

PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

Baiada Poultry Pty Limited (ACN 002925948)

and

Bartter Enterprises Pty Limited (ACN 000 451 374)

SCHEDULE 1

Details: Office of the Fair Work Ombudsman (FWO) and Baiada Group

FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43884188232
	Address	The Fair Work Ombudsman GPO Box 9887 Melbourne VIC 3001
	Telephone	(02) 4979 3529
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	Attention	Steve Wade
		Assistant Director – Compliance Coordination Team
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Baiada Group	Name	Baiada Poultry Pty Limited Bartter Enterprises Pty Limited
	ACN	002925948 (Baiada Poultry) 000451374 (Bartter Enterprises)
	Address	642 Great Western Highway, Pendle Hill NSW 2145
	Telephone	(02) 9842 1000
	Fax	(02) 9842 1133
	Attention	Scott Murray

RECITALS:

Background to this Deed

- A. The Baiada Group (**Baiada**) comprises both Baiada Poultry Pty Ltd (ACN 002925948) and Bartter Enterprises Pty Ltd (ACN 000451374).
- B. Baiada operates a complete poultry growing, processing and supply operation including *'broiler and breeder farms, hatcheries, processing plants, feed milling and protein recovery'*. It operates poultry processing plants in Beresfield, Hanwood and Tamworth in New South Wales, and five other processing plants around Australia.
- C. Prior to November 2013, the Fair Work Ombudsman (**FWO**) received requests for assistance from contract workers at Baiada's Beresfield plant alleging that they were being underpaid by their contractor employer, forced to work extremely long hours, and required to pay high rents for overcrowded and unsafe employee accommodation.
- D. The majority of Baiada's workers are directly engaged as employees of Baiada and this Deed does not relate to such employees.
- E. The plant contractor workers' allegations aligned with information the FWO received from the Australian Meat Industry Employees' Union, members of the local communities in Griffith and Tamworth, and a report broadcast on the Australian Broadcasting Corporation's *Lateline* program in October 2013.
- F. As a result of the allegations, in November 2013, the FWO commenced an inquiry into Baiada's labour procurement processes at its three New South Wales sites in Beresfield, Hanwood and Tamworth.
- G. At the conclusion of its inquiry, on 18 June 2015, the FWO published a report entitled: *"A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales"* (**Baiada Report**), which can be found on the FWO's website at <http://www.fairwork.gov.au>.
- H. The Baiada Report stated the FWO's inquiry had found, in summary, on Baiada's processing sites in New South Wales:
 - (a) non-compliance with a range of Commonwealth Workplace Laws by contractor entities in the labour supply chain from Baiada to the contracted workers;
 - (b) limited oversight and governance arrangements by Baiada relating to various labour supply chains; and

- (c) exploitation by contractor entities in the supply chain of a labour pool, comprised predominantly of overseas workers in Australia on sub class 417 working holiday visas, involving:
 - (i) significant Underpayments;
 - (ii) extremely long hours of work;
 - (iii) high rents for overcrowded and unsafe worker accommodation;
 - (iv) discrimination; and
 - (v) misclassification of employees as contractors.
- I. The Baiada Report made recommendations that Baiada:
 - (a) ensure that its contractors and subcontractors identify the true employer of workers and display the employer's name on factory identification cards issued to workers;
 - (b) introduce an electronic time-keeping system at the processing plants to properly record the start and finishing times of all workers;
 - (c) set up a formal complaint and dispute resolution process, including the appointment of a Mandarin-speaking human resources representative;
 - (d) commission an independent, external specialist to review its labour recruitment practices;
 - (e) implement protocols and policies to improve governance arrangements to ensure workers at its sites are being paid correctly for all hours worked; and
 - (f) prepare industry and language-specific induction materials for all workers.
- J. Baiada believes it has a moral and ethical responsibility to require standards of conduct from all entities and individuals involved in the conduct of its enterprise, that:
 - a) comply with the law in relation to all workers at all of its sites, and
 - b) meet Australian community and social expectations, to provide equal, fair and safe work opportunities for all workers at all of its sites.
- K. Prior to the release of the Baiada Report, Baiada had commenced instituting changes to the contracting and subcontracting arrangements it had previously used to engage its contracted labour force (comprising less than 20% of its workers), due to its concerns that those arrangements were not stringent enough and that more needed to be done to ensure that the contract workers on its processing plant sites were not vulnerable to exploitation, including by way of underpayment.

- L. Baiada has and will continue to implement fundamental, permanent and sustainable changes to its enterprise, because Baiada agrees that, for all workers, on all of its sites, Commonwealth Workplace Laws including the *Fair Work Act 2009* (Cth) (FW Act), Fair Work Regulations, and Fair Work Instruments, should be fully complied with.
- M. Following the publication of the Baiada Report, the parties have held discussions where Baiada presented to the FWO the compliance measures it had begun initiating prior to the release of the Report, including termination of some contractors and subcontractors. These measures included many of the recommendations contained in the Report. During the parties' discussions, Baiada indicated that it wished to enter into a proactive compliance partnership with the FWO. Both parties have agreed to enter into this Deed as a proactive compliance partnership opportunity.
- N. The parties agree as follows:

OPERATIVE PROVISIONS

PART I - "BAIADA'S NEW APPROACH – TAKING RESPONSIBILITY:

IMPLEMENTING CHANGE" – PUBLIC STATEMENTS

1. Statements by Baiada on compliance with the Fair Work Act 2009 (Cth)

1.1 Baiada will, within 28 days after the issue of the initial media release announcing the execution of this Deed, publish the statements at Items J and K of the recitals, and the commitment to further action at Item L of the recitals, by the following means:

- (a) posting them on the public website of Baiada;
- (b) posting them on public notices displayed at all Baiada processing plant sites;
and
- (c) publishing them in a public notice, to be placed in an edition of *'The Weekend Australian'* newspaper, with such public notice:
 - i. to bear the company name and logo of Baiada;
 - ii. to appear on either page 3 or page 5 or page 7 of the newspaper; and
 - iii. to measure at least 15cm x 7.4cm in size.

1.2 Baiada will provide the FWO with evidence of the public notice referred to in clause 1.1(c) within 7 days of publication.

**PART II - "HELPING CONTRACTORS TO HELP THEMSELVES" – BAIADA'S
COMMITMENT TO GOVERNANCE AND SELF-AUDITING**

2. Identifying workers and maintaining worker records

- 2.1 Baiada will continue to implement systems to enable the hours worked by all processing workers at Baiada's processing plant sites, as well as the employing entity of those people, to be readily ascertained, including by, within 28 days after the execution of this Deed:
- (a) ensuring that all processing workers on its processing plant sites are issued with a photo identification card, which identifies their full name, their employing entity and for workers commencing after the execution of this Deed, their employer's Australian Business Number;
 - (b) require all workers to carry such a card at all times while on its processing plant sites; and
 - (c) finalising its implementation of an electronic time keeping system applying to all processing workers on all of its processing plant sites, which enables Baiada to maintain and monitor accurate records of workers' working hours, including start and finishing times.

3. Regular self-auditing of Baiada's operations

- 3.1 Baiada will arrange, at its own expense, for an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (**Auditor**), to commence, after 6 months, 18 months, and 30 months (**Audits**), from the execution of this Deed, an audit of compliance with Commonwealth Workplace Laws and Fair Work Instruments, of all contractors and subcontractors supplying labour to Baiada processing plant sites. Each audit will consider a 20% sample of Baiada Contract Workers (**Sample**), provided by each contractor or subcontractor, with the Sample to be selected by Baiada in consultation with the FWO and approved by the Auditor.
- 3.2 For all audits conducted in accordance with clause 3.1, Baiada will require the Auditor to:
- (a) check any manual time sheets provided by the contractor or subcontractor against Baiada's electronic time records for the Audit Period to ensure that all workers are included in both records, and identify any inconsistencies between the two records;

- (b) check the Sample records to ensure the contractor or subcontractor has complied with Commonwealth Workplace Laws and Fair Work Instruments;
 - (c) review the amount the contractor or subcontractor has invoiced for the Audit Period, and consider whether the Sample records provided by the contractor or subcontractor accurately reflect the amount of work undertaken;
 - (d) review all leave and termination entitlements paid out to all Baiada Contract Workers for the Audit period; and
 - (e) provide a signed statement from the Auditor certifying the outcome of the audit.
- 3.3 Baiada will require each contractor and subcontractor to provide both Baiada and the Auditor with all documents related to the relevant Audit Period regarding Baiada Contract Workers, including:
- (a) time sheets for the Sample of Baiada Contract Workers employed by the contractor or subcontractor, that comply with the requirements under Commonwealth Workplace Laws;
 - (b) the invoices created by the contractor or subcontractor relating to the Sample;
 - (c) payslips for the Sample Baiada Contract Workers that comply with the requirements under Commonwealth Workplace Laws; and
 - (d) certification by the contractor or subcontractor's accounting professional that payments have been made to the Sample Baiada Contract Workers.
- 3.4 For each audit required under clause 3.1, Baiada will require the Auditor to provide a copy of the audit findings to Baiada and the FWO, within 2 months from each of the Audits (i.e. by 8 months, 20 months, and 32 months from the date of execution of this Deed).
- 3.5 The Auditor's findings will be considered by the FWO and published in all and any reports by the FWO on the progress and completion of the commitments contained within the Deed.
- 4. Training**
- 4.1 Baiada will, at its own expense, engage workplace relations specialists to design and implement, within 6 months of the date of execution of this Deed:
- (a) an ongoing workplace relations training program, with the aim to ensure that all current and new workers on its processing plant sites are made aware of their rights and entitlements pursuant to Commonwealth Workplace Laws and

Fair Work Instruments, including the provision of industry and language-specific induction documents; and

- (b) an ongoing workplace relations and human resources training program with the aim to ensure that all of its directors, officers, managers, and all persons who have a supervising or management responsibility on its processing plant sites (including all persons associated with contractors or subcontractors who have a supervising or management responsibility, regardless of their ordinary place of work), are aware of their obligations and the rights and entitlements owed to all workers engaged on its processing plant sites, pursuant to Commonwealth Workplace Laws, Fair Work Instruments, and Work Health and Safety and Migration Laws.

5. Engagement of contractors

5.1 Baiada will take all reasonably necessary and practicable steps to ensure that each contractor (and subcontractor):

- (a) understands its statutory and contractual obligations (under the written contract as referred to below) to comply with the FW Act in respect of its workers at Baiada's processing plant sites;
- (b) provides Baiada with a written certification signed by a director that its directors, officers and managers understand the contractor's statutory and contractual obligations (under the written contract referred to below) to comply with Commonwealth Workplace Laws in respect of its workers;
- (c) enters into a written contract with Baiada regarding the engagement of workers at Baiada's processing plant sites;
- (d) is required by the written contract to provide Baiada every six months with complete details of the terms and conditions upon which each worker is engaged at the processing plant sites, (including hours of work and rates of pay);
- (e) provides a Fair Work Information Statement to all Baiada Contract Workers before or on commencement of employment:
 - i. in a manner permitted by regulation 2.02 of the FW Regulations; and
 - ii. in a language of the Baiada Contract Worker's choice.
- (f) arranges payment of wages to all Baiada Contract Workers in a manner that complies with clause 22.1 of the *Poultry Processing Award 2010*, that is:

- i. Wages must be paid weekly, and for an amount which is not less than the minimum provided for by either:
 - a. the actual ordinary hours worked each week; or
 - b. according to the average number of ordinary hours worked each week.
 - (g) issues payslips to all Baiada Contract Workers within 1 day of the payment of wages in clause 5.1(g) above in accordance with the FW Regulations;
 - (h) keeps records of the payments in clause 5.1(f) above in accordance with the FW Regulations; and
 - (i) makes payment to workers by a method that is verifiable by an independent third party.
- 5.2 Baiada will ensure that its written contracts with each contractor include express terms to the effect that the contractor is responsible for ensuring compliance with Commonwealth Workplace Laws and Fair Work Instruments in respect of all Baiada Contract Workers engaged by or through that contractor on Baiada processing plant sites.
- 5.3 Where Baiada is notified (whether by an audit, or any other means) that a contractor or subcontractor has committed a Serious Breach of the FW Act, Baiada will, within 14 days of being notified, serve written notice on such contractor or subcontractor requiring them to rectify such a breach within 30 days. Where such a breach is not so rectified, Baiada will terminate its contract with that contractor or consent for that subcontractor to operate at the processing plant site.

**PART III - "BAIADA TAKES RESPONSIBILITY" – BAIADA'S TREATMENT OF
CURRENT AND FUTURE COMPLAINTS**

6. Reporting of non-compliance with Commonwealth Workplace Laws

- 6.1 Within 28 days of the date of execution of this Deed, Baiada will, at its own expense, establish and maintain a dedicated telephone hotline service (**Hotline**), with an interpreter provided in the language of each caller's choice, to ensure that any person, including workers on its processing plant sites and members of the public, may make enquiries, lodge complaints or grievances, or report potential non-compliance with Commonwealth Workplace laws or Fair Work Instruments, including underpayment of wages, at Baiada processing plant sites. All workers are to be provided with details of the Hotline upon commencing work at Baiada's processing plant sites.
- 6.2 Baiada will, at its own expense, publish a notice inviting current and former Baiada Contract Workers to contact the Hotline. Within 28 days of the date of execution of this Deed, Baiada will use its reasonable endeavours to publish such a notice:
- (a) on any Australian hosted website known by Baiada to be used by contractors or subcontractors of Baiada to advertise labour at Baiada's work sites;
 - (b) if the website uses a foreign language, in that foreign language;
 - (c) in the meal room area or change room area of each processing plant, in languages spoken by workers at that plant;
- 6.3 The notice referred to at clause 6.2(a) must be published for a minimum continuous period of one month, and the notice referred to at clause 6.2(c) must be published on an ongoing basis. Baiada must provide the FWO with evidence that notices have been published in accordance with the requirements of clause 6.2 and this clause 6.3.
- 6.4 Baiada will employ a suitably qualified dedicated human resources specialist as the human resources representative (**HR Representative**) within Baiada with responsibility for overseeing the Hotline, managing human resources support staff at each Baiada processing plant site, and managing responses to enquiries and the investigation of complaints and grievances from or about any person engaged (or formerly engaged) as a worker in Baiada's processing plant operations, including regarding rights and entitlements.
- 6.5 Baiada will employ suitably qualified human resources support staff (**HR Support Staff**) at each Baiada processing plant site, who will respond to any enquiries,

complaints and reports of potential non-compliance with Commonwealth Workplace Laws or Fair Work Instruments at the site and report those matters to the HR Representative. The HR Support Staff will respond to enquiries and assist in the investigation of complaints and grievances referred to above, under the direction of the HR Representative.

6.6 Baiada will undertake to, by way of its HR Representative and/or HR Support Staff:

- (a) investigate and use all reasonable endeavours to resolve any complaint, grievance or report of non-compliance with Commonwealth Workplace Laws or Fair Work Instruments, that is received on the Hotline, or by the HR Representative, within 20 business days of receipt of each complaint;
- (b) provide written notification to the FWO, and Baiada's directors and officers, within 25 business days of each complaint, grievance or report of non-compliance with Commonwealth Workplace Laws or Fair Work Instruments being received, including identification of the complaint, grievance or report made, the investigation undertaken, and the steps taken to rectify the conduct if required. The FWO reserves its rights to separately investigate any such complaint, grievance or report;
- (c) where any allegation involving Underpayments is made to the Hotline, investigate that complaint, and, within 25 business days of the Hotline receiving the allegation, provide a written report to the FWO, and Baiada's directors and officers, identifying the steps taken to assess whether there have been any Underpayments, and, if so, an estimate of the quantum of the Underpayments. The FWO reserves its rights to separately investigate any such allegations regarding Underpayments; and
- (d) in the course of investigating any alleged Underpayments in relation to a current or former Baiada Contract Worker, will consider the following:
 - i. any information or documents provided by a Baiada Contract Worker, which should include full name and visa records, place of residence (street and postal), time and attendance records, bank account deposit records, pay slips and other wage records, taxation records, and Tax File Number, as prepared or kept by the Baiada Contract Worker (which information or documents are subject to credibility checking and verification against the records, documents and information held by Baiada in the sub-clauses below);

- ii. any equipment sheets, loose items sheets, time sheets, or similar records held by Baiada, or reasonably obtainable by Baiada, which relate to the Baiada Contract Worker;
- iii. any documents held by Baiada, or reasonably obtainable by Baiada, which indicate the hours that a processing plant where the Baiada Contract Worker worked, was operating on a particular day;
- iv. any other documents held by Baiada, or reasonably obtainable by Baiada, which may indicate the times worked by a Baiada Contract Worker, or wages paid to a Baiada Contract Worker; and
- v. any other relevant information.

7. Rectification of Underpayments by contractors relating to work undertaken since 1 January 2015 until the date of execution of the Deed – Ex gratia payments

- 7.1 In relation to any allegation involving Underpayments that are identified, substantiated and quantifiable to the reasonable satisfaction of Baiada by way of the investigation process at clause 6.6 above, or by any other means, Baiada will take reasonable steps to require the relevant contractors and subcontractors to rectify such Underpayments incurred from 1 January 2015 or thereafter, to current or former Baiada Contract Workers, in respect of all workers engaged by that contractor or subcontractor.
- 7.2 If a contractor or subcontractor fails to rectify any Underpayments in accordance with clause 7.1 above, within 30 days of Baiada having identified, substantiated and quantified the Underpayments, Baiada will, subject to clause 7.3, make ex gratia payments to rectify such Underpayments up to a maximum contribution by Baiada of \$500,000 in aggregate.
- 7.3 Baiada is not liable to make an ex gratia payment for any Underpayments in respect of the period 1 January 2015 to the date of this deed, unless the allegation is notified to Baiada prior to 31 December 2015.
- 7.4 If after making ex gratia payments in accordance with clause 7.2, there remains as at 31 May 2016, any balance of the \$500,000 maximum contribution, then Baiada will by 30 June 2016 make a donation of that balance amount to be split equally between the following charities:
- (a) Bankstown Multicultural Youth Service;

- (b) Community Migrant Resource Centre;
- (c) Working Women's Centres in Darwin, Brisbane and Adelaide (with any donation to be split equally between the Working Women's Centres in the three locations);
- (d) Lifestart;
- (e) Children's Hospital Foundation; and
- (f) Children's Cancer Institute.

8. Rectification of Underpayments by contractors relating to work undertaken from the date of execution of the Deed – Ex gratia payments

- 8.1 Where a complaint of an underpayment has been made in respect of a Baiada Contract Worker in relation to work performed at any of Baiada's processing plant sites, relating to a period after the date of execution of this Deed, and such underpayments are identified, substantiated and quantified to the reasonable satisfaction of Baiada by way of the investigation process at clause 6.6 above, or by other means, Baiada will take reasonable steps to require the relevant contractors and/or subcontractors to rectify such underpayments.
- 8.2 If a contractor or subcontractor engaging a Baiada Contract Worker that has been underpaid is either unable or unwilling to rectify the underpayment in accordance with clause 8.1, then Baiada will make an ex gratia payment to the Baiada Contract Worker to rectify such underpayments within 30 days of underpayment having been determined.

PART IV - "ONGOING PARTNERSHIP BETWEEN FWO and Baiada"

9. Contractor Information

9.1 Baiada will provide the FWO with processing contractor (and subcontractor) details on a quarterly basis, and each time that a new processing contractor is engaged will provide updated details, including:

- (a) the full name and contact details of all Baiada Contract Workers;
- (b) the full name and contact details of all contractors who engage Baiada Contract Workers;
- (c) the full name, contact details, and original certified copy of passport of all Directors of any contractor who engage Baiada Contract Workers;
- (d) if known, post-employment email and telephone contact details for all Baiada Contract Workers who have, in the preceding three months, ceased working on Baiada processing plant sites, including overseas telephone and email contact details for all such workers who are not Australian residents;
- (e) written certification (as required by clause 5.1(b) above) signed by a director that its directors, officers and managers understand the contractor's statutory and contractual obligations to comply with Commonwealth Workplace Laws in respect of its workers; and
- (f) copies of all written contracts entered into between Baiada and any processing contractor.

9.2 Where contractor details has been provided by Baiada to FWO under clause 9.1, and these details have not changed, Baiada may refer to such details in later quarterly updates.

10. Provision of Audit and Training documents to the FWO

10.1 As required in the time frames set out in clause 3 above, Baiada will provide the FWO with:

- (a) the terms of reference of that audit;
- (b) the findings of that audit; and
- (c) any signed statement provided by any auditor.

10.2 Each quarter, Baiada will provide the FWO with information regarding the conducting of all training as required by clause 4.1 above, including copies of all materials provided to attendees, the names of attendees and a record of attendance signed by

attendees at the time and place of the training.

11. Sharing of information relating to Requests for Assistance

11.1 No more than 7 days following the execution of this Deed, the FWO will, in relation to any request for assistance by a Baiada Contract Worker that is currently under investigation by the FWO as at the date of execution of this Deed (**Current Request for Assistance**) and with each Baiada Contract Worker's consent:

- (a) notify Baiada of that Current Request for Assistance; and
- (b) provide Baiada with details relating to each Current Request for Assistance.

11.2 Within 5 business days of the FWO receiving any request for assistance after the date of execution of this Deed (**Future Request for Assistance**), the FWO will, with each Baiada Contract Worker's consent:

- (a) notify Baiada of that Future Request for Assistance; and
- (b) provide Baiada with details relating to each Future Request for Assistance.

11.3 Within 25 business days of notification by the FWO, Baiada will investigate and use all reasonable endeavours to attempt to resolve each Current or Future Request for Assistance.

11.4 Within 5 business days of resolving any Current or Future Request for Assistance, Baiada will provide the FWO with evidence that the Current or Future Request for Assistance has been resolved and, if substantiated, any identified Underpayments and other entitlement issues have been rectified.

11.5 If Baiada is not able to resolve any Current or Future Request for Assistance by agreement between Baiada and the Baiada Contract Worker, within 25 business days of notification by the FWO, Baiada will provide the FWO with a written report addressing the reasons why the request could not be resolved between the parties and the steps taken by Baiada to resolve the matter. Such report is to be provided by no later than 5 business days after the expiry of the 25 business days from notification by the FWO.

11.6 The FWO reserves its right to investigate any Future Request for Assistance that it considers serious or in the public interest to investigate or that Baiada has been unable to resolve within 25 business days.

12. Access to Baiada's sites and documents

12.1 Baiada will allow officers of the FWO to inspect its processing plant sites, including

any documents or things related to the subject matter of this Deed.

- 12.2 Baiada will provide the FWO with copies of all documents related to the subject matter of this Deed as reasonably requested by the FWO, regardless of the form in which any such request is made.
- 12.3 Nothing in this clause prevents or restricts the FWO or any Fair Work Inspector from exercising a function or power which it holds under Commonwealth Workplace Laws or other legislation.
- 12.4 Nothing in this clause requires Baiada to allow inspection of or provide copies of documents related to the subject matter of this Deed which documents are the subject of a claim of legal professional privilege or otherwise subject to a claim of confidentiality.

13. Public Inspection

- 13.1 This Deed is a public document.
- 13.2 The FWO may :
 - (a) make this Deed available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (b) release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (c) issue a media release in relation to this Deed; and
 - (d) from time to time, publicly refer to this Deed.

14. Publicity

- 14.1 The FWO agrees to provide Baiada with 24 hours to view FWO's initial media release (**Initial Media Release**) announcing this Deed. The Initial Media Release will include a statement from Baiada in relation to this Deed.
- 14.2 If Baiada requests any edits or amendments to the media release, the FWO will, in good faith, consider those requests.
- 14.3 Notwithstanding clause 14.2, Baiada agrees and acknowledges that if Baiada makes any suggested edits or amendments to a media release, the FWO is under no obligation to accept any of them.
- 14.4 The FWO will reflect the co-operation of Baiada in entering into this Deed in the Initial Media Release.

14.5 Nothing in this clause prevents the FWO from publishing fair and factual information relating to Baiada.

PART V - PROCEDURAL TERMS

15. Term of obligations arising from Deed

- 15.1 All obligations owed by Baiada arising from this Deed entered into with the FWO will remain in force for a period of 30 months from the date of entry into this Deed.

16. Commencement of Proactive Compliance Deed

- 16.1 This Deed comes into effect when both Baiada and the FWO have executed this Deed.

17. No Inconsistent Statements

17.1 Baiada:

- (a) must not; and
- (b) must ensure that each of its officers, employees or agents do not;
- (c) must use all reasonable endeavours to ensure that each of its contractors and subcontractors do not,

make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the acknowledgements made in this Deed.

18. Termination by the FWO

- 18.1 Without prejudice to any right or remedy the FWO may have, at any time, the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if Baiada commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.
- 18.2 The FWO will, in the case of any breach of this Deed by Baiada, by notice in writing, require Baiada to rectify the breach within a reasonable period of time.

19. Independent Legal Advice

19.1 Baiada acknowledges that:

- (a) before executing this Deed, Baiada was given the opportunity to seek independent legal and other advice of its choice;
- (b) in light of any advice provided, Baiada considered its position; and
- (c) Baiada fully understands the effect of this Deed.

20. Continuing obligations

20.1 The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):

- (a) clause 1 (Statements by Baiada on Compliance with Fair Work Act);
- (b) clause 3 (Self-Auditing and Reporting to the FWO), but only to the extent that it enables the audit commencing 30 months after the execution of this Deed to be completed;
- (c) clause 17 (No Inconsistent Statements).

21. Legally binding

21.1 The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

22. Entire agreement

22.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and Baiada.

23. Construction

23.1 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

23.2 Unless expressed to the contrary in this document:

- (a) words in the singular include the plural and vice versa; and
- (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

24. Severance

24.1 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

25. Governing law

- 25.1 This Deed shall be construed in accordance with the laws for the time being of the State of New South Wales and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

26. Counterparts

- 26.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

27. Costs in respect of this Deed

- 27.1 The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation.

28. Notices

- 28.1 Any notice, request or other communication to be given or served pursuant to this Deed must be in writing and dealt with as follows:

- (a) if given by Baiada to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
- (b) if given by the FWO to Baiada, marked for the attention of Baiada's Contact Person with the address indicated in Schedule 1 or as otherwise notified by Baiada.

- 28.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.

- 28.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 business days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

29. Date of this Deed

- 29.1 The date the parties execute the Deed, or, if it is executed on different dates, the date of last execution.

30. Definitions

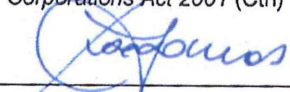
30.1 In this Deed:

- (a) **Audit Period** means a 4 week period of work, including any public holidays or weekends, that occurred at some time in the preceding six or twelve months of the audit (as the case may be);
- (b) **Baiada Contract Worker** means any processing services worker at Baiada's processing plant sites who is employed by contractors or subcontractors of Baiada;
- (c) **Baiada's Contact Person** means the person nominated by Baiada in Schedule 1 to this Deed, or any other person specified by Baiada in writing and notified to the FWO;
- (d) **Commonwealth** means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman;
- (e) **Commonwealth Workplace Laws** means:
 - i. the *Fair Work Act 2009*;
 - ii. the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;
 - iii. the *Fair Work Regulations 2009*;
 - iv. the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*;
- (f) **Deed** means this Proactive Compliance Deed, including any Schedules and Attachments;
- (g) **Employing Entity** includes a corporation, a partnership or a sole trader;
- (h) **Fair Work Instruments** means:
 - i. a modern award;
 - ii. an enterprise agreement;
 - iii. a workplace determination;
 - iv. a Fair Work Commission order;
- (i) **FW Act** means the *Fair Work Act 2009* (Cth);

- (j) **FWO** means the Fair Work Ombudsman;
- (k) **FW Regulations** means the *Fair Work Regulations 2009* (Cth);
- (l) **Related Company** means a related body corporate as defined in the *Corporations Act 2001* (Cth);
- (m) **Serious Breach of the FW Act** means:
 - i. a contravention of any of the general protections contained in Part 3-1 of the FW Act;
 - ii. one or more contraventions giving rise to significant Underpayments (upwards of \$5,000 in total (not per employee)); or
 - iii. a failure to comply with a Notice to Produce or Compliance Notice issued by a Fair Work Inspector under sections 712 or 716 of the FW Act;
- (n) **Underpayments** means any underpayment or non-payment of wages owing to a Baiada Contract Worker to the extent there is a shortfall to the minimum prescribed pursuant to Commonwealth Workplace Laws or Fair Work Instruments (including underpayment or non-payment of overtime and penalty rates) in relation to all periods worked from 1 January 2015, which has been identified, substantiated and quantified to the reasonable satisfaction of Baiada by way of:
 - i. the self-auditing processes referred to in clause 3 above;
 - ii. the reporting processes referred to in clause 6 above; or
 - iii. any other means;
- (o) **Work Health and Safety and Migration Laws** means
 - i. the *Work Health and Safety Act 2011*;
 - ii. the *Work Health and Safety Regulations 2011*;
 - iii. the *Migration Act 1958*; and
 - iv. the *Migration Regulations 1994*.

EXECUTED AS A DEED

EXECUTED BY BAIADA POULTRY PTY LTD in accordance with section 127(1) of the Corporations Act 2001 (Cth)



(Signature of Director/Secretary)

GEORGE TSEKOURAS

(Name of Director/Secretary)

23 OCTOBER 2015

(Date)



(Signature of Director)

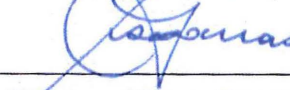
Simon Camilleri

(Name of Director)

23 OCTOBER 2015

(Date)

EXECUTED BY BARTTER ENTERPRISES PTY LTD in accordance with section 127(1) of the Corporations Act 2001 (Cth)



(Signature of Director/Secretary)

GEORGE TSEKOURAS

(Name of Director/Secretary)

23 OCTOBER 2015

(Date)



(Signature of Director)

Simon Camilleri

(Name of Director)

23 OCTOBER 2015

(Date)

SIGNED FOR and on behalf of the COMMONWEALTH OF AUSTRALIA as represented by the Office of the Fair Work Ombudsman

MICHAEL CAMPBELL

(Printed Name)

DEPUTY FAIR WORK OMBUDSMAN

(Title)



(Signature)


23 OCTOBER 2015

(Date)

In the presence of :

Dale Neil Woods

(Name of witness in full)



(Signature)