

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Subsection 88 (1)

**AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR
AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection

* to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

* to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

* (Strike out whichever is not applicable)

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of applicant:

INGHAMS ENTERPRISES PTY LTD ("Inghams").

(b) Short description of business carried on by applicant:

Inghams is a fully integrated processor of the meat of chickens grown by contracted growers. The chicken meat is processed, distributed and marketed by Inghams.

(c) Address in Australia for service of documents on the applicant:

Dr Timothy J. Ryan, Principal Consultant
Timothy J. Ryan & Associates Pty Ltd
11 Shirley Crt, Boronia Vic 3155

2. (a) Brief description of contract, arrangement or understanding and where already made, its date:

Inghams seeks authorisation (on its own behalf and in respect of its own conduct) to negotiate the terms of a proposed chicken growing agreement with growers (who may include those growers identified in Annexure C) on a collective basis.

The negotiations will be conducted by Inghams with a grower group or groups through a nominated representative or representatives.

The terms of the agreement will provide for a common fee to be paid to growers for the growing of chicken meat, and the basis upon which such fee is to be calculated.

Attached as Annexure B is a draft agreement Inghams proposes to use in negotiations with growers.

- (b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding:

See Annexure C (**Inghams request that Annexure C be excluded from the Public Register because of its confidential nature**).

3. Names and addresses (where known) of parties and other persons on whose behalf application is made:

N/A

The names and addresses of other growers who may enter into collective negotiations for a growing agreement with Inghams are not known at this time.

4. (a) Grounds for grant of authorisation:

As set out in Annexure D

- (b) Facts and contentions relied upon in support of those grounds:

As set out in Annexure D

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

Yes

- (b) If so, the following information is to be furnished:

- (i) the names of the parties to each other contract, arrangement or understanding:

Not Applicable

INGHAMS ANNEXURE A

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ANNEXURE B:

**Draft Victoria
Collective Agreement**



**BROILER CHICKEN
GROWING AGREEMENT**

BETWEEN

INGHAMS ENTERPRISES PTY LIMITED
ABN 20 008 447 345
("Inghams")

AND

("Grower")

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BETWEEN **INGHAMS ENTERPRISES PTY LIMITED** ABN 20 008 447 345 a company incorporated in New South Wales having its registered office at 203 Northumberland Street, Liverpool NSW 2170 and its principal place of business in Victoria at Grants road, Somerville, Vic 3912 ("**Inghams**")

AND _____ of _____
in the state of _____ ("**Grower**") with farm facilities and sheds
located at _____

RECITAL

Inghams agrees to supply Chickens to the Grower, and the Grower agrees to raise those Chickens in accordance with the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1. TERM

- 1.1. This Agreement commences on **[INSERT]** ("**Commencement Date**") and (subject to Clause 1.3 and any provisions of this Agreement providing for its earlier termination) will continue for a period of five (5) years ("**Initial Term**") and expire on **[INSERT]**.
- 1.2. Prior to the expiry of the Initial Term, unless the Grower is in breach of this Agreement, the parties will if they agree to do so enter into negotiations in good faith regarding the terms and conditions of a new agreement for the supply and raising of Chickens ("**New Agreement**") for a further term of five (5) years ("**Renewal Term**"). If the Grower fails to comply with Clause 5, Inghams may in its absolute and unfettered discretion have the right to terminate this Agreement.
- 1.3. No obligation to enter into a new agreement nor any associated liability will arise at any time as a result of any representation or conduct by either party in relation to negotiations entered into pursuant to Clause 1.2 unless such representations have been expressly made in writing.
- 1.4. Where a batch of chickens is incomplete on the expiry date this Agreement will be extended until the pick-up of that batch of chickens has been completed.
- 1.5. The Grower understands and agrees that no agent, servant, or employee of the Inghams has authority to make any oral modification to this Agreement. Modification of this Agreement may only be accomplished by written instrument fully executed by the Grower and an authorised representative of Inghams.

2. RELATIONSHIP

The parties acknowledge and agree that the Grower is an independent contractor and that nothing in this Agreement will result in either party being the principal, agent, employer, employee, master, servant, representative, franchisor, franchisee, partner or joint venturer of the other.

3. INGHAMS' GENERAL OBLIGATIONS

- 3.1 Subject to this Agreement, the availability of Chickens and the Grower's capacity to raise those Chickens (as reasonably determined by Inghams), Inghams will supply Batches of Birds randomly placed from the Hatchery Production to the Grower.
- 3.2 Inghams shall so far as is reasonably practicable supply the Grower with Batches of Birds and at such placement densities as are similar over a twelve month period to those supplied by Inghams to other contracted Growers operating in the same PNG subject to permitting a variation therefrom:
 - 3.2.1 if the Grower requests that it receive a quantity of Birds for a particular Batch that is less than would be required pursuant to clause 3.2;
 - 3.2.2 if the Grower exceeds or has not satisfied and/or fails to continue to satisfy the requirements of the Manual and the Minimum Standard Facility Criteria;
 - 3.2.3 taking into consideration the number, kind and size of facilities and sheds of the Grower;
 - 3.2.4 taking into consideration any relevant animal welfare standards;
 - 3.2.5 taking into consideration any other provision of this Agreement; and/or
 - 3.2.6 if Inghams' farming standards change.
- 3.3 Inghams will use its best endeavours to provide reasonable notice (either verbally or in writing) to the Grower as to when Inghams will:
 - 3.3.1 make any deliveries to the Grower;
 - 3.3.2 collect any Birds or other goods from the Grower; and
 - 3.3.3 if the Grower gives Inghams not less than three (3) calendar months written notice of a request for an extended break Inghams may allow such a break, such request shall not be unreasonably withheld.
- 3.4 Where Inghams is obliged to supply a Batch to the Grower, Inghams must (unless otherwise agreed) supply at no cost and free of delivery charges to the Grower:
 - 3.4.1 the Birds and shall upon delivery assist the Grower with placement of the Birds into the shed;
 - 3.4.2 feed for the Birds; and
 - 3.4.3 such technical services, medication, vaccines, disinfectant and/or other supplies for the Birds as it considers necessary.
- 3.5 Inghams' technical advisers may visit the Grower's Premises from time to time and provide advice and assistance to the Grower in connection with the Birds.
- 3.6 Inghams shall, at the Grower's request, assist the Grower in the disposal of any Birds that are killed as a result of an event beyond the Grower's reasonable control (which may include establishing a disposal procedure for those Birds), provided however that Inghams will not be obliged by this Clause 3.6 to make any additional payments or to provide any financial assistance to the Grower in respect of such Birds.

- 3.7 Inghams and its representatives must comply with the Biosecurity Manual when present on the Premises. In the event of any disagreement between Inghams' representatives and the Grower as to compliance with the Biosecurity Manual, the decision of Inghams will be final.

4. GROWER'S GENERAL OBLIGATIONS

The Grower must:

- 4.1 accept each Batch delivered by Inghams to the Grower pursuant to this Agreement and raise the Birds in each Batch to the stage of maturity determined by Inghams;
- 4.2 comply with the Manual;
- 4.3 prepare the Sheds in readiness for each Batch;
- 4.4 be available or present on the Premises when each Batch is delivered;
- 4.5 place the Birds in the Sheds upon their delivery;
- 4.6 furnish all labour, utilities, water, electricity, litter, bedding and all other supplies (other than those Inghams agrees to supply under this Agreement) required to raise the Birds and comply with its obligations under this Agreement and the Manual;
- 4.7 provide adequate well-maintained Sheds for the Birds as required by the Manual;
- 4.8 maintain all-weather roads to the Sheds and keep all accessible areas free of any overhanging wires or other obstacles;
- 4.9 ensure that adequate room to turn and load vehicles is available at the locations on the Premises nominated by Inghams;
- 4.10 dispose of any dead Birds and used litter in a responsible and appropriate manner and in accordance with:
 - 4.10.1 the Manual;
 - 4.10.2 any advice, directions or instructions provided by Inghams; and
 - 4.10.3 any applicable legislation, guidelines or codes of practice;
- 4.11 comply at all times with any procedures and farming standards (including without limitation the Biosecurity Manual) notified by Inghams;
- 4.12 comply with Inghams' reasonable directions and the Manual in respect of the preparation of the Sheds, the replacement, maintenance and management of facilities and equipment, the replacement of litter, the raising of the Birds, the Grower's general husbandry practices, the culling of Birds, and the Grower's disease prevention practices;
- 4.13 use exclusively the goods and services described under Clauses 3.4.2 and 3.4.3, and no other such goods or services, in raising the Birds;
- 4.14 maintain all such records as Inghams and the Manual reasonably require ("**Records**");
- 4.15 keep the Records confidential in accordance with Clause 25 (provided that the Records may be disclosed to relevant third parties for the purposes of Clause 23);

- 4.16 without limiting Clause 8, allow Inghams' representatives full and free access at all reasonable times to the Birds, the Records and any other goods belonging to Inghams on the Premises;
- 4.17 notify Inghams immediately and follow the control measures prescribed and the advice given by Inghams in the event that any disease, illness or abnormal losses (including losses apparently caused by heat stress) occur in respect of the Birds;
- 4.18 notify Inghams immediately if the Grower believes that the Biosecurity Manual is not being followed by any person (if possible prior to allowing those persons access to the Premises) (subject to Clause 3.7);
- 4.19 not permit or allow, at any time:
 - 4.19.1 any unauthorised persons to enter the Sheds;
 - 4.19.2 any other poultry or domestic avian species onto the Premises or into the Sheds; or
 - 4.19.3 any livestock to be or remain within the vicinity of the Sheds,in accordance with the requirements of the Manual and the Biosecurity Manual;
- 4.20 as far as practicable acknowledge delivery of all goods supplied to the Grower by Inghams (including the Birds) by signing relevant delivery dockets or consignment notes, and notify Inghams of any deficiency in goods delivered within twenty four (24) hours of the delivery (and where the Grower was not present at the time of a delivery from Inghams, Inghams' records will be prima facie evidence as being correct);
- 4.21 clearly identify the Grower's Premises to Inghams' satisfaction by signage at its main entrance, and clearly identify each Shed and silo by number; and
- 4.22 where the Processor requires the Grower to adopt and implement changes to the Manual and Biosecurity Manual the Grower will be given reasonable time to implement the changes and any material impact on costs to the Grower arising therefrom will give rise to the renegotiation of the Fee.

5. GROWERS OBLIGATIONS ON UPGRADING SHEDDING

[OR LEFT INTENTIONALLY BLANK]

6. INGHAMS' PROPERTY

- 6.1 The goods supplied by Inghams to the Grower described under Clause 3.2 (including live Birds) will remain the property of Inghams, and the Grower acknowledges that Inghams retains title to these goods at all times.
- 6.2 The Records shall be and remain the property of Inghams, may be inspected by Inghams at any time in accordance with Clause 8, and must be surrendered to Inghams upon demand.

7. COLLECTION OF BIRDS

- 7.1 Inghams will determine, in its absolute and unfettered discretion, when the Birds in the Batch accepted by the Grower will be collected for processing.

- 7.2 Inghams will arrange for the Birds to be caught, loaded for transportation and delivered to Inghams' chosen destination, free of charge to the Grower.
- 7.3 The Grower must allow free access to the Premises and the Sheds to permit Inghams' representatives to complete the tasks described under Clause 7.2, and must be available or present at the Sheds immediately prior to and during those activities.
- 7.4 The Grower must allow Inghams' representatives to carry out the tasks described under Clause 7.2, and must not hinder or obstruct those activities.
- 7.5 The Grower will remain responsible for, and all of its obligations under this Agreement will continue with respect to, each Batch until Inghams' representatives (in the presence of the Grower or its nominee) have caught the Birds pursuant to Clause 7.2.
- 7.6 The Grower is responsible for re-setting all relevant equipment after the Birds have been collected.

8. RIGHT OF ACCESS

- 8.1 Subject to Clause 8.2, the Grower authorises Inghams and any of its representatives to at any reasonable time enter upon the Premises to verify the Grower's compliance with its obligations under this Agreement and to inspect, remove and/or deal with any of the Birds or any other goods belonging to Inghams on the Premises.
- 8.2 Subject to Clause 8.3, if Inghams or its representatives require access to the Premises outside of normal operating hours, Inghams will provide reasonable notice to the Grower, and for the purposes of this Clause 8.2 a telephone call received by the Grower in advance of the visit advising the time that access will be required will constitute reasonable notice.
- 8.3 Inghams will not be required to provide advance notice of its intention to enter upon the Premises where Inghams reasonably believes that a breach of this Agreement has occurred, in which case Inghams will provide its reason for accessing the Premises in writing within a reasonable period of time after the access has occurred.

9. PAYMENT

- 9.1 For each Batch of Birds raised by the Grower and collected by Inghams from the Grower, Inghams will pay the Grower a Payment calculated in accordance with Clauses 9, 10 and 11.
- 9.2 Subject to Clause 7.5, for any Birds killed or smothered (subsequent to the first flock inspection and prior to the end of the catch flock inspection for each Shed, excluding normal mortality) during the catching or removal of the Birds from the Premises in accordance with Clause 7 ("**Killed Birds**"):
 - 9.2.1 Inghams will pay the Grower for the Killed Birds as if they had not been killed; and
 - 9.2.2 for the purposes of any calculations to determine the Payment or the Grower's performance under this Agreement, the Killed Birds will be deemed to have not been killed, and the weight of a Killed Bird will be deemed to be the average weight of all Birds collected from the relevant Shed at the time that the Killed Bird was killed.

- 9.3 As soon as practicable after the collection of Birds, Inghams will arrange for each trailer load of Birds to be weighed (both gross and tare) using a certified weighbridge nominated by Inghams, and will provide the Grower, upon request, with a copy of the weighbridge ticket in respect of each load.
- 9.4 Inghams may deduct from the Payment any amount referable to the weight and/or number of Birds rejected as unfit for processing by Inghams or which, once processed, fail to meet the standards set by the relevant Australian Model Codes of Practice and which do not meet Inghams' normal expectancy for processing.
- 9.5 Inghams will use every reasonable endeavour to notify the Grower as soon as possible after inspecting the Birds if it proposes to make a deduction in accordance with Clause 9.4, and will permit the Grower, upon request, to inspect a sample of the rejected Birds at Inghams' premises within a reasonable time after that notification. Inghams will permit the Grower, upon request, to have access to Inghams' quality control records in order to verify Inghams' assessment and the amount to be deducted, and Inghams will provide the Grower with written notice of its assessment.
- 9.6 Where Inghams and the Grower have agreed that Inghams will supply materials to the Grower for which the Grower is liable to pay, the costs of those materials may be deducted by Inghams from the Payments from time to time.
- 9.7 Inghams will pay to the Grower 70% of the Fee within fourteen (14) days of the Friday of the week in which the last Birds in the Batch are collected by Inghams and the balance of money owing 28 days after the completion of the Pool. Inghams shall send to the Grower a detailed statement of the pool costs incurred by it for that Growers chickens.
- 9.8 The Grower or its nominee may audit the Payments made to the Grower by Inghams under this Agreement. The Grower will bear the costs of any such audit, and if the audit reveals an error that is accepted by Inghams, Inghams will correct the error as soon as practicable.

10. LEFT INTENTIONALLY BLANK

11. EXCLUSION FROM POOL PAYMENT SYSTEM

- 11.1 If the poor performance of a Batch is caused by any negligent or deliberate action by or on behalf of Inghams:
 - 11.1.1 the Batch will not be assessed by reference to the Pool Payment System;
 - 11.1.2 the Batch will not be considered during the determination of the Grower's Efficiency Rating; and
 - 11.1.3 the Payment will be determined as the number of Birds initially supplied in the Batch (less the average mortality rate over the three (3) most recent consecutive Batches of Birds collected by Inghams from the Grower) multiplied by an amount no less than the lesser of:
 - (a) the Fee; and
 - (b) the average amount per Bird paid to the Grower for its immediately preceding three (3) Batches, adjusted for any changes to the Fee that have since occurred.

- 11.2 If the poor performance of a Batch is due to circumstances beyond the control of the Grower (other than the circumstances described under Clause 11.1), or it is otherwise agreed between the parties, Clause 11.1.1 and 11.1.2 will apply and the Payment will be determined as the number of Birds initially supplied in the Batch (less the average mortality rate over the three (3) most recent consecutive Batches of Birds collected by Inghams from the Grower) multiplied by the Fee.
- 11.3 If any of the circumstances described under Clause 12.1 apply, Clause 11.1.1 will apply and Inghams will credit against any losses due to Inghams from the Grower pursuant to Clause 12.1 an amount per Bird calculated as the lower of the Fee and the average amount per Bird paid to the Grower for its immediately preceding three (3) Batches, adjusted for any changes to the Fee that have occurred.
- 11.4 Inghams may exclude the Grower from the Pool Payment System if permitted to do so by the provisions of the Pool Payment System.

12. LOSS CAUSED BY GROWER

- 12.1 The Grower will bear any resulting financial losses to Inghams (including the cost of all goods supplied to the Grower in accordance with Clause 3.2 but not including any consequential losses) caused as a result of:
 - 12.1.1 the negligence of the Grower in raising the Birds;
 - 12.1.2 the failure of the Grower to comply with the Grower's obligations under this Agreement;
 - 12.1.3 the failure of the Grower to satisfy the Minimum Standard Facility Criteria (including without limitation where Birds are killed as a result of heat wave conditions and those losses are attributable to the failure of the Grower to meet the Minimum Standard Facility Criteria);
 - 12.1.4 the failure of the Grower to install and/or operate the Sheds and/or equipment in accordance with Inghams' requirements (unless Inghams has required that the Grower modify its facilities and the time allowed by Inghams for the Grower to implement those changes has not yet expired); and/or
 - 12.1.5 any equipment or machinery failure caused by the Grower's or its representative's negligent act,and Inghams may deduct its losses from any Payments due to the Grower.
- 12.2 Inghams will notify the Grower in writing if the Grower is to be held liable under Clause 12.1.
- 12.3 Inghams may collect from the Grower and/or raise (or arrange to be collected and/or raised) any Birds to which any losses under Clause 12.1 are referable, in which case:
 - 12.3.1 Inghams will notify the Grower in writing of its intention to do so; and
 - 12.3.2 Inghams may charge to and recover from the Grower the losses and all reasonable expenses incurred by Inghams in taking action under this Clause 12.3.
- 12.4 Any dispute relating to the amount of any loss pursuant to this Clause 12 will be resolved in accordance with Clause 23, provided that Inghams will pay to the

Grower within fourteen (14) days of the Friday of the week in which the last Birds in the Batch in respect to the notice under Clause 12.2 are collected by Inghams one half of the Payment determined by it to be due to the Grower in respect of the relevant Batch, with an adjustment to be made after the resolution of the Dispute.

13. COMPULSORY SLAUGHTER

If any State or Federal Government body or authority ("**Authority**") requires and/or carries out the destruction of the Birds (including without limitation due to the outbreak of a disease), then:

- 13.1 if Inghams receives financial compensation from the Authority in respect of the destroyed Birds, Inghams must pay to the Grower (subject to Clause 13.3) an amount from the compensation received which (unless otherwise determined by the Authority) will be calculated for each age group of Birds slaughtered in accordance with the formula:

$$\text{Amount to be paid} = \text{Fee} \times P \times N,$$

where:

"**Fee**" is as defined in Clause **Error! Reference source not found.16**;

"**P**" means the percentage of the Fee Inghams reasonably determines to be referable to the raising of the Birds in the relevant age group to that age, taking into account:

- 13.1.1 the age of the Birds as compared with their expected age at the date of their collection (being the average age of the Chickens collected by Inghams from the Grower during the previous ten (10) weeks) ("**Maturity Age**"); and
- 13.1.2 the cost to the Grower of growing the Birds to their age as compared with the anticipated total cost to the Grower of growing the Birds to the Maturity Age; and

"**N**" means the number of Birds of the relevant age group destroyed, as determined by Inghams' records.

- 13.2 Inghams will not be obliged under Clause 13.1 to pay to the Grower more than:

- 13.2.1 any amount specified by the Authority as being attributable to the losses suffered by the Grower; or
- 13.2.2 the total amount of compensation received by Inghams from the Authority (on a proportional basis to input costs).

- 13.3 Inghams will not be obliged to pay any amount to the Grower in relation to the destruction of the Birds if Inghams does not receive any financial compensation from any Authority in respect of that event.

14. EFFICIENCY RATING

- 14.1 All batches of chickens raised by the Grower under the conditions of this Agreement shall be subject to an efficiency rating in accordance with standards and criteria as provided for in Annexure 3 unless it is agreed by Inghams and Grower's Representatives to waive such provisions for one or more batches;

- 14.2 Inghams may terminate this Agreement on seven (7) days notice in writing to the Grower if the Grower is determined by Inghams to be "inefficient" under this Clause 14 and Annexure 3.
- 14.3 Following service of the notice referred to in Clause 14.2 the Grower may receive a further three batches of chickens at the Grower's request. The Grower's return for these three batches shall be calculated by including the Grower in the pool, then:
- a) If the Growers return is equal to or greater than the average Growing Fee, the Grower shall remain in the pool; or
 - b) If the Growers return is less than the average growing Fee, The Grower shall be removed from the Pool and paid the return as if the Grower had remained in the Pool. The Pool shall then be re-calculated for the remaining Growers.
 - c) The three batches will include the batch of chickens that may be already placed on the farm when the Notice of termination is issued.

The number of chickens to be placed on the farm for these three batches shall be the same number as the batch placed prior to that Grower becoming inefficient, subject to any general density change.

- 14.4 If the Grower elects to sell the Grower's undertaking (including the Premises) at any time within six (6) months after the date of the notice of termination of this Agreement by Inghams pursuant to Clause 14.3 and the purchaser so requests, the provisions of Clause 16 will apply.

15. **MANUAL**

- 15.1 Inghams will provide a copy of the Manual to the Grower.
- 15.2 Inghams may at any time and from time to time amend the Manual.
- 15.3 If Inghams amends the Manual:
- 15.3.1 Inghams will provide an updated copy of the Manual (or copies of the updated sections of the Manual together with instructions for modifying the Grower's copy of the Manual) to the Grower;
 - 15.3.2 Inghams will if necessary allow the Grower a reasonable time within which to adopt and/or implement any changes necessary due to the amendments to the Manual; and
 - 15.3.3 if any amendments to the Manual are, in the reasonable opinion of both parties, likely to cause a material increase in the cost to the Grower of performing its obligations under this Agreement, the parties will re-negotiate the Fee in respect to the effect of these amendments.
- 15.4 The Manual remains the property of Inghams and Inghams retains all intellectual property rights associated with the Manual, and the Grower must not copy, reproduce or duplicate the Manual in any way and must return all copies of the Manual to Inghams immediately upon the expiration or termination of this Agreement or upon any request by Inghams.
- 15.5 Unless otherwise advised by Inghams:

- 15.5.1 the Grower must obtain a copy of the Biosecurity Manual at its own expense; and
- 15.5.2 if Inghams notifies the Grower that the Biosecurity Manual has changed, the Grower must obtain a copy of the new Biosecurity Manual at its own expense as soon as practicable after receiving that notice.

16. ASSIGNMENT AND RELOCATION

- 16.1 Subject to Clause 16.2, either party may assign its rights, privileges, duties and obligations under this Agreement to a third party ("**Assignee**") provided the other party gives prior written consent and where the Assignee enters into an agreement on the same terms and conditions of this Agreement.
- 16.2 Any determination of the Grower's Efficiency Rating will not apply in respect of the Assignee.
- 16.3 The Grower may, with Inghams' prior written permission, relocate the Grower's operations or facilities for performing services under this Agreement to another site such consent shall not be unreasonably withheld.
- 16.4 In the event that a Grower sells his contracted farm, and the new incoming Grower is to receive a new contract then the incoming Grower will be entitled at his option to join an existing Processing Negotiating Group but will not necessarily be entitled to the same contract terms and conditions of the Growers in the PNG.

17. REPRESENTATIONS AND WARRANTIES

- 17.1 The Grower represents and warrants to Inghams that:
 - 17.1.1 it has not entered into any agreement with any party other than Inghams regarding the growing of Chickens, and is not under any obligation to grow Chickens for any third party;
 - 17.1.2 it will not during the Term enter into any agreement with any party other than Inghams regarding the growing of Chickens, and will not incur any obligation to grow Chickens for any third party;
 - 17.1.3 it has full power and authority to enter into and perform its obligations under this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
 - 17.1.4 if the Grower is a company, it is a limited liability body corporate duly incorporated and validly existing under the laws of its place of incorporation and has corporate power to own its property and assets and to carry on its business as it is now being conducted;
 - 17.1.5 if the Grower enters into this Agreement as trustee of a trust:
 - (a) it is sole trustee of the trust;
 - (b) the trust is duly constituted and validly existing;
 - (c) it is not in breach of the terms of the trust;

- (d) its right of indemnity out of, and liens over, the assets of the trust have not been limited in any way;
- (e) no powers conferred on the trustee of the trust by the trust deed have been delegated;
- (f) no vesting date has been determined under the provisions of the trust deed; and
- (g) there are no claims (whether legal or equitable) against the assets of the trust; and

17.1.6 if the Grower enters into this Agreement as partners of a partnership:

- (a) those partners are the sole partners of the partnership;
- (b) the partnership is duly constituted and validly existing; and
- (c) the partners are not in breach of the terms of the partnership.

17.2 While Inghams will endeavour to exercise a reasonable degree of care, Inghams does not warrant quality, merchantability, fitness for purpose or otherwise warrant any product delivered or recommended by it to the Grower that is not manufactured or produced by Inghams.

18. TRUSTEE AND PARTNERSHIP PROVISIONS

18.1 If the Grower enters into this Agreement as trustee of a trust:

18.1.1 Inghams acknowledges that its rights against the Grower under this Agreement will, except in the case of fraud or wilful breach of trust, not be against the Grower personally but against the Grower solely in its capacity as the trustee of the trust and that only the assets of the trust will be available to satisfy the rights and the liability of the Grower under this Agreement;

18.1.2 the Grower will on demand by Inghams exercise any right of indemnity it may have in relation to the trust fund and any right against the beneficiaries to pay moneys payable under this Agreement or otherwise hold such rights for the benefit of Inghams;

18.1.3 the Grower will cause any successor of the Grower as trustee of the trust to execute such documents as Inghams may require to ensure that this Agreement is binding on that successor.

18.2 If the Grower enters into this Agreement as partners of a partnership, each undertaking, term, condition, representation and warranty with respect to the Grower under this Agreement shall be deemed to bind each partner jointly and severally.

19. INSURANCE AND INDEMNITY

19.1 The Grower must effect and maintain during the Term policies of insurance providing adequate cover for:

- 19.1.1 all workers' compensation and employees' liability as required by law;
- 19.1.2 common law liability in respect of each employee;

- 19.1.3 damage by fire (and other risks ordinarily included in fire insurance policies) to the Premises, the Sheds and the Grower's equipment used for the purposes of this Agreement, for their current replacement value; and
 - 19.1.4 public liability cover necessary for the Premises for an amount of not less than \$10,000,000.00.
- 19.2 The Grower must provide to Inghams upon demand evidence to Inghams' satisfaction of the Grower's compliance with Clause 19.1.

20. TERMINATION OF AGREEMENT

20.1 This Agreement may be terminated:

- 20.1.1 at any time by the mutual agreement of the parties;
- 20.1.2 by Inghams pursuant to Clause 14.3;
- 20.1.3 by Inghams providing at least one hundred and eighty (180) days notice in writing to the Grower if it intends to cease a significant part of its Chicken processing operations;
- 20.1.4 by the Grower providing at least one hundred and eighty (180) days notice in writing to Inghams if it intends to cease a significant part of its Chicken growing operations;
- 20.1.5 by either party notifying the other party in writing if that other party commits a fundamental breach of this Agreement, provided however that if the breach is one that is capable of remedy, the non-defaulting party must notify the defaulting party in writing of the breach and allow the defaulting party a reasonable time (being not less than seven (7) days) after its receipt of that notice to remedy that breach, and may only terminate this Agreement if the defaulting party fails to do so;
- 20.1.6 immediately by Inghams notifying the Grower in writing if the Grower is negligent in the performance of its duties and obligations under this Agreement;
- 20.1.7 by either party providing seven (7) days notice in writing to the other if the Grower becomes permanently incapable due to illness or injury of carrying on business as a Chicken grower (and if Inghams proposes to terminate this Agreement under this Clause 20.1.7, Inghams must reasonably believe that the Grower is incapacitated as provided for by this Clause);
- 20.1.8 by either party providing notice in writing to the other if:
 - (a) the defaulting party commits any act of bankruptcy;
 - (b) the defaulting party becomes insolvent in the non-defaulting party's reasonable opinion or takes the benefit of any law for the relief of insolvent debtors;
 - (c) the defaulting party ceases to pay its debts in the ordinary course of business or is unable to pay its debts as and when they fall due;
 - (d) a liquidator, provisional liquidator, receiver, receiver and manager, controller, administrator, trustee, mortgagee-in-possession, official or

scheme manager or any other similar officer is appointed over any of the defaulting party's assets or undertaking;

- (e) an order is made or a resolution is passed for the bankruptcy, winding up (whether voluntary or compulsory) or dissolution of the defaulting party;
- (f) the defaulting party assigns its estate for the benefit of creditors or enters into any composition or arrangement with its creditors;
- (g) the defaulting party suffers execution to be levied against its estate; or
- (h) the defaulting party entity is held or conceded not to have been properly incorporated or constituted; or

20.1.9 immediately by Inghams providing notice in writing to the Grower if:

- (a) any amendment is made to the Grower's constituting document (including, as relevant, the company's constitution, trust deed or partnership agreement) without Inghams' prior written permission, such permission to be not unreasonably withheld by Inghams;
- (b) the Grower entered into this Agreement in its capacity as the trustee of a trust, and the Grower ceases to be authorised to hold in its name the property of the trust and/or to perform its obligations under this Agreement;
- (c) the Grower entered into this Agreement as partners in a partnership, and any of the partners cease to be authorised to perform their obligations under this Agreement, or without the prior written consent of Inghams a partner is removed or resigns or a new or additional partner is appointed;
- (d) the Grower parts with possession of any of the goods supplied by Inghams under this Agreement or attempts to encumber, transfer or otherwise dispose of those goods;
- (e) the Grower does or suffers to be done anything whereby it might be deprived of the goods supplied to it by Inghams;
- (f) the Grower is convicted of any serious crime or offence;
- (g) the Grower conducts its business so contrary to this Agreement and/or the Manual as to constitute an imminent danger to public health or safety;
- (h) the Grower ceases to operate or abandons its business; or
- (i) the Grower or any of its authorised representatives acts in any way against Inghams or its representatives in a manner that reasonably justifies termination of this Agreement.

20.2 If this Agreement is terminated pursuant to Clauses 20.1.5 or 20.1.8:

20.2.1 by the Grower, the termination will be effective seven (7) days after the date of receipt of the notice by Inghams from the Grower or the date of

collection of the last Birds in the Batch currently placed with the Grower, whichever date is later; or

- 20.2.2 by Inghams, the termination will be effective immediately.
- 20.3 Within fourteen (14) days after the termination of this Agreement or the date of collection of the last of the Birds in the Batch currently placed with the Grower (whichever is later), Inghams may remove from the Premises or otherwise recover from the Grower any goods supplied by Inghams to the Grower under this Agreement which remain unused and of merchantable quality. If any such goods supplied by Inghams are no longer of merchantable quality as a result of the negligence of the Grower, the Grower will pay to Inghams (or Inghams may deduct from any Payments due to the Grower) an amount for those goods on the basis that they are goods sold and delivered by Inghams to the Grower.
- 20.4 If Inghams fails to comply with Clause 20.2 within the specified time, the Grower may:
 - 20.4.1 retain the goods (and title to the goods will vest in the Grower); or
 - 20.4.2 arrange for the goods to be removed from the Premises and delivered to Inghams, at Inghams' expense. The Grower may select any appropriate method of delivering the goods to Inghams.
- 20.5 If Inghams terminates this Agreement pursuant to Clauses 20.1.8 or 20.1.9, the Grower will pay to Inghams (or Inghams may deduct from any Payments due to the Grower) any reasonable expenses Inghams may incur under Clause 20.2.
- 20.6 Termination of this Agreement will not alter any rights or obligations that may have arisen prior to its termination.
- 20.7 Notwithstanding the termination of this Agreement, the Grower's obligations under this Agreement in relation to any Birds that may be placed with the Grower as at the date of termination will continue until such time as those Birds are collected by Inghams.

21. SURVIVAL

Clauses 1.3, 1.4, 1.5, 4.15, 4.16, 6, 12, 14.4, 15.4, 20.2, 20.3, 20.4, 20.5, 20.6, 20.7, 21, 25, 28 and 29 will survive the termination or expiration of this Agreement.

22. SUSPENSION OF AGREEMENT

- 22.1 The operation of this Agreement will be suspended if:
 - 22.1.1 the parties agree; or
 - 22.1.2 circumstances arise which are beyond the reasonable control of the affected party and which prevent that party meeting, or substantially affect its ability to meet, its obligations under this Agreement, including without limitation personal sickness or disability, livestock availability, the importation of a significant quantity of chicken product from other countries, disease, husbandry problems, fire, war, terrorism, flood, tempest, industrial dispute, strike or lock out.
- 22.2 If Clause 22.1.2 applies, the affected party must give reasonable written notice (being not less than twenty four (24) hours prior to the time this Agreement is proposed to be suspended) to the other party, advising the particulars of the