



# **FREE RANGE**

## **EGG SUPPLY AGREEMENT**

**MEMBER GUIDANCE ON NEGOTIATING CONTRACTS:  
A MODEL EGG SUPPLY AGREEMENT (VERSION 1)**



British  
**Free  
Range  
Egg**  
Producers Association



**There has been a marked increase in the number of members reporting complications with their egg supply agreements or contracts over the last couple of years. At the same time, we have seen an increase in the variety of contracts available to producers, with more and more members signing up to feed linked or cost-plus contracts.**

In recognition of these developments, BFREPA has produced a Model Egg Supply Agreement as guidance to members to use when negotiating a new contract with a packer or processor. This model contract is the first version of a live document which will change over time in response to market conditions, and the needs of producers and packers.

It is hoped that members will be able to consider the different pricing options in the model contract and empower them to have more informed discussions with their packer about their availability and the terms and conditions which go with them.

It is also expected that members may find some of the wording of the clauses used in the model contract as an improvement on those being proposed to them and may use them to negotiate changes in the wording when renewing or signing a new contract.

Many members never have a need to refer to their egg supply agreements but, in the event of a breakdown in the business relationship, it is important that a fair and workable contract is available for both parties.

**Robert Gooch**  
**BFREPA CEO**

A handwritten signature in blue ink, reading "Robert Gooch".

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## AGREEMENT FOR THE SUPPLY OF EGGS

<b>Date:</b>	.....
<b>Agreement No:</b>	.....
<b>Producer:</b>	.....
<b>Producer's address:</b>	.....
<b>Producer's telephone Number:</b>	.....
<b>Producer's email address:</b>	.....
<b>Producer's VAT number:</b>	.....
<b>Buyer:</b>	.....
<b>Buyer's address:</b>	.....
<b>Buyer's telephone Number:</b>	.....
<b>Buyer's email address:</b>	.....
<b>Flock Housing Date:</b>	.....
<b>Eggs:</b>	has the meaning given in clause 1 of the Conditions.
<b>Egg Collection Days:</b>	[SPECIFY] and [SPECIFY].
<b>Excluded Eggs:</b>	not more than [INSERT]% OR [INSERT NUMBER] Eggs per week produced by the Laying Flock, which the Producer may either consume, give away to its farm staff or sell.
<b>Average Yolk Colour:</b>	[INSERT]
<b>Laying Flock:</b>	the laying flock specified in Schedule 2, located at the Site.
<b>Site:</b>	.....
<b>Term:</b>	the flock cycle period comprising of [INSERT] flock cycles of [INSERT LENGTH OF AN INDIVIDUAL FLOCK CYCLE] (Flock Cycle Period).
<b>Payment Terms:</b>	within 21 days of the date of the Buyer's self invoice in accordance with clause 12.2
<b>Any other specific terms to apply to the agreement:</b>	



**1. This agreement is made up of the following:**

- (a) the Agreement Details;
- (b) the Schedules; and
- (c) the Conditions.

**2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.**

**This agreement has been entered into on the date stated at the beginning of it.**

Signed on behalf of the Producer

Signed on behalf of the Buyer

Print Name:

Print Name:

Position:

Position:

Date:

Date:

**SCHEDULE 1. SPECIFICATION OF THE EGGS AND EGG PRICES**

**1. SPECIFICATION OF THE EGGS**

[INSERT ANY SPECIFIC SPECIFICATION RELATING TO THE EGGS WHICH IS NOT ALREADY INCLUDED WITHIN THE MAIN BODY OF THE AGREEMENT]

**2. PRICES**

**[OPTION 1 - FIXED EGG PRICES]**

**2.1** The Prices of the Eggs shall be as follows:

	Egg Grade	Egg Price
First Quality Egg	Very Large	[SPECIFY]
	Large	[SPECIFY]
	Medium	[SPECIFY]
	Small	[SPECIFY]
Second Quality Egg	Farm Seconds	[SPECIFY]
	Graded Seconds	[SPECIFY]

**[OPTION 2 - VARIABLE PRICE]**

**2.1** The Price of the Eggs supplied under this agreement at the Commencement Date are based on the following base prices:

	Egg Grade	Egg Price	Egg Price as at the Commencement Date
First Quality Egg	Very Large	[SPECIFY]	[SPECIFY]
	Large	[SPECIFY]	[SPECIFY]
	Medium	[SPECIFY]	[SPECIFY]
	Small	[SPECIFY]	[SPECIFY]
Second Quality Egg	Farm Seconds	[SPECIFY]	[SPECIFY]
	Graded Seconds	[SPECIFY]	[SPECIFY]

**SCHEDULE 1. SPECIFICATION OF THE EGGS AND EGG PRICES**

**[OPTION 3 – FEED TRACKER PRICES]**

**2.1** The Prices of the Eggs supplied under this agreement at the Commencement Date are as follows:

	Egg Grade	Egg Price
First Quality Egg	Very Large	[SPECIFY]
	Large	[SPECIFY]
	Medium	[SPECIFY]
	Small	[SPECIFY]
Second Quality Egg	Farm Seconds	[SPECIFY]
	Graded Seconds	[SPECIFY]

**2.2** The above Egg Prices are calculated based on the base price for poultry feed being [£INSERT] at the date of this agreement:

**2.3** The Base Price of the Eggs will be recalculated at the beginning of each month based on the poultry feed costs set out in [INSERT], provided that such Base Prices shall never fall below those stated in paragraph 2.1 above. The Prices of the Eggs then applying for that month will be increased or decreased at a ratio of [INSERT] in line with each [£1.00] increase or decrease in the tonne price of poultry feed (to be applied on a pro rata basis).

- 2.4 By way of example only:**
- (i) When the poultry feed costs is £[INSERT] per tonne, all First Quality Large Eggs are [INSERT] per dozen and all Second Quality Eggs are [INSERT] per dozen.
  - (ii) When the poultry feed costs is £[INSERT] per tonne, all First Quality Large Eggs are [INSERT] per dozen and all Second Quality Eggs are [INSERT] per dozen.
  - (iii) When the poultry feed costs is £[INSERT] per tonne, all First Quality Large Eggs are [INSERT] per dozen and all Second Quality Eggs are [INSERT] per dozen.

**SCHEDULE 2. LAYING FLOCK**

[INSERT DETAILS HERE]



**SCHEDULE 3. FEED SPECIFICATION**

[INSERT DETAILS HERE]

**SCHEDULE 4. BONUS SCHEME**

[INSERT DETAILS HERE]

# 1. INTERPRETATION

## 1.1 Definitions

<b>ADR notice</b>	has the meaning given in clause 25.1.
<b>agreement</b>	the agreement between the Producer and the Buyer for the sale and purchase of the Eggs in accordance with the Agreement Details, the Schedules and these Conditions.
<b>Agreement Details</b>	the agreement details form, forming part of this agreement together with the Schedules and the Conditions.
<b>Bonus Scheme</b>	the bonus scheme which the Producer has the benefit of, as set out in Schedule 4.
<b>Business Day</b>	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Codes of Practice</b>	the Codes of Practice for Lion Eggs (issued by the British Egg Industry Council as amended from time to time); the DEFRA Code of Recommendations for the Welfare of Livestock: Laying Hens; DEFRA Guidance on Legislation Covering the Marketing of Eggs; and RSPCA Assured.
<b>Collection</b>	completion of the collection of each Consignment by the Buyer on each of the Collection Days in accordance with clause 4.
<b>Collection Location</b>	the Site, or such other location as the Producer notifies to the Buyer, prior to an Egg Collection Day and which has been agreed between the parties.
<b>Collection Vehicle</b>	the vehicle owned or operated by the Buyer and/or its sub-contractor used to collect the Eggs from the Collection Location.

<b>Commencement Date</b>	the date of this agreement.
<b>Conditions</b>	these terms and conditions set out in clauses 1 to 34 (inclusive).
<b>Confidential Information</b>	any information of a confidential nature concerning the business, affairs, Buyers, clients or suppliers of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and Buyers.
<b>Consignment</b>	the Eggs collected by the Buyer at each Collection, pursuant to clause 4.
<b>Consignment Number</b>	has the meaning given in clause 4.3.
<b>Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures</b>	as defined in the Data Protection Legislation.
<b>Data Protection Legislation</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).
<b>Dispute</b>	has the meaning given in clause 25.1.
<b>Dispute Notice</b>	has the meaning given in clause 25.1.

<b>Eggs</b>	means together (or individually as the context requires) the First Quality Eggs and the Second Quality Eggs produced by the Laying Flock and supplied to the Buyer by the Producer in accordance with the terms of this agreement and the Specification.		
<b>Egg Collection Days</b>	the usual weekly Egg collection days on which the Buyer shall collect the Eggs from the Collection Location, as set out in the Agreement Details or such other days from time to time as are agreed between the parties.		
<b>[Egg Price Review</b>			
<b>Review</b>	has the meaning given in clause 11.]		
<b>Excluded Eggs</b>	has the meaning given in the Agreement Details.		
<b>Expert</b>	has the meaning given in clause 13.1.	<b>Laying Flock</b>	the laying flock specified in Schedule 2, located at the Site.
<b>Farm Seconds</b>	eggs, which following visible inspection by the Producer, are properly determined by the Producer to be seconds because they are not First Quality Eggs.	<b>month</b>	a calendar month.
<b>Feed Specification</b>	the feed specification set out in Schedule 3.	<b>Prices</b>	the prices of the Eggs as determined in accordance with clause 10.1.
<b>First Quality Eggs</b>	very large, large, medium and small eggs which comply in all respects with the provisions of clause 3.1.	<b>Representatives</b>	has the meaning given in clause 17.2.
<b>Flock Cycle Length</b>	has the meaning given in the Agreement Details.	<b>Schedules</b>	the schedules to the agreement, namely Schedules 1 to 4 (inclusive).
<b>Force Majeure Event</b>	has the meaning given in clause 22.1.	<b>Second Quality Eggs</b>	means Farms Seconds and Graded Seconds that do not meet the criteria of First Quality Eggs.
<b>Graded Seconds</b>	eggs that the Buyer has determined are not First Quality Eggs.	<b>Site</b>	has the meaning given in the Agreement Details.
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights,	<b>Specification</b>	the specification of the Eggs as set out in Schedule 1.
		<b>Term</b>	the term of the agreement, as determined in accordance with clause 18.
		<b>UK Data Protection Laws</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation

	((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.	
<b>VAT</b>	value added tax chargeable in the UK.	<b>1.11</b> A reference to writing or written includes e-mail.
<b>Year</b>	the period of 12 consecutive months from the Commencement Date and each successive 12 month period thereafter during the Term.	<b>1.12</b> Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
<b>1.2</b>	Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.	<b>1.13</b> A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
<b>1.3</b>	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).	<b>1.14</b> References to clauses and Schedules are to the clauses and Schedules of this agreement; and references to paragraphs are to paragraphs of the relevant Schedule.
<b>1.4</b>	The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.	
<b>1.5</b>	A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.	
<b>1.6</b>	Unless the context otherwise requires, words in the singular shall include the plural and vice versa.	
<b>1.7</b>	Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.	
<b>1.8</b>	This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.	
<b>1.9</b>	A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.	
<b>1.10</b>	A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.	

## 2. SUPPLY OF EGGS

- 2.1** During the Term, the Producer shall supply and the Buyer shall purchase all Eggs produced by the Laying Flock, other than the Excluded Eggs in accordance with the terms and conditions of this agreement.
- 2.2** The Buyer shall provide, free of charge, all packaging materials required by the Producer to pack the Eggs.
- 2.3** All packaging materials provided by the Buyer to the Producer will be visibly clean on arrival.
- 2.4** Any packaging materials provided by the Buyer to the Producer remain the sole property of the Buyer at all times and shall not be used by the Producer for any other purpose, other than the loading of the Eggs being sold to the Buyer.
- 2.5** The Producer shall use all reasonable endeavours to return any packaging materials provided to it when requested by the Buyer.



### 3. QUALITY STANDARDS

- 3.1** The Producer shall ensure that all Eggs supplied to the Buyer comply with the following quality standards. That:
- 3.1.1** they are of satisfactory quality;
  - 3.1.2** they are free of any unnatural odour or taint;
  - 3.1.3** they are not fertile or part incubated;
  - 3.1.4** they are free of any contamination from pest, parasite or vermin;
  - 3.1.5** they are packed into the Keyes trays supplied by the Buyer;
  - 3.1.6** they are stored by the Producer, once collected from the Laying Flock, in a clean store at a temperature of less than 20 degrees, with maximum and minimum temperatures recorded daily;
  - 3.1.7** the Keyes trays are loaded onto pallets in adherence with any prior instructions supplied by the Buyer;
  - 3.1.8** they are produced from birds fed to the required Feed Specifications as indicated in Schedule 3;
  - 3.1.9** they record an Average Yolk Colour;
  - 3.1.10** they record an air cell of less than 6mm (upon arrival at the packing centre); and
  - 3.1.11** any Eggs with visual faults are segregated at the Site and marked as Second Quality Eggs,
- 3.2** The Producer shall remove as many Eggs of visual faults to render the Consignment usable by the Buyer or its agent and shall pack and label such faulty Eggs separately as Second Quality Eggs. Second Quality Eggs shall, in addition to the obligations set out in clause 3.1 above, comply with the following standards:
- 3.2.1** all cracked Eggs shall have the membrane intact (i.e. contents entire and not leaking); and
  - 3.2.2** shall be clean and free from heavy soiling such as hen faeces, litter, egg content or any other foreign body.

## 4. COLLECTION

- 4.1** The Buyer shall collect the Eggs from the Collection Location on the Egg Collection Days unless otherwise agreed between the parties.
- 4.2** Collection is completed when the Producer places the Consignment of Eggs being collected, at the Buyer's disposal at the Collection Location.
- 4.3** Each Consignment of Eggs will be given a Consignment number (Consignment Number).
- 4.4** The Producer shall provide and maintain suitable and unobstructed access for the Collection Vehicle to the Collection Location at the time of collection on the Egg Collection Days or outside these hours by prior arrangement.
- 4.5** Any Collection Vehicle used by the Buyer to collect the Eggs will be visibly clean on arrival.
- 4.6** The Producer shall make available a flat loading area adjacent to the storage area in order to facilitate the proper collection of Eggs by the Buyer. It is the Producer's responsibility to maintain this area.
- 4.7** Without prejudice to clause 22.1, if severe weather prevents the Collection of the Eggs from the Collection Location, the Producer shall use all reasonable endeavours to allow the Buyer to collect the Eggs from an alternative collection point, on an alternative day and/or time as agreed between the parties.
- 4.8** Delays in Collection of a Consignment, caused directly by the actions of the Buyer, shall not entitle the Buyer to:
- 4.8.1** refuse to take delivery of the Consignment being delivered; or
- 4.8.2** claim damages; or
- 4.8.3** terminate this agreement, subject always to clause 19.1.3 and clause 19.1.12.
- 4.9** The Producer shall have no liability for any failure or delay in delivering a Consignment of Eggs to the extent that any failure or delay is caused by the Buyer's failure to comply with its obligations under this agreement.
- 4.10** If the Buyer fails to collect the Consignment on the relevant Egg Collection Day, then the Producer shall store the Consignment for up to one week (Storage Period).
- 4.11** If the Buyer fails to collect the Consignment within the Storage Period then the Buyer shall be liable to pay the Producer the average Price paid by the Buyer for uncollected Consignments of Eggs based on the last three Consignments of Eggs which were collected by the Buyer.
- 4.12** Each Delivery of Eggs shall be accompanied by a Collection note from the Producer showing the Consignment Number, the number of Eggs and pallets collected, the oldest day of lay of the Eggs and if there are any Farm Seconds on top of the pallets.

## 5. TITLE AND RISK

- 5.1** Risk in the Eggs shall pass to the Buyer on Collection.
- 5.2** Subject to clause 5.5, any damage to the Eggs occurring during (i) the transport of the Egg pallet from the Producer's egg storage room to the loading bay before being loaded; and (ii) the loading of the Eggs onto the Collection Vehicle, shall be the responsibility of the Buyer.
- 5.3** Title to the Eggs shall not pass to the Buyer until
- 5.3.1** the Producer receives payment in full (in cash or cleared funds) for the Eggs and all other sums that are or that become due to the Producer from the Buyer for sales of Eggs or on any account, in which case title to these Eggs shall pass at the time of payment of all such sums; and
- 5.3.2** the Buyer resells those Eggs, in which case title to those Eggs shall pass to the Buyer at the time specified in clause 5.4.
- 5.4** Subject to clause 5.5, the Buyer may resell or use Eggs in the ordinary course of its business (but not otherwise) before the Producer receives payment for the Eggs. However, if the Buyer resells the Eggs before that time:
- 5.4.1** it does so as principal and not as the Producer's agent; and
- 5.4.2** title to those Eggs shall pass from the Producer to the Buyer immediately before the time at which resale by the Buyer occurs.
- 5.5** If before title to Eggs passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 19.1.3 to clause 19.1.12 inclusive, then, without limiting any other right or remedy the Producer may have then the sums due by the Buyer to the Producer for the Consignment will become immediately payable.

## 6. COMPLIANCE

- 6.1** The Producer shall at all times ensure that:
- 6.1.1** it complies with all EU and UK legislation, regulations and other statutory requirements directly applying to the production, storage and handling of the Eggs;
  - 6.1.2** it complies with each Code of Practice;
  - 6.1.3** it complies with any other directly relevant and applicable non-statutory codes of practice and guidance notes issued by any relevant authorities from time to time relating to the production, handling and storage of eggs; and
  - 6.1.4** where appropriate, any certification standards and any organic legislation; and
  - 6.1.5** any retailer codes of practice, notified to the Producer in advance of the Eggs being produced, in order for the Buyer to sell the Eggs to the applicable retailer;
- in each case, which are applicable to the performance of the Producer's obligations under this agreement from time to time.
- 6.2** If any amendments are made during the Term to the Codes of Practice, then the Buyer shall notify the Producer as soon as it becomes aware of any such change and following such notice the Producer shall ensure that it complies with such Codes of Practice as amended.
- 6.3** During the Term the parties shall at all times comply with their obligations under the UK Data Protection Laws.

## 7. ACCEPTANCE AND DEFECTIVE EGGS

- 7.1** Upon delivery of a Consignment to the Buyer's packing centre, the Buyer shall inspect, candle and grade the Eggs into the following categories:
- 7.1.1** First Quality Eggs; and
  - 7.1.2** Second Quality Eggs.
- 7.2** The inspection, candling and grading of the Eggs by the Buyer shall take place as soon as reasonably practicable after Collection.
- 7.3** The Buyer shall ensure that its inspection, candling and grading facilities comply with applicable industry standards.
- 7.4** The Buyer shall notify the Producer of the number, grade, weight and other details of the Consignment as soon as reasonably practicable after Collection (the "Collection Confirmation"). Where the information is disputed by the Producer and the parties are unable to agree between themselves then the matter shall be referred to an Expert in accordance with clause 13.
- 7.5** The Buyer may reject any Eggs delivered to it that do not comply with clauses 3.1 and 3.2, provided that:
- 7.5.1** notice of rejection is given to the Producer, by telephone or email, within two days of the date of the inspection, candling and grading of the Eggs;
  - 7.5.2** none of the events listed in clause 7.7 apply.
- 7.6** If the Buyer fails to give notice of rejection in accordance with clause 7.5, it shall be deemed to have accepted the Consignment.
- 7.7** The Producer shall not be liable for any Eggs' failure to comply with clauses 3.1 and 3.2 if the Eggs differ from their description as a result of changes made to ensure they comply with any applicable statutory or regulatory requirements.
- 7.8** If the Buyer rejects Eggs under clause 7.5 then the Buyer shall be entitled to require the Producer to reimburse it the cost of disposing of the Eggs or, at the request of the Producer, the Producer shall have the right to collect the Eggs.
- 7.9** If the parties dispute whether any Eggs comply with clause 3, either party may refer the matter to an Expert for determination in accordance with clause 13.

## 8. RECALL

**8.1** If the Buyer or the Buyer' retailer:

**8.1.1** is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Eggs from the market;

**8.1.2** suspects the flock to have avian flu or regulated salmonella serovars;

**8.1.3** finds any other problem with the Eggs requiring them to be recalled, (**Recall Notice**) then the Buyer shall immediately notify the Producer in writing enclosing a copy of the Recall Notice.



## 9. INSPECTION

- 9.1** The Producer shall be entitled at any reasonable time, on giving reasonable prior written notice to the Buyer to enter the premises of the Buyer, on agreed days, in order to inspect the grading, candling and packing of the Eggs carried out by the Buyer.
- 9.2** The Buyer shall be entitled at any reasonable time, on giving reasonable prior notice to the Producer either by telephone or by email, to enter the premises of the Producer, in order to inspect the Laying Flock and packing of the Eggs carried out by the Producer.

## 10. PRICES

- 10.1** If applicable the Prices of the Eggs for the first Contract Year shall be the prices set out in Schedule 1. [The Prices for subsequent Contract Years shall be determined in accordance with clause 11.]
- 10.2** The Prices are exclusive of amounts in respect of VAT. For the avoidance of doubt, VAT is not chargeable on the supply of Eggs.
- 10.3** The Prices are exclusive of the costs of the packaging which shall be supplied by the Buyer free of charge.
- 10.4** Where a Bonus Scheme applies in relation to the supply of the Eggs, the terms of the Bonus Scheme as set out in Schedule 4 will apply.

## 11. PRICE REVIEW

### [OPTION 1 - FIXED EGG PRICE CLAUSES]

- 11.1** The parties shall meet in [MONTH][TBC] of each year to review and, where appropriate, agree changes to the Prices (Price Review). Agreed changes shall take effect on the anniversary of each Contract Year. In agreeing Prices for the following Contract Year, the parties shall have regard to the following factors:
- 11.1.1** changes to the Producer's costs of producing the Eggs;
  - 11.1.2** the volumes of Eggs ordered by, and supplied to, the Buyer;
  - 11.1.3** the price at which the Producer supplies the Eggs to comparable Buyers;
  - 11.1.4** the prices at which comparable Eggs are supplied by other Producers in the open market; and
  - 11.1.5** any cost reductions achieved by the Producer since the last Price Review (to the extent that they have not already been taken into account in the Product Prices).
- 11.2** If within one month of beginning a Price Review the parties cannot agree the Prices for the following year, either party may refer the matter to an Expert for determination in accordance with clause 13. The Expert shall determine the Prices for the relevant year, taking into account the factors for consideration listed in clause 11.
- 11.3** All disputes concerning the Product Prices shall be resolved in accordance with clause 25, except as provided in clause 11.2 .]

### [OPTION 2 - VARIABLE PRICES]

- 11.1** The parties shall meet [quarterly][TBC] each year to review and, where appropriate, agree changes to the base price of the Egg Prices (Price Review). Agreed changes shall take effect from the beginning of the next month. In agreeing the base prices to apply for the next [quarter][TBC], the parties shall have regard to the following factors:
- 11.1.1** changes to the Producer's costs of producing the Eggs;
  - 11.1.2** the volumes of Eggs ordered by, and supplied to, the Buyer;
  - 11.1.3** the price at which the Producer supplies the Eggs to comparable Buyers;
  - 11.1.4** the prices at which comparable Eggs are supplied by other Producers in the open market; and
  - 11.1.5** any cost reductions achieved by the Producer since the last Price Review (to the extent that they have not already been taken into account in the Product Prices).
- 11.2** If the parties cannot agree the changes to the base prices of the Eggs, either party may refer the matter to an Expert for determination in accordance with clause 13. The Expert shall determine the Prices for the next [quarter][TBC], taking into account the factors for consideration listed in clause 11.
- 11.3** All disputes concerning the Product Prices shall be resolved in accordance with clause 25, except as provided in clause 11.2.]

## 12. TERMS OF PAYMENT

**12.1** The Buyer shall self-invoice itself weekly in arrears for each Consignment on or at any time after receipt of the Delivery Confirmation. Each invoice shall quote the relevant Consignment Number.

**12.2** The Buyer shall pay invoices in full and in cleared funds within 21 days of the date the self-invoice is raised or as otherwise set out in the Agreement Details. Payment shall be made to the bank account nominated in writing by the Producer.

**12.3** If a party fails to make any payment due to the other under this agreement by the due date for payment, then, without limiting the other party's remedies under clause 19.1, the defaulting party shall pay interest on the overdue amount at the rate of 4% a year above the Bank of England's base rate from time to time. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this clause 12.3 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

**12.4** If the Buyer disputes any invoice or other statement of monies due, the Buyer shall immediately notify the Producer in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Producer shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 14 days of the Buyer giving notice to the Producer, the dispute shall be resolved in accordance with clause 25. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 12.2.

**12.5** All payments payable to the Producer by the Buyer under this agreement shall become immediately due and payable:

**12.5.1** on termination of this agreement for any reason; or

**12.5.2** if the Buyer becomes subject to any of the events listed in clause 19.1.3 to clause 19.1.12 inclusive.

This clause 12.5 is without prejudice to any right to claim for interest under the law or under this agreement.

## 13. EXPERT DETERMINATION

- 13.1** An expert is a person appointed in accordance with this clause 13 to resolve certain matters as specified in this agreement (Expert).
- 13.2** Where under this agreement a party wishes to refer a matter to an Expert, the parties shall first agree on the appointment of an independent Expert and agree with the Expert the terms of his appointment.
- 13.3** In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the Expert to be appointed pursuant to clause 13.2 or as to the appropriate professional body within 7 days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the Expert to be appointed pursuant to clause 13.2 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.
- 13.4** The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of one month of the matter being referred to the Expert.
- 13.5** If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 13, then:
- 13.5.1** either party may apply to the President for the time being of the Law Society of England and Wales to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 13.5.2** this clause 13 shall apply to the new Expert as if they were the first Expert appointed.
- 13.6** All matters to be determined in accordance with this clause 13 must be conducted, and the Expert's decision shall be written, in the English language.
- 13.7** The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with any assistance and documents as the Expert reasonably requires to reach a decision.
- 13.8** To the extent not provided for by this clause 13, the Expert may, in its reasonable discretion, determine any other procedures to assist with the conduct of the determination as the Expert considers just or appropriate, including (to the extent the Expert considers necessary) instructing professional advisers to assist the Expert in reaching a determination.
- 13.9** Each party shall with reasonable promptness supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make a submission under this clause 13.
- 13.10** The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matters referred to the Expert under the agreement which may include any issue involving the interpretation of any provision of this agreement, the Expert's jurisdiction to determine the matters and issues referred to the Expert and the terms of reference. The Expert's written decision on the matters referred to the Expert shall be final and binding on the parties in the absence of manifest error or fraud.
- 13.11** Each party shall bear its own costs in relation to the reference to the Expert.
- 13.12** All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 13.13** Each party shall act reasonably and co-operate to give effect to the provisions of this clause 13 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.
- 13.14** The Expert and President for the time being of the Law Society of England and Wales shall have no liability to the parties for any act or omission in relation to this appointment, save in the case of bad faith.

## 14. INSURANCE

- 14.1** During this agreement the Producer shall maintain in force the following insurance policies with reputable insurance companies:
- 14.1.1** public liability insurance with a limit of at least [£[5] million a claim][TBC]; and
  - 14.1.2** product liability insurance with a limit of at least [£[5] million][TBC] for claims arising from a single event or series of related events in a single calendar year.
- 14.2** The Producer's liabilities under this agreement shall not be deemed to be released or limited by the Producer taking out the insurance policies referred to in clause 14.1.



## 15. LIMITATION OF LIABILITY

**15.1** This clause 15 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other for:

**15.1.1** any breach of this agreement however arising;

**15.1.2** any use made or resale of the Eggs by the Buyer, or of any product incorporating any of the Eggs; and

**15.1.3** any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

**15.2** Nothing in this agreement shall limit or exclude the liability of either party for:

**15.2.1** death or personal injury resulting from negligence; or

**15.2.2** fraud or fraudulent misrepresentation.

**15.3** Without prejudice to clause 15.2, neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profit, goodwill, business, business opportunity, anticipated opportunity, anticipated saving, corruption of data or information, special, indirect or consequential damage suffered by the other party that arises under or in connection with this agreement.

**15.4** Without prejudice to clause 15.2 or clause 15.3, the Producer's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the total Price paid by the Buyer to the Producer in the 12 month period immediately preceding the month in which the liability arises.

## **16. ASSIGNMENT AND OTHER DEALINGS**

- 16.1** Subject to clause 17, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

## 17. CONFIDENTIALITY

**17.1** Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination disclose to any person any Confidential Information, except as permitted by clause 17.2.

**17.2** Each party may disclose the other party's Confidential Information:

**17.2.1** to its employees, officers, agents, consultants, subcontractors or in the case of the Buyer, its retailers customers (Representatives) who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 17 as though they were a party to this agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause 17; and

**17.2.2** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**17.3** Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

## **18. COMMENCEMENT AND TERM**

- 18.1** Unless otherwise stated in the Agreement Details, this agreement shall commence on the Flock Housing Date and unless terminated earlier in accordance with clause 19 (Termination), shall continue for the Flock Cycle Period whereupon it shall automatically terminate (Term).
- 18.2** The Producer may terminate this agreement by giving the Buyer not less than one flock cycles notice to terminate.

## 19. TERMINATION AND SUSPENSION

- 19.1** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 19.1.1** the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 19.1.2** the other party commits a material breach of any other term of this agreement and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 19.1.3** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2);
  - 19.1.4** the other party begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
  - 19.1.5** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party;
  - 19.1.6** an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
  - 19.1.7** the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 19.1.8** a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - 19.1.9** a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 19.1.10** any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 19.1.3 to clause 19.1.9 inclusive;
  - 19.1.11** the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business;
  - 19.1.12** any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of three months.
- 19.2** Without limiting its other rights or remedies, the Producer may suspend provision of the Eggs under the agreement or any other contract between the Buyer and the Producer if the Buyer becomes subject to any of the events listed in clause 19.1.3 to clause 19.1.12, or the Producer reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this agreement on the due date for payment.

## 20. OBLIGATIONS ON TERMINATION

- 20.1** On termination or expiry of this agreement, each party shall promptly and in any event within 7 days of the date of termination or expiry:
- 20.1.1** return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it;
  - 20.1.2** return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
  - 20.1.3** erase all the other party's Confidential Information from its computer systems (to the extent possible); and
  - 20.1.4** on request, certify in writing to the other party that it has complied with the requirements of this clause 20.
- 20.2** On termination or expiry of this agreement, the Buyer shall as soon as reasonably practicable, release the Producer's Lion code number to such person as is specified by the Producer.
- 20.3** On termination or expiry of this agreement, the Buyer shall pay to the Producer all monies owing to the Producer at the date of termination within 2 Business Days and vice versa.



## 21. CONSEQUENCES OF TERMINATION

- 21.1** On termination of this agreement the following clauses shall continue in force:
- 21.1.1** Clause 14 (Insurance);
  - 21.1.2** Clause 15 (Limitation of liability);
  - 21.1.3** Clause 17 (Confidentiality);
  - 21.1.4** Clause 20 (Obligations on termination);
  - 21.1.5** Clause 25 (Multi-tiered dispute resolution procedure);
  - 21.1.6** Clause 29 (Notices);
  - 21.1.7** Clause 33 (Governing law); and
  - 21.1.8** Clause 34 (Jurisdiction).
- 21.2** Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the agreement that existed at or before the date of termination.

## **22. FORCE MAJEURE**

- 22.1** Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three months', the party not affected may terminate this Agreement by giving one months' written notice to the affected party.

## **23. COSTS**

- 23.1** Except as expressly provided in this agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreement and any documents referred to in it.

## **24. SEVERANCE**

- 24.1** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If that modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of, a provision or part-provision under this clause 24 shall not affect the validity and enforceability of the rest of this agreement.
- 24.2** If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 25. DISPUTE RESOLUTION PROCEDURE

**25.1** If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause 25:

**25.1.1** either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Producer and [EMPLOYEE TITLE] of the Buyer shall attempt in good faith to resolve the Dispute;

**25.1.2** if the [EMPLOYEE TITLE] of the Producer and [EMPLOYEE TITLE] of the Buyer are for any reason unable to resolve the Dispute within 7 days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Producer and [SENIOR OFFICER TITLE] of the Buyer who shall attempt in good faith to resolve it; and

**25.1.3** if the [SENIOR OFFICER TITLE] of the Producer and [SENIOR OFFICER TITLE] of the Buyer are for any reason unable to resolve the Dispute within 7 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 7 days after the date of the ADR notice.

**25.2** The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 34, which clause shall apply at all times.

**25.3** If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 30 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 34.

## **26. FURTHER ASSURANCE**

- 26.1** At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

## **27. VARIATION**

- 27.1** No variation of this agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

## **28. WAIVER**

- 28.1** A waiver of any right or remedy under this agreement or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 28.2** A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.



## 29. NOTICES

- 29.1** Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- 29.1.1** delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 29.1.2** sent by email to the following email addresses for the parties or such other email address as a party may notify the other party of from time to time:
    - 29.1.2.1** The Producer: [INSERT]; and
    - 29.1.2.2** The Buyer [INSERT].
- 29.2** Any notice shall be deemed to have been received:
- 29.2.1** if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 29.2.2** if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
  - 29.2.3** if sent by email, at 9.00 am on the next Business Day after transmission.
- 29.3** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 29.4** A notice given under this agreement is valid if sent by email.

## **30. ENTIRE AGREEMENT**

- 30.1** This agreement constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 30.2** Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 30.3** Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 30.4** Nothing in this clause 30 shall limit or exclude any liability for fraud.

## **31. THIRD PARTY RIGHTS**

- 31.1** This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **32. COUNTERPARTS**

- 32.1** This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

### **33. GOVERNING LAW**

- 33.1** This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## **34. JURISDICTION**

- 34.1** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.





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