an addendum to this Agreement; and
  - (ii) will, to the extent of any inconsistency with this clause 7 or any other provision of this Agreement, take precedence over this clause 7 or such other provisions.
- (d) NQBE commits to the development of a memorandum of understanding concerning the allocation of sugar to facilitate QSL or other marketing agent pricing against the Discretionary Pool for the Relevant Seasons.

## 7.2 Cane Weighing, Sampling and Analysis

Each Delivery of Cane will be weighed, sampled, analysed and have its CCS determined in accordance with Annexure 1 – Cane Analysis Program which forms part of the Agreement.

A Cane Analysis and Audit Committee shall be constituted comprising delegated persons nominated by the grower and NQBE. This committee shall be responsible for overseeing the Cane Analysis Program including the recruitment and management of cane analysis audit staff and the preparation of an annual budget of estimated expenditure for approval by NQBE and the grower.

Following review by the Cane Analysis and Audit Committee, the Grower's Representative is expressly authorised to amend the Cane Analysis Program from time to time to reflect changes that have been agreed with NQBE.

The Grower's Representative is further authorised to negotiate the terms of a separate agreement with NQBE for the introduction of Near Infrared Spectroscopy (NIR) analysis OR any other new technology for nutrient management and Cane payment purposes. Such agreement shall include consideration of the introduction of the can fibre machine for Cane fibre measurement and relevant commercial terms.

## 7.3 Spilled Cane

Where Cane is spilled from a Bin after delivery onto the railway, the determination of weight and CCS shall be in accordance with the Cane Analysis Program.

## 7.4 Base Cane Value Formula (Daily Relative CCS Scheme)

- (a) Each Grower will be entitled to receive payment for each Delivery of Cane which has been accepted by NQBE according to the value derived by the following formula:

$$\text{Grower's Delivery Base Cane Value (\$/t)} = \frac{\text{NQBE Base Cane Value} \times \text{Grower's Delivery CCS}}{\text{Daily CCS} + Y}$$

Where:

$$\text{NQBE Base Cane Value (\$/t)} = 0.009 \times \text{Sugar Value} \times (\text{NQBE CCS} - 4) + 0.6353$$

And:

**NQBE CCS** = Interim seasonal average CCS (as determined in clause 7.5(a) or 7.5(b)) for payments during the season, or the weighted seasonal average CCS of NQBE Cane, excluding Cane determined as having less than 7 CCS units, as determined in clause 7.5(d) for subsequent payments

**NQBE Daily CCS** = weighted average CCS of all NQBE Cane delivered, excluding Cane determined as having less than 7 CCS units, on the same day as the Grower's Delivery

**Grower's Delivery CCS** = the CCS determined in accordance with the Cane Analysis Program for the Delivery on a particular day, excepting Cane determined as having less than 7 CCS units

**Sugar Value** = QSL Sugar Value, unless and to the extent that the Grower elects to enter into a Forward Price Agreement in which case, NQBE will derive the sugar value in \$/t IPS to be applied to certain Deliveries or parts thereof as per the terms of the Forward Price Agreement.

**Y** = An amount of **NOT** less than \$2.00 per tonne of cane delivered to NQBE.

- (b) For determining the Base Cane Values, the date of the Delivery will be the date on which the Cane was harvested.

#### **7.5 Payment CCS and Relative Cane Payment**

- (a) Prior to the commencement of each Relevant Season, NQBE will calculate an interim seasonal average CCS based on the weighted average CCS for NQBE Cane over the Herbert River District's previous 5 years annual average unless otherwise agreed between NQBE and the Grower's Representative.
- (b) If, during the season, it becomes evident to NQBE that the weighted average seasonal CCS of Collective Cane is likely to vary from the interim seasonal average CCS as determined in accordance with clause 7.5(a), the interim seasonal average CCS for the purpose of payments to Growers may be increased or decreased by NQBE after consultation with the Grower's Representative.
- (c) Where any CCS or QSL Sugar Value adjustments are made, the Grower's Delivery Base Cane Value shall be recalculated in accordance with the formula in clause 7.4(a) and adjusting payments made to Growers.
- (d) At the conclusion each Relevant Season, the weighted seasonal average CCS of Collective Cane, excluding Cane determined as having less than 7 CCS units, shall be determined by NQBE for use in the end of season adjustment payment and subsequent payments for the Relevant Season.

#### **7.6 Deliveries with less than 7 CCS units**

- (a) Any delivery with less than 7 CCS units may be eligible for payment under this clause, but is ineligible for payment under clauses 7.4 and 7.5.
- (b) Subject to the following paragraphs, any Delivery made in the months of June, July or November and later having a CCS of 6 units or greater but less than 7 units will be paid at the rate of \$6.50 per tonne. No payment shall be made for any Delivery having a CCS of less than 6 units.
- (c) Payments pursuant to this clause will be made in conjunction with the end of season adjustment payment (clause 7.7(b)).

#### **7.7 Timing of Payments**

Payments due to Growers for Cane supplied shall be made available by NQBE for release via the EFT system in accordance with the deadlines outlined in this

clause. For major financial institutions, this generally means that monies released by NQBE on one day are credited to Grower accounts that same day. In some cases, the monies may be credited by financial institutions on the following day. NQBE will not be responsible for any delays to EFT payment provided NQBE has made money and account details available for EFT by the appropriate EFT deadline.

**(a) Interim Payment for Cane on Delivery**

NQBE shall pay each Grower on a weekly basis for Cane delivered for each weekly period based on Cane harvested in the calendar week from Sunday to Saturday inclusive. Payment to each Grower is to be made available for release via EFT within 1 Business Day of receipt by NQBE of proceeds from QSL for sugar produced from the relevant week's Cane Deliveries.

**(b) End of Season Adjustment Payment**

Should a payment entitlement to the Grower arise as provided for under clause 7.5(d) from the determination of the weighted seasonal average CCS of Collective Cane, then this payment shall be made available for release via EFT within 10 Business Days after the crushing season has ceased.

**(c) Adjustment of Value of Sugar**

Where a sugar value increase is made by QSL to NQBE at any time, except with respect to the final payment for sugar made from a crushing season, the adjustment Cane payment is to be made available for release via EFT within 1 Business Day of receipt by NQBE of proceeds for sugar.

**(d) Final Payment for Sugar**

When the final payment is made by QSL to NQBE for the Relevant Season's sugar the adjustment Cane payment shall be made available for release via EFT within 2 Business Days of receipt by NQBE of the final sugar proceeds.

Where NQBE is more than 2 Business Days late in making any payment due the Grower under this Agreement, NQBE shall pay to the Grower interest on the overdue amount at rate of 6.5% per annum (converted to a daily rate) for any further delay.

**7.8 Incentive Payments and Allowances**

**(a) Planting and Productivity Allowance**

To encourage planting and productivity improvement by Growers, an allowance of \$250.00 per hectare will be paid by NQBE to the Grower for each hectare of the Grower's Land (previously fallow) that is planted with seed Cane, in accordance with best practices adopted in the Herbert River District, by 31 October in each Relevant Season.

To receive the Planting and Productivity Allowance the Grower must notify to NQBE and HCPSL by the 28<sup>th</sup> February in each year, the area of the Growers Land (previously fallow) that has been planted with seed Cane, in accordance with best practices adopted in the Herbert River District, by the 31<sup>st</sup> October last.



**(b) Performance Guarantee**

**(i) Principle**

NQBE is expected to process 2.3 million tonnes of Cane in a Performance Guarantee period of 154 Harvesting Days, including an allowance of 8 days lost crushing time beyond NQBE's control. Should lost crushing time beyond NQBE's control exceed 8 days, the Performance Guarantee period is to be extended by such lost crushing time in excess of 8 days. Growers are expected to provide reasonable Bin weights and Cane quality such that NQBE's ability to process the Crop in the Performance Guarantee period is not impeded.

In seasons where the Crop is insufficient to supply the Mill for the full 22 weeks, at normal crushing rates, inclusive of an allowance of 8 days lost crushing time beyond NQBE's control, NQBE and the growers agree to reduce the season length so as to maximise sugar production and manage seasonal risk.

**(ii) Performance Guarantee Period**

The Performance Guarantee period shall commence in accordance with the date determined in clause 3.3 and shall be on a Harvest Day basis.

Where NQBE and Growers Representatives agree to vary the starting date for any crushing train or trains, the Performance Guarantee period will be extended by 8 hours for each 24 hour variation for each crushing train.

The Performance Guarantee period is 154 days, as extended pursuant to the previous paragraph or by lost crushing time beyond NQBE's control in excess of 8 days within the Performance Guarantee period.

An example of the operation of this clause, including specific rules relating to the assignment of lost crushing time beyond NQBE's control, is provided in Schedule 2.

**(iii) Lost Crushing Time Beyond NQBE's Control**

Lost crushing time beyond NQBE's control includes the full amount of actual lost time and time lost indirectly through crushing rate loss due to:

- (1) wet weather, or failure of Growers to supply Cane for any other reason except any extension of crushing delay as referenced by clause 3.4 where there is sufficient supply to meet the daily thresholds nominated in that clause but where NQBE elects to delay recommencement;
- (2) the daily average 4 tonne Bin weight loaded being 0.04 tonnes or more below the average weight used for that day's loading;
- (3) any Delivery having a 4 tonne Bin weight less than 3.3 tonnes;
- (4) excessive dirt, extraneous or foreign matter included with Cane in Bins;
- (5) industrial disputes provided that, in relation to disputes at the Mill, NQBE has made reasonable attempts to resolve such disputes;

- (6) emergency, force majeure or natural disaster situations or other causes beyond NQBE's reasonable control.

Lost crushing time beyond NQBE's control as determined above shall be adjusted to reflect the relativity of the expected crushing rate at the time of the event to the seasonal crushing rate profile to be calculated and agreed between NQBE and the Grower prior to the commencement of the 2012 Sugar harvesting season.

**(iv) Communication and Reporting of Lost Crushing Time**

Where Cane supply shortfalls occur that NQBE believes to be beyond its control, NQBE shall make reasonable endeavours to convey details of such instances to the Grower's Representative on a daily basis. The purpose of this communication is to facilitate the involvement of the Grower's Representative in monitoring harvesting performance and taking corrective action where necessary.

NQBE shall also make reasonable endeavours to communicate details of other major lost crushing time events that it believes to be beyond its control to the Grower's Representative within 24 hours of the occurrence. Such events shall also be reported promptly to the Cane Analysis Auditor. A full listing of lost crushing time events shall subsequently be made available to the Cane Analysis Auditor.

NQBE shall furnish the Grower's Representative with a weekly report providing details of any lost crushing time events that it believes to be beyond its control no later than close of business Wednesday following the relevant week being reported. The Grower's Representative shall review the report provided by NQBE and respond by close of business Friday in the same week.

In the event that the lost crushing time report is not accepted by the Grower's Representative, any differences are to be resolved during the following week.

**(v) Calculation of Performance Guarantee Tonnage Shortfall**

The Cane tonnage shortfall to which Performance Guarantee (PG) payment may apply shall be determined as follows:

- (1) Where a NQBE Cane tonnage of 2.3 million tonnes or greater is harvested, the tonnage shortfall is any positive difference between 2.3 million tonnes and the tonnage harvested by the end of the Performance Guarantee period defined in clause 7.8(b)(ii).
- (2) Where all available NQBE Cane has been harvested and it is less than 2.3 million tonnes, the tonnage shortfall is any positive difference between the NQBE Cane tonnage and the tonnage harvested by the end of the Performance Guarantee period defined in clause 7.8(b)(ii).
- (3) Where all available Crop has not been harvested, the tonnage shortfall is any positive difference between the Cane actually harvested and the tonnage that should have been harvested by the

end of the Performance Guarantee period defined in clause 7.8(b)(ii) . Calculations under this scenario are as follows:

- Where District Cane harvested plus unharvested Cane is less than 2.3 million tonnes:

PG shortfall tonnes = ((NQBE Crop / Allowable PG period Days) – (NQBE Cane harvested / Actual harvest days)) x Allowable PG period Days

- Where NQBE Cane crushed plus unharvested Cane greater than 2.3 million tonnes:

PG shortfall tonnes = ((2,300,000 / Allowable PG period Days) – (NQBE Cane harvested / Actual harvest days)) x Allowable PG period Days

Where, in each case:

- Allowable PG period Days = 146 days plus any days of lost crushing time allowance not wholly used and any extension following agreed crushing train delays: and
- Actual harvest days = Duration of harvest in calendar days less the total of lost crushing time beyond NQBE's control; and
- NQBE Crop = QBE Cane harvested plus remaining NQBE Cane as recorded in NQBE's harvesting system.

#### **(vi) Bin Weight Adjustment Factor**

The tonnage shortfall determined in clause 7.8(b)(v) shall be adjusted by the relevant factor in the following formula:

Bin Weight Adjustment Factor =  $1 + 0.025 * (\text{Actual 4 tonne Bin seasonal average Bin weight} - 3.7) / 0.1$

For example, if the seasonal average Bin weight is 3.8 tonnes, a factor of 1.025 applies. Conversely, if the seasonal average Bin weight is 3.5 tonnes, a factor of 0.95 applies.

#### **(vii) Performance Guarantee Rate**

The Performance Guarantee allowance rate shall be at a maximum value of \$6.00 per tonne of Cane at a QSL Sugar Value of \$300 per tonne IPS and above and reducing pro-rata to a minimum of \$2.00 at a QSL Sugar Value of \$200 per tonne IPS and below.

#### **(viii) Performance Guarantee Allowance Payable**

The allowance is payable on the calculated tonnage shortfall applicable to Growers' Cane determined in accordance with this clause multiplied by the Bin Weight Adjustment Factor. For clarity, the tonnage shortfall attributable to Growers' Cane is the tonnage derived in clause 7.8(b)(v) multiplied by the Bin

Weight Adjustment Factor derived in clause 7.8(b)(vi) and multiplied by the NQBE Cane and divided by District Cane.

All such payments shall be paid pro-rata on all NQBE Cane supplied for the season and shall be paid to the Grower with the final payment for the Relevant Season.

Performance Guarantee payments made pursuant to this clause shall constitute full and final compensation for any and all inconvenience, disadvantage or loss suffered, real or perceived, as a result of the Performance Guarantee not being met or for any other reason.

**(c) Weekend & Public Holiday Harvest Allowance**

NQBE will pay the following allowances in recognition of the cost of labour rate premiums for harvesting crews for Cane harvested on a Saturday, Sunday or public holiday in normal harvesting roster rotations:

- A rate of \$1.18 per tonne Cane harvested is payable to the Grower with payment for the Cane; and
- In addition, where a Harvesting Group employs a third haul-out driver, and this payment has been accepted by NQBE in past seasons for haulage from more distant Blocks, a rate of \$1.55 per tonne harvested is payable to the Grower on receipt by NQBE of an acceptable written claim.

In each case, the allowance rate is to be reviewed in advance of the next season in accordance with any movements in the hourly wage rate for a cane harvester employee (Grade 1) under the Sugar Field Sector Award – State, Northern District. Where a wage increase is linked clearly to productivity improvements, then only the net wage movement after deduction of the productivity component need be used.

The new rate shall be the rate for the previous season increased in proportion to the hourly wage rate movement.

**(d) Roster (or RDO) Allowance**

As a result of the roster for cane Harvesting Groups, a particular Harvesting Group may work each day for a continuous 6 day period from Sunday to Friday inclusive. In such instances, NQBE will make an additional payment for Cane harvested on that Friday at the same rate and terms as the Weekend & Public Holiday Harvest Allowance in clause 7.8 (c), except in the case when a public holiday coincides with that Friday when only the public holiday allowance is payable.

**(e) Delivery Point Overflow Allowance**

Where it has become necessary for a Harvesting Group to deliver Cane to more than one Delivery Point as a result of the introduction of continuous crushing causing existing Delivery Points to be under capacity, an allowance in recognition of additional haulage costs will be payable by NQBE to the Grower upon receipt by NQBE of an acceptable written claim.

The allowance payable is 22 cents per tonne delivered to the alternative Delivery Point per kilometre of the distance between the expected and alternative Delivery Points as measured along the rail.

The allowance will not be payable to any Grower in a Harvesting Group where a land owner who is also a part of the Harvesting Group refuses to consent to make land available for a Delivery Point extension or rationalisation.

The allowance may be reviewed annually on the same basis as the allowance in 7.8(c).

**(f) Long Distance Haulage Payment**

A long distance haulage payment at the rate of 1 cent per tonne of NQBE Cane shall be made by NQBE in recognition of additional haulage costs incurred by Growers as a result of Blocks being located in excess of 3 kilometres by the shortest practical route from Delivery Points. The payment shall be made at the same time as Delivery payments.

The total allowance collected for the Relevant Season will be distributed to eligible Growers by taking account of:

- the tonnes delivered by Growers from such distant Blocks, and
- the distance of the haul to the Delivery Point.

NQBE will be responsible for the allocation of the payment to individual Growers and the creation of associated tax invoices.

**7.9 Grower Payment Deductions**

Where the Grower provides a written deduction authority for any NQBE approved third party, NQBE may retain out of any payment due to a Grower the amount representing such payments in accordance with the written authorisations provided by the Grower to NQBE. For the purpose of this Agreement, the sum retained for payment to a third party shall be regarded as part of the Cane payment due to the Grower.

**7.10 Payment Advices**

- (a) Cane Delivery and payment advices for all Cane payments will be forwarded to the Grower as payments are made.
- (b) NQBE intends to provide advices by a system of electronic notification of Delivery and payment information.
- (c) If the Grower requests NQBE to provide extra copies of advices to be sent to the Grower then an administration charge covering the cost for providing these notices will apply to the Grower.

**7.11 Recovery of Overpayments**

Where the Grower has been inadvertently overpaid, NQBE may make the appropriate adjustment to subsequent payments, or take other action for the recovery of sums overpaid as considered necessary. Where the overpayment was not a result of an error on NQBE's part, the Grower may be charged interest at the rate specified in clause 7.7(d) for the period of delay on the amount of any payments not made to NQBE within 3 Business Days of receipt

by the Grower of a written request from NQBE for payment of the overpaid amount.

## **8 Goods and Services Tax**

### **8.1 Definitions and Interpretation**

Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this Agreement.

In this Agreement:

**GST** means the goods and services tax as imposed by the GST Law.

**GST Amount** means, in relation to a Taxable Supply, the amount of GST which the supplier is liable in respect of the Taxable Supply taking into account any additional consideration payable pursuant to this clause.

**GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Payment** means any amount payable under or in connection with this Agreement including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non monetary consideration.

**Recipient Created Tax Invoice (RCTI)** made pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* and regulations made under it (GST Law) and the *A New Tax System (Goods and Services Tax) Act 1999* Classes of Recipient Created Tax Invoice Determination (No. 1) 2000 (Determination) and explained in the Goods and Services Tax Ruling GSTR 2000/10 - Goods and services tax: recipient created tax invoices (Ruling).

### **8.2 Consideration GST Exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

### **8.3 Payment of GST**

Where GST applies to any supply made under or in connection with this Agreement, NQBE will pay to the Growers the GST Amount.

### **8.4 Timing of GST Payment**

The GST Amount will be paid in addition to and at the same time as the amount payable under this Agreement.

### **8.5 Adjustment Event**

If, in relation to a taxable supply, an adjustment event occurs that gives rise to an adjustment, then the GST amount will be adjusted accordingly and where necessary a payment will be made to reflect that adjustment. If a payment is required, it will be made within five Business Days of the date on which the adjustment note is issued by NQBE.

## **8.6 Recipient Created Tax Invoice (RCTI)**

Where the Grower makes a taxable supply to NQBE under this Agreement, the Parties agree that:

- (i) NQBE will issue a RCTI in respect of the supply at the same time that NQBE provides the consideration for the supply;
- (ii) The Grower will not issue a tax invoice in respect of the supply;
- (iii) NQBE will issue an adjustment note for any adjustment event that arises in respect of the supply;
- (iv) The Grower will not issue an adjustment note for any adjustment event that arises in respect of the supply; and
- (v) NQBE shall not issue a document that would otherwise be an RCTI, on or after the date when it or the Grower has failed to comply with any of the requirements of the determination.

## **8.7 Reimbursements**

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

If a party is a member of a GST Group, references to GST for which the party is liable and to Input Tax Credits to which the party is entitled include GST for which the Representative Member of the GST Group is liable and Input Tax Credits to which the Representative Member is entitled.

Each party warrants that it is registered for GST pursuant to the GST Law. The Grower repeats that warranty whenever it makes a taxable supply to NQBE. NQBE repeats that warranty whenever it issues a RCTI.

This clause will not merge upon completion.

## **9 Value Adding from Cane**

In the event of a sugar cane based value adding project appropriate for capital investment in the Herbert District being considered, consultation will take place between NQBE and the Grower's Representative on the potential for mutual participation with sharing of risk and reward in the project.

## **10 Mill Sale or Closure**

NQBE agrees it will not voluntarily cease to carry on the business of manufacturing sugar cane derived products in the District.

Subject to Australian Securities Exchange listing rules, NQBE agrees to keep the Growers informed as to the progress of any sale of NQBE in whole or in part.

## 11 Dispute Resolution

- (a) Subject to clause 11(i) this clause relates to any dispute, disagreement, claim, controversy, demand, proceeding, suit, litigation, action or cause of action in contract, tort, under statute or otherwise.
- (b) Disputes arising under the Annexure 1 - Cane Analysis Program relating to the weighing, sampling and analysis of Cane shall be dealt with in accordance with the procedures laid out in that document. Unresolved disputes under the Cane Analysis Program may be elevated to access the disputes resolution mechanisms of this clause.
- (c) In the event of a dispute between a Grower and NQBE, the Grower will initially meet with a person nominated by NQBE to seek to resolve the dispute. The meeting will take place within 5 Business Days of either party requesting the meeting and providing written notice of the circumstances of the dispute.
- (d) If the dispute cannot be resolved within 7 days of the meeting referred to in the preceding paragraph, a further meeting will take place between the Grower, the Grower's Representative and a NQBE Representative to seek to resolve the dispute. That meeting will take place within 5 Business Days of either party requesting it or as soon as practicable thereafter having regard to availability.
- (e) If the dispute cannot be resolved within 7 days of the meeting referred to in the preceding paragraph, either party to the dispute may refer the dispute to mediation administered by the Australian Commercial Disputes Centre (ACDC) before recourse to any arbitration.
- (f) The mediation will be conducted in accordance with the ACDC Guidelines for Commercial Mediation (Guidelines) in force at the date of this Agreement. The Guidelines including the ACDC Mediation Appointment Agreement, are incorporated into and form part of this Agreement. The Guidelines govern the manner of dealing with costs for such mediations.
- (g) If the dispute has not been resolved within 28 days of the mediation, or such other period as agreed in writing between the Parties, the dispute may be referred to final and binding arbitration in Townsville or Brisbane.
- (h) The arbitrator will not be the same person as the mediator. If the Parties cannot agree the identity of the arbitrator within 7 days of either party notifying the other in writing of the decision to refer the dispute to arbitration, the arbitrator shall be selected by the then current President of the Queensland Law Society. The arbitration will be conducted in accordance with and be subject to the *Commercial Arbitration Act, 1990* (Qld) with each party bearing their own costs.



- (i) The Parties agree to follow the procedures set out in this clause 11 in relation to any dispute. Nothing in this clause 11 prevents a party from seeking urgent interlocutory relief in respect of a dispute from any court having jurisdiction.

This clause 11 shall survive termination and expiration of this Agreement

## **12 Access and Information**

### **12.1 Access**

- (a) Subject to NQBE providing the Grower with reasonable prior notice, the Grower will permit NQBE's employees, agents and contractors to enter upon the Land with or without vehicles for the purposes of carrying out any obligations or exercising any rights provided for in this Agreement providing that every person exercising this right of access shall do so in such a way as to minimise interference with the Grower's operations and shall rectify any damage resulting from such entry within a reasonable time.
- (b) The Grower expressly authorises HCPSL personnel to enter upon the Land in accordance with the preceding paragraph.
- (c) Subject to the Grower's Representative providing NQBE with reasonable prior notice, NQBE will permit the Grower's Representative to enter NQBE's premises for the purposes of discussing and reviewing documents and information relating to payments due to Growers under this Agreement. Growers provide their consent to NQBE disclosing to the Grower's Representative information in relation to each individual Grower. The Grower's Representative's rights of access are subject to the Grower's Representative exercising the right of access so as to minimise interference with NQBE's operations.

### **12.2 Information to Grower's Representative**

- (a) NQBE agrees to provide the Grower's Representative with timely information relevant to the operation and administration of this Agreement. Such information shall include data obtained on NQBE's behalf by HCPSL on aggregate areas for harvest, pre-season forecasts and estimates and a technical budget for processing the Crop.
- (b) NQBE further agrees to provide Growers and the Grower's Representative, via the Grower website, with a weekly update against budget of District crushing rate, Cane supply lost time, District tonnes throughput, District CCS and the estimated finishing date for the season.
- (c) NQBE shall publish QSL indicative sugar value matrices and advance payment programmes, together with corresponding indicative Cane prices, on the Grower website within 3 days of receipt of relevant information from QSL. NQBE shall also publish non-commercially sensitive marketing information from QSL and make available to the Grower's Representative documentary evidence of the final QSL Sugar Value as received by NQBE in each Relevant Season.

### 12.3 Information General

- (a) The Grower agrees to provide written notification to NQBE and the Grower's Representative of any change to the information contained in Schedule 1 or any other information relevant to the performance of obligations under the Agreement as soon as practicable upon becoming aware of the change, and in any event, within 14 days of such change.
- (b) The Grower authorises NQBE to provide non-financial information to the Grower's Representative and industry service and research providers in relation to the Grower for the purposes of NQBE exercising its rights and performing its obligations under this Agreement.
- (c) NQBE is expressly authorised to provide relevant non-financial information to Herbert Cane Productivity Services Limited, Herbert Resource Information Centre, BSES Limited and Harvesting Contractors.
- (d) Non-financial information includes Farm numbers, grower trading names, ABN, addresses, phone numbers, email addresses and cane productivity data including tonnes, CCS, harvest areas, yields and like information.
- (e) NQBE is further authorised to publish non-financial information on the Grower website which is relevant to the operation and administration of this Agreement. An example of this is the posting of group equity reports showing tonnage and area information for a Harvesting Group.
- (f) The use and disclosure of any personal information will be subject to the restrictions imposed on the respective Parties by the Privacy Act 1988 (as amended).

## 13 Force Majeure

### 13.1 Force Majeure occurrence

- (a) If a party (Affected Party) is prevented or hindered by Force Majeure from fully or partly complying with any obligation (except for the payment of money) under this document, that obligation is suspended for the duration of such Force Majeure.
- (b) If the Affected Party wishes to claim the benefit of this clause it must give prompt notice of the Force Majeure occurrence to the other Parties including reasonable details of:
  - (i) the Force Majeure occurrence;
  - (ii) the effect of the Force Majeure occurrence on the performance of the Affected Party's obligations; and
  - (iii) the likely duration of the delay in performance of those obligations.

The Affected Party must use its best endeavours to remove the cause and/or effect of the Force Majeure but is not obliged to settle any strike or other labour dispute contrary to its best judgment if it has made all reasonable efforts to settle that strike or dispute.

### 13.2 Termination

If a delay caused by Force Majeure continues for more than 60 days, either party may terminate the Agreement evidenced by this document by giving 14 days notice to the other Parties.

### 13.3 Definition of "Force Majeure"

For the purposes of this clause 13 "Force Majeure" includes any of the following:

- (a) act of God;
- (b) law, rule, regulation or order of any government or governmental authority;
- (c) act of war declared or undeclared;
- (d) public disorder;
- (e) riot, insurrection, rebellion, sabotage or act of terrorists;
- (f) flood, earthquake, hail, lightning, severe weather conditions or other natural calamity including pest and disease outbreaks;
- (g) catastrophic plant or machinery failure due to explosion, fire or other cause during the course of a season;
- (h) strike, boycott, lockout or other labour disturbance or inability to employ staff or engage contractors to provide services necessary for the proper performance of functions within the targeted and contractual time frames specified by this Agreement;
- (i) inability to procure critical equipment or materials;

which:

- (j) is beyond the control of the Affected Party;
- (k) could not have been reasonably foreseen by the Affected Party; and
- (l) was not directly or indirectly caused or contributed to by the Affected Party.

## 14 Confidentiality

The Parties agree not to disclose the contents of this Agreement to any other party except for the purposes of professional or financial advice or as required by law.

## 15 Independent advice

The Parties acknowledge that before entering into this Agreement they have independently assessed the terms of this Agreement and have had the opportunity to obtain legal and financial advice about the rights and obligations created by this Agreement.

## 16 Notices

### 16.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

### 16.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the party's current fax number for notices.

### 16.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

NQBE's Address: PO Box 1012, Ingham Q 4850

Fax: 07-4776 5392

Attention: Cane Supply Manager

Growers Address: The Grower's address details as shown in Schedule 1.

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

### 16.4 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
- (b) in any other case, ten Business Days after posting.

### 16.5 Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

### 16.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

**16.7 Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this clause 16 or in accordance with any applicable law.

**17 Variation of Agreement**

This Agreement may be varied only by written agreement executed by NQBE and the Grower.

**18 General**

**18.1 Legal costs**

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

**18.2 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

**18.3 Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

**18.4 Consents**

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

**18.5 Further steps**

Each party must promptly do whatever any other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

**18.6 Governing law and jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

**18.7 Assignment**

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Parties.
- (b) Any purported dealing in breach of this clause is of no effect.

**18.8 Liability**

An obligation of two or more persons binds them separately and together.

**18.9 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.

**18.10 Entire understanding**

- (a) This Agreement contains the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
  - (i) affects the meaning or interpretation of this Agreement; or
  - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

**18.11 Relationship of Parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

**19 Conditions Precedent**

This Agreement is subject to and conditional upon NQBE :

- (a) Completing and commissioning the Factory for manufacture of sugar cane derived products; and
- (b) Securing legal access to CSR's existing rail network in the District; by no later than 29 February 2012.

In the event that either condition precedent (a) and/or (b) is not satisfied by 29 February 2012 then this Agreement shall be null and void and neither party shall have any claim against the other.

## Signatories to Agreement

**EXECUTED** in Queensland as an Agreement this ..... day of , 20.

**Executed** on behalf of NQBE by:

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Signature of Witness

**Executed** by

[.....]

being the **Grower** in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Grower

\_\_\_\_\_  
Print Name

**Executed** on behalf of

[.....]

(a **partnership**) by

[.....]

(who warrants that he/she/it has authority  
to bind the partners) in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Partner

\_\_\_\_\_  
Print Name

**Executed** in accordance with its  
constitution by

[.....]  
**ABN**.....] being  
the Grower in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Print Name

**Executed by**

[.....]  
as **Trustee** for the  
[.....]  
Trust in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Trustee

\_\_\_\_\_  
Print Name

Persons signing on behalf of the Grower warrant to NQBE that they have the authority to  
do so.



## Schedule 1 – Grower Details and Relevant Seasons

The following details relating to the Grower's contract and Contract Area are recorded by NQBE. Where information is not correct, the Grower is to make hand-written amendments to show the correct information, initial the changes, and then sign and date the document in the execution space(s) provided.

**Relevant Seasons:** The 2012 to 2016 Cane harvesting seasons inclusive

**Grower Name:** \_\_\_\_\_  
(eg: <ABC Pty Ltd atf The William James Brown Family Trust>)

**ABN:** \_\_\_\_\_

**Contract Area (in hectares):**

2012 Season: \_\_\_\_\_ Ha  
2013 Season: \_\_\_\_\_ Ha  
2014 Season: \_\_\_\_\_ Ha  
2015 Season: \_\_\_\_\_ Ha  
2016 Season: \_\_\_\_\_ Ha

(figures provided are the aggregate area of the Farms shown below as recorded by HCPSL for the 2009 Season)

**Farm Number & 2009 Contract Area (CA) for the Grower:**

Farm No.						Total
CA						

**Other Farms not included in the Contract Area but considered to be worked in conjunction** as per Clause 4.1

Farm No. & Grower name: e.g. 5789 e.g. Brown, WJ & AB

**Address for Notices:** \_\_\_\_\_  
\_\_\_\_\_

**Telephone Number:** \_\_\_\_\_ **Mobile Number:** \_\_\_\_\_

**Facsimile Number:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_