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**Section 44 of the Competition Act (Cap. 50B)**

**Grounds of Decision issued by the Competition and Consumer Commission of Singapore**

**Application for Decision by Mr. Tan Chin Long, Kee Song Holdings Pte. Ltd., Sinmah Holdings (S) Pte. Ltd., Tong Huat Poultry Processing Factory Pte. Ltd. and Tysan Food Pte. Ltd.**

**29 June 2018**

**Case number: CCCS 400/005/17**

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<p>Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X].</p>
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## I. INTRODUCTION

1. On 12 September 2017, the Competition and Consumer Commission of Singapore (“**CCCS**”) <sup>1</sup> received a joint application for decision (“**Application**”) from Mr Tan Chin Long (“**TCL**”),<sup>2</sup> Kee Song Holdings Pte. Ltd. (“**KSH**”), Sinmah Holdings (S) Pte. Ltd. (“**Sinmah**”), Tong Huat Poultry Processing Factory Pte. Ltd. (“**Tong Huat**”), and Tysan Food Pte. Ltd. (“**Tysan**”) (each an “**Applicant**”, collectively, “**the Applicants**”) made pursuant to section 44 of the Competition Act (Cap. 50B) (“**the Act**”).
2. The Application was made in relation to the Applicants’ proposed formation of a joint venture company, Singapore Poultry Hub Pte. Ltd. (“**SPH**”), for the purposes of conducting poultry slaughtering services<sup>3</sup> for and on behalf of each Applicant (or its respective Affiliates<sup>4</sup>) (“**the Proposed JV**”).
3. The Applicants sought a decision as to whether the Proposed JV would infringe section 34 of the Act. CCCS accepted the Application as complete on 12 September 2017. On 22 November 2017, the Applicants lodged a Form 2 with CCCS. CCCS accepted Form 2 as complete on 15 February 2018.
4. This decision sets out CCCS’s assessment of the Application. As part of its assessment, CCCS conducted a public consultation which included contacting twenty-seven (27) third-parties comprising local government agencies and regulatory bodies,<sup>5</sup> seventeen (17) customers<sup>6</sup> and seven (7) competitors<sup>7</sup> of the Applicants, for their views on the Proposed JV. CCCS received feedback from eleven (11) third-parties.<sup>8</sup> Requests for information (“**RFIs**”) were also sent to the Applicants to seek further information and clarifications for the assessment. CCCS’s decision is based on the submissions and information provided by the Applicants as well as information obtained from third-parties.

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<sup>1</sup> CCCS was known as the Competition Commission of Singapore before 1 April 2018.

<sup>2</sup> TCL, together with his wife, Mdm. Teo Siew Giok (“**TSG**”), is the controlling shareholder of Boong Poultry Pte. Ltd. (“**Boong**”). In addition, TCL is also the Group Executive Chairman of Boong. Paragraphs 3.1.2 and 3.2.1 of Form 1.

<sup>3</sup> Basic poultry slaughtering services consist of the following processes: killing and bleeding; scalding and de-feathering; evisceration; inspection of eviscerated carcasses; cooling of carcasses; and tagging of dressed poultry (i.e. freshly slaughtered chickens) (collectively, the “**Slaughtering Services**”). Paragraph 7.2 of Form 1.

<sup>4</sup> Details of the Applicants’ respective Affiliates are set out in section II(d) below. “**Affiliates**” is defined by the Applicants to mean, in relation to any person, any subsidiary or ultimate holding company of that person and any other subsidiary of that ultimate holding company.

<sup>5</sup> Agri-food and Veterinary Authority of Singapore (“**AVA**”); JTC Corporation (“**JTC**”); and SPRING Singapore (now Enterprise Singapore, with effect from 1 April 2018) (“**EnterpriseSG**”).

<sup>6</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

<sup>7</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

<sup>8</sup> AVA; JTC; EnterpriseSG; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

## II. THE FACTS AND APPLICANTS' SUBMISSIONS

### (a) The Application for Notification for Decision

5. The Application concerns the Proposed JV to form SPH for the purposes of conducting poultry Slaughtering Services for and on behalf of each Applicant (or its respective Affiliates). The Applicants entered into a Shareholders' Agreement dated 12 September 2017 ("**SHA**") which governs the Applicants' relationship as shareholders in SPH.<sup>9</sup>
6. The Applicants have submitted that the main objective of the Proposed JV is the establishment of a poultry slaughtering facility ("**the Facility**") within JTC's proposed poultry processing hub at Buroh Lane, Singapore ("**JTC's PPH**"). SPH will occupy #01-01 and #01-02 of JTC's PPH ("**the JTC Lease**"),<sup>10</sup> while all five Applicants and/or their Affiliates will occupy other floors in the building, with some floors housing more than one Applicant or its Affiliate.
7. Each Applicant (or its Affiliate) will enter into a separate arm's length Service Agreement with SPH in respect of the provision of Slaughtering Services by SPH, such that there will be a total of five (5) Service Agreements.<sup>11</sup>
8. The Applicants are currently competitors in the poultry industry in Singapore, particularly in the downstream marketing and sale of fresh chilled chickens (whole and parts), frozen chickens (whole and parts) and/or frozen processed chickens-related food products (the "**Overlapping Products**") to the wholesale market<sup>12</sup> in Singapore. As such, the Applicants submitted that the consolidation of their financial capital, equipment, manpower and expertise to establish the Facility to conduct Slaughtering Services for and on behalf of the Applicants (or their respective Affiliates) will raise questions of compatibility with section 34 of the Act.<sup>13</sup> Nonetheless, the Applicants also submitted that the Proposed JV is likely to fall under the exclusion set out in section 35 read with paragraph 9 of the Third Schedule to the Act ("**the NEB Exclusion**"), on the basis that the integration of the Applicants' Slaughtering Services operations would likely lead to significant gains in efficiency that will benefit the poultry industry and consumers in Singapore alike.<sup>14</sup>

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<sup>9</sup> Paragraph 13.1.1 of Form 1.

<sup>10</sup> Paragraph 13.1.2 of Form 1.

<sup>11</sup> Paragraph 13.1.3 of Form 1.

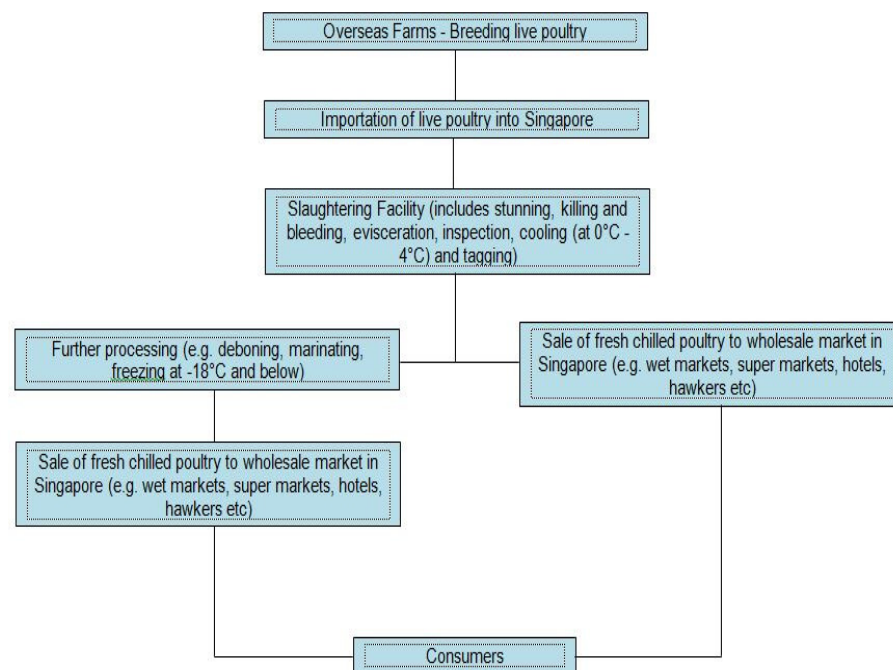
<sup>12</sup> Wholesale market includes wet markets, supermarkets, hotels, hawkers etc.

<sup>13</sup> Paragraph 14.1 of Form 1.

<sup>14</sup> Paragraph 18.1 of Form 1.

**(b) Poultry Supply Chain in Singapore**

9. Based on the Applicants' submissions, the typical operation of a vertically integrated poultry firm is set out in the diagram below:<sup>15</sup>



10. According to the Applicants, the diagram above is reflective of a vertically integrated poultry distributor with activities spread among entities within a common corporate group. The supply chain starts from the rearing of livestock which takes place on farms located in Malaysia, after which live chickens are imported by poultry distributors in Singapore. The live poultry is then distributed to AVA-licensed slaughterhouses. Upon completion of the Slaughtering Services, the fresh chilled chickens (i.e. freshly slaughtered chickens) are either sold to the wholesale market in Singapore, or undergo further processing in the form of value-added services such as deboning and marination.<sup>16</sup>
11. There are currently no foreign meat establishments approved by AVA for the export of chilled chickens to Singapore. Fresh chilled chickens in Singapore are only available through the slaughtering of live poultry imported from Malaysia, with such Slaughtering Services conducted in AVA-licensed slaughterhouses in Singapore.<sup>17</sup>

<sup>15</sup> Paragraph 7.1 of Form 1.

<sup>16</sup> Paragraph 7.2 of Form 1.

<sup>17</sup> Paragraph 8.2.1 of Form 1. AVA has separately confirmed that the import of meat and meat products is only allowed from accredited countries and meat establishments, and that there are currently no meat establishments which are approved for export of chilled chicken to Singapore. AVA's response to question 9 of CCCS's RFI dated 23 October 2017, received 20 November 2017.

**(c) Background to JTC's PPH**

12. According to JTC, JTC recognised that there was likely to be demand for land from poultry slaughtering companies which (i) would be affected by HDB's redevelopment plans for Defu Industrial Estate [X], or (ii) have leases on JTC land that are expiring [X].<sup>18</sup> JTC therefore developed a concept, in consultation with the relevant Government agencies, to cluster poultry slaughtering companies in a multi-storey multi-tenanted hub as a long-term approach for the poultry slaughtering industry. It was assessed that benefits such as land intensification, productivity improvement (in using an automated slaughtering line) and environmental sustainability can be achieved with the clustering of poultry slaughtering companies in a single location. JTC then shared this proposed development concept at a dialogue session with the Poultry Merchants' Association, Singapore that was attended by all poultry slaughtering companies in August 2014.<sup>19</sup>
13. Following the dialogue session, the Kee Song Group, the Sinmah Group and the Tong Huat Group [X]<sup>20</sup> (together with the Aqina Group<sup>21</sup> and Thye San Group<sup>22</sup> [X]) approached JTC to initiate discussion on the proposed take up of space at the PPH for their future business needs.<sup>23</sup> They proposed to combine their slaughtering capabilities, know-how, capital and assets to form a joint venture company which will utilise the Facility within JTC's PPH.<sup>24</sup>

**(d) The Applicants, their Respective Affiliates, and their Activities**

14. The Applicants are each members of various corporate groups that are vertically-integrated, to varying extents, across different levels of the poultry supply chain in Singapore.
15. Based on information provided by the Applicants, the activities of the Applicants and their respective Affiliates in each level of the poultry supply chain in Singapore are summarised in **Table 1** below:

***Table 1: Summary of Applicants' Activities***

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<sup>18</sup> In relation to the alternative uses of this land, according to JTC, [X]. JTC's response to questions 1, 5 and 6 of CCCS's RFI dated 12 October 2017, received 15 November 2017.

<sup>19</sup> JTC's response to question 1 of CCCS's RFI dated 12 October 2017, received 15 November 2017.

<sup>20</sup> Paragraph 13.2.1 of Form 1.

<sup>21</sup> To which Boong belongs.

<sup>22</sup> To which Tysan belongs.

<sup>23</sup> JTC's response to question 1 of CCCS's RFI dated 12 October 2017, received 15 November 2017.

<sup>24</sup> Paragraph 13.2.1 of Form 1.

	<b>Boong</b>	<b>KSH</b>	<b>Sinmah</b>	<b>Tong Huat</b>	<b>Tysan</b>
Breeding of live chickens in Malaysia <sup>25</sup>	✓	✓	✗	✓	✓
Importation of live chickens into Singapore <sup>26</sup>	✓	✓	✓	✓	✓
Slaughtering of chickens	✗	✓ (for internal use only)	✓ (for internal use only)	✓ (for internal use only)	✗
Sale of Overlapping Products to wholesale market in Singapore	✓	✓	✓	✓	✓

16. The Applicants have submitted that they (or their Affiliates) will retain activities that are upstream and downstream to that of the Slaughtering Services, i.e., they will remain as competitors, and will have separate premises to conduct activities retained by each Applicant (or its Affiliates). The activities retained by each Applicant (or its Affiliates) are in respect of:<sup>27</sup>

- (a) **upstream level of the supply chain:** the breeding, supply and/or procurement of live poultry from AVA-approved farms in Malaysia;<sup>28</sup> and
- (b) **downstream level of the supply chain:** further processing services (such as marinating, cooking and freezing services), and marketing and distribution of the Overlapping Products to the wholesale market in Singapore,

(collectively, “**the Retained Activities**”).

<sup>25</sup> Each Applicant and/or its Affiliates may also sell live chickens from their respective farms in Malaysia to unrelated Singapore importers of live chickens, including the other Applicants. Paragraphs 2.1 to 2.5 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>26</sup> Each Applicant and/or its Affiliates may also sell the live chickens that it has imported into Singapore, to unrelated poultry suppliers in Singapore, including the other Applicants. The Applicants further submitted that the sale of live poultry or any of the Overlapping Products between the Applicants would only occur on an ad-hoc basis (e.g. in the event of a shortage of live poultry or any of the Overlapping Products, the Applicants may purchase from one another to fulfill their orders to customers). Paragraph 13.1 of Form 2; Paragraph 7.5 of Form 1; and Paragraphs 1.1 to 1.5 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>27</sup> Paragraph 13.2.5 of Form 1.

<sup>28</sup> The Applicants purchase live chickens from related and non-related farms in Malaysia.

## Boong

17. Boong is part of the Aqina Group, which is controlled by TCL and his wife TSG<sup>29</sup> through a parent company Aqina Holdings Sdn. Bhd. (“**Aqina Holdings**”).<sup>30</sup> Boong is involved in the following activities relating to the poultry supply chain in Singapore:
- (a) Breeding of live chickens in Malaysia for export to Singapore, through its Affiliate Aqina Farming Sdn. Bhd. (“**Aqina Farm**”),<sup>31</sup> which is wholly-owned by Aqina Holdings;<sup>32</sup>
  - (b) Import of live chickens into Singapore, as sourced from farms in Malaysia owned by: (i) Boong’s Affiliate, Aqina Farm; (ii) other Applicants and/or their Affiliates; and (iii) other unrelated exporters<sup>33</sup> for the purpose of further processing internally, and sale to other poultry suppliers and to the wholesale market in Singapore;<sup>34</sup> and
  - (c) Sale of chickens in Singapore. Specifically, (i) the sale of live chickens to third-party poultry producers, including other Applicants and/or their Affiliates, and other unrelated poultry suppliers;<sup>35</sup> and (ii) the sale of Overlapping Products to the wholesale market in Singapore.<sup>36</sup>
18. Boong and its Affiliates do not conduct Slaughtering Services internally and have contracted with Soonly Food Processing Industries Pte. Ltd. (“**Soonly**”), a subsidiary of the Lee Say Group, for the provision of such services.<sup>37</sup>

## KSH

19. KSH is part of the Kee Song Group and is a wholly-owned subsidiary of Kee Song Bio-Technology Holdings Limited (“**KSBT**”) whose shares are publicly traded.<sup>38</sup> KSH is involved in the following activities relating to the poultry supply chain in Singapore:

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<sup>29</sup> Paragraph 11.2 of Form 1.

<sup>30</sup> Annex 2 of Form 1.

<sup>31</sup> Paragraph 2.1 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>32</sup> Annex 2 of Form 1.

<sup>33</sup> Paragraph 2.1 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>34</sup> Paragraphs 7.3 and 7.5 of Form 1.

<sup>35</sup> Paragraphs 7.3 and 7.5 of Form 1.

<sup>36</sup> Paragraph 7.3 of Form 1.

<sup>37</sup> Paragraph 7.7 of Form 1.

<sup>38</sup> Paragraph 11.4 and Annex 3 of Form 1.



- (a) Breeding of live chickens in Malaysia for export to Singapore, through its wholly-owned subsidiary, Meng Kee Poultry (M) Sdn Bhd (“**Meng Kee**”);<sup>39</sup>
- (b) Import of live chickens into Singapore, through its subsidiary Kee Song Food Corporation (S) Pte. Ltd. (“**KSFC**”), as sourced from farms in Malaysia owned by: (i) KSH’s wholly-owned subsidiary, Meng Kee; (ii) other Applicants and/or their Affiliates; and (iii) other unrelated exporters<sup>40</sup> for the purpose of further processing internally;<sup>41</sup>
- (c) Slaughtering of chickens in Singapore, through KSFC, for internal purposes only, i.e. for themselves and/or their Affiliates for the eventual purpose of selling Overlapping Products to third-parties. Slaughtering Services are not in and of themselves sold to third-parties;<sup>42</sup> and
- (d) Sale of chickens in Singapore, through KSFC. Specifically, the sale of Overlapping Products to the wholesale market in Singapore.<sup>43</sup>

### Sinmah

20. Sinmah is part of the Sinmah Group and is owned by various members of the Chiew family.<sup>44</sup> Sinmah is involved in the following activities relating to the poultry supply chain in Singapore:

- (a) Import of live chickens into Singapore, through its Affiliate, Sinmah Poultry Processing (S) Pte. Ltd. (“**Sinmah Poultry**”), which is not directly owned by Sinmah, but related to the rest of the Sinmah Group through common shareholders. Live chickens are imported from and/or sourced from farms in Malaysia owned by: (i) other Applicants and/or their Affiliates; and (ii) other unrelated exporters<sup>45</sup> for the purpose of further processing internally;<sup>46</sup>

<sup>39</sup> Paragraph 2.2 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>40</sup> Paragraph 2.2 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>41</sup> Paragraphs 7.3 and 7.5 of Form 1.

<sup>42</sup> Paragraph 7.6 of Form 1.

<sup>43</sup> Paragraph 7.3 of Form 1.

<sup>44</sup> Paragraph 11.6 of Form 1.

<sup>45</sup> Paragraph 11.6 and Annex 4 of Form 1; Paragraph 2.4 of the Applicants’ response to CCCS’s RFI dated 6 October 2017; and Paragraphs 15.1 and 15.2 of the Applicants’ response to CCCS’s RFI dated 10 January 2018.

<sup>46</sup> Paragraphs 7.3 and 7.5 of Form 1.

- (b) Slaughtering of chickens in Singapore, through Sinmah Poultry, for internal purposes only, i.e. for themselves and/or their Affiliates for the eventual purpose of selling Overlapping Products to third-parties. Slaughtering Services are not in and of themselves sold to third-parties;<sup>47</sup> and
  - (c) Sale of chickens in Singapore, through Sinmah Poultry. Specifically, the sale of Overlapping Products to the wholesale market in Singapore.<sup>48</sup>
21. Sinmah has submitted that the Sinmah Group is not involved in the breeding of live chickens in Malaysia.<sup>49</sup>

#### Tong Huat

22. Tong Huat's majority shareholder is Cab Cakaran Corporation Berhad ("**Cab Cakaran**"), a company registered in Malaysia and listed on the mainboard of Bursa Securities Malaysia Berhad.<sup>50</sup> Tong Huat is involved in the following activities relating to the poultry supply chain in Singapore:
- (a) Breeding of live chickens in Malaysia for export to Singapore, through its Affiliates Cab Cakaran Southern Sdn. Bhd. ("**Cab Cakaran Southern**") and Protheme Pte. Ltd. ("**Protheme**");
  - (b) Import of live chickens into Singapore, directly and through its wholly-owned subsidiary Ban Hong Poultry Pte. Ltd. ("**Ban Hong**") as well as Protheme, as sourced from farms in Malaysia owned by: (i) its Affiliates Cab Cakaran Southern and Protheme; (ii) other Applicants and/or their Affiliates; and (iii) other unrelated exporters<sup>51</sup>, for the purpose of further processing internally, and sale to other poultry suppliers and to the wholesale market in Singapore;<sup>52</sup>
  - (c) Slaughtering of chickens in Singapore, for internal purposes only, i.e. for themselves and/or their Affiliates for the eventual purpose of selling Overlapping Products to third-parties. Slaughtering Services are not in and of themselves sold to third-parties;<sup>53</sup> and

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<sup>47</sup> Paragraph 7.6 of Form 1.

<sup>48</sup> Paragraph 7.3 of Form 1.

<sup>49</sup> Email from the Applicants' joint legal representative, Dentons Rodyk & Davidson LLP, dated 2 March 2018.

<sup>50</sup> Paragraph 11.8 and Annex 5 of Form 1.

<sup>51</sup> Paragraph 2.5 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>52</sup> Paragraphs 7.3 and 7.5 of Form 1.

<sup>53</sup> Paragraph 7.6 of Form 1.

- (d) Sale of chickens in Singapore. Specifically, (i) the sale of live chickens to third-party poultry producers, including other Applicants and/or their Affiliates, and other unrelated poultry suppliers;<sup>54</sup> and (ii) the sale of Overlapping Products to the wholesale market in Singapore.<sup>55</sup>

### Tysan

23. Tysan is part of the Thye San Group, which is controlled by Toh Cheng Hai, Toh Ching Kang and Toh Ching Lim<sup>56</sup>. Tysan is involved in the following activities relating to the poultry supply chain in Singapore:

- (a) Breeding of live chickens in Malaysia for export to Singapore, through its Affiliate Gesing Group Sdn. Bhd. (“**Gesing Group**”);
- (b) Import of live chickens into Singapore, through its Affiliate Toh Thye San Farm, as sourced from farms in Malaysia owned by: (i) its subsidiary, Gesing Group; (ii) other Applicants and/or their Affiliates; and (iii) other unrelated exporters<sup>57</sup> for the purpose of further processing internally;<sup>58</sup> and
- (c) Sale of chickens in Singapore, through its Affiliates Toh Food Pte Ltd (“**Toh Food**”) and Toh Thye San Farm<sup>59</sup>. Specifically, the sale of Overlapping Products to the wholesale market in Singapore.<sup>60</sup>

24. Tysan and its Affiliates do not conduct Slaughtering Services internally and have contracted with Soonly for the provision of such services.<sup>61</sup>

### Iceberg Cold Storage Pte. Ltd. (“Iceberg”)

25. In addition, CCCS notes that four of the Applicants, namely Tong Huat, Tysan, KSH and Sinmah, also own Iceberg, whose primary business is the provision of cold storage services.<sup>62</sup> CCCS understands that Iceberg will also occupy a unit in JTC’s PPH.<sup>63</sup> According to the Applicants, notwithstanding the common ownership through the four above-named Applicants, Iceberg and SPH operate as separate and distinct entities, and

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<sup>54</sup> Paragraphs 7.3 and 7.5 of Form 1.

<sup>55</sup> Paragraph 7.3 of Form 1.

<sup>56</sup> Paragraph 11.10 of Form 1.

<sup>57</sup> Paragraph 2.3 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>58</sup> Paragraphs 7.3 and 7.5 of Form 1.

<sup>59</sup> Paragraph 11.10 of Form 1.

<sup>60</sup> Paragraph 7.3 of Form 1.

<sup>61</sup> Paragraph 7.7 of Form 1.

<sup>62</sup> Paragraphs 18.1 and 18.4 of the Applicants’ response to CCCS’s RFI dated 21 November 2017.

<sup>63</sup> Annex 12 of Form 1.

Iceberg's business operations are intended to be independent of SPH's operations.<sup>64</sup>

26. As Iceberg does not form part of the Proposed JV notified and assessed by CCCS in this decision, no decision by CCCS is made in relation to Iceberg or the activities of the four above-named Applicants pertaining to Iceberg.

**(e) The Proposed JV**

27. The ownership structure of SPH is as follows:<sup>65</sup>

<b>Applicant</b>	<b>Number of Shares in the Issued Share Capital of SPH</b>	<b>Percentage Shareholdings in the Issued Share Capital of SPH</b>
TCL <sup>66</sup>	62,500	12.5%
KSH	125,000	25%
Sinmah	125,000	25%
Tong Huat	125,000	25%
Tysan	62,500	12.5%

Activities of the Proposed JV

28. The Applicants submitted that the main activity undertaken by SPH will be the provision of Slaughtering Services. Upon the completion of JTC's PPH, the Kee Song Group, the Sinmah Group and the Cab Group will integrate their current slaughtering operations, and together with the Aqina Group and the Thye San Group, will establish the Facility. This will result in the transfer of employment of certain existing employees with the relevant technical skills from their current employers (i.e. the Applicants or their Affiliates) to SPH. SPH will also procure new machinery for the Slaughtering Services and will assume all Slaughtering Services for and on behalf of each of the Applicants (or their Affiliates).<sup>67</sup> The Applicants have also submitted that SPH intends to supply Slaughtering Services to other poultry distributors in the market eventually,<sup>68</sup> albeit that the Applicants envisage that third-party customers will not receive as favourable slaughtering fees as the Applicants unless certain conditions are met (e.g.

<sup>64</sup> Paragraphs 18.2 and 18.5 of the Applicants' response to CCCS's RFI dated 21 November 2017.

<sup>65</sup> Paragraph 13.2.2 of Form 1.

<sup>66</sup> The controlling shareholder (together with his wife) and Group Executive Chairman of Boong.

<sup>67</sup> Paragraph 13.2.3 of Form 1.

<sup>68</sup> The Applicants submitted that this would include poultry distributors without slaughterhouse facilities which previously relied on vertically-integrated poultry distributors for the Slaughtering Services, and vertically-integrated poultry distributors which consider it more cost effective to switch to SPH or may engage SPH on an ad-hoc basis. SPH's BOD may also decide to have the management of SPH source for alternative business in the event that SPH does not meet its financial targets. Paragraph 12.4 of Form 2; and Annex F of the Applicants' response to CCCS's RFI dated 10 January 2018.

minimum number of chickens to be slaughtered per year and contract duration in order to obtain volume discounts or more favourable slaughtering fees, and SPH has excess capacity to provide such Slaughtering Services to third-parties).<sup>69</sup>

29. According to the Applicants, each Applicant (or its Affiliate) will remain responsible for procuring its own live chickens. SPH will only conduct Slaughtering Services in respect of these live chickens. Once SPH completes the Slaughtering Services, the fresh chilled chickens will be returned to the Applicants (or their Affiliates).<sup>70</sup>
30. For completeness, SPH will also undertake the following ancillary services:<sup>71</sup>
  - (a) the provision of facilities management services in respect of JTC's PPH; and
  - (b) the establishment of a dormitory within JTC's PPH ("**Dormitory**") and the operation of the Dormitory and the provision of dormitory services.
31. As noted in paragraph 16 above, the Applicants and/or their Affiliates will remain as competitors in the Retained Activities upstream and downstream to the Slaughtering Services.

#### *Applicants' Initial Envisaged Arrangements in relation to SPH*

##### Staff and Management

32. The Applicants submitted that SPH's Board of Directors ("**BOD**") will consist of Directors appointed by the Applicants ("**Representative Directors**"), with each Applicant entitled to appoint or revoke the appointment of one Representative Director.<sup>72</sup> The BOD will be responsible for the establishment of the management and support functions of SPH and for determining all matters relating to the management, supervision, operation and conduct of SPH's business.<sup>73</sup> This includes the appointment of the senior management of SPH,<sup>74</sup> as well as the terms of

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<sup>69</sup> Paragraphs 13.1 to 13.3, and 15.1 of the Applicants' response to CCCS's RFI dated 22 February 2018.

<sup>70</sup> Paragraphs 13.2.4 of Form 1.

<sup>71</sup> Paragraph 13.2.6 of Form 1.

<sup>72</sup> Clause 5.1 of the SHA.

<sup>73</sup> Clauses 5.3(a) and 5.3(b) of the SHA.

<sup>74</sup> Clause 5.3(c) of the SHA.

employment of these appointees,<sup>75</sup> extending to matters such as their remuneration and performance assessments.<sup>76</sup>

33. The senior management of SPH will comprise the Chief Executive Officer (“CEO”) or Managing Director (“MD”), Chief Financial Officer (“CFO”), and the Chief Operating Officer (“COO”).<sup>77</sup> The Applicants have not yet identified the persons who will take on the senior management roles in SPH.<sup>78</sup>
34. As regards staffing, the Applicants had initially submitted that they have not decided on the specific identities and number of employees that will be (i) transferred from the employment of the Applicants or their Affiliates to SPH; and (ii) directly employed by SPH.<sup>79</sup> In addition, the Applicants had not discussed whether certain transferred employees will undertake managerial positions in SPH;<sup>80</sup> and had not indicated whether the transfer of employees will be on a permanent basis or otherwise (e.g. secondment).

#### Capacity Allocation and Slaughtering Service Agreements

35. The Applicants had initially submitted that the allocation of SPH’s slaughtering capacity amongst themselves will be mutually negotiated at an SPH board meeting [§].<sup>81</sup> SPH is expected to have sufficient capacity to satisfy the Applicants’ respective needs for Slaughtering Services, with some buffer capacity.<sup>82</sup> However, in the unlikely situation that there is insufficient capacity, the available slaughtering capacity will be shared among the Applicants and their Affiliates [§].<sup>83</sup>
36. In relation to the arm’s length Service Agreements that each Applicant (or its Affiliate) will enter into separately with SPH, the Applicants also initially submitted that, amongst other terms in the Service Agreements, [§].<sup>84</sup> The slaughtering fee will be determined collectively by the SPH BOD in consultation with SPH’s external business advisor [§].<sup>85</sup>

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<sup>75</sup> Clause 5.3(c) of the SHA.

<sup>76</sup> Paragraph 11.1 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>77</sup> Clause 5.3(c) of the SHA.

<sup>78</sup> Paragraph 10.3 of the Applicants’ response to CCCS’s RFI 6 October 2017.

<sup>79</sup> Paragraphs 10.2 to 10.4 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>80</sup> Paragraphs 10.2 and 10.3 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>81</sup> Paragraphs 12.1 and 13.1 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>82</sup> Paragraph 18.1 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>83</sup> Paragraph 18.1 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>84</sup> Paragraph 12.3 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

<sup>85</sup> Paragraph 12.3 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

37. The Applicants had also initially submitted that, under the SHA, SPH's entry into the Service Agreements will require the approval of SPH's BOD.<sup>86</sup>

#### Information Sharing under SPH, and Safeguards

38. To manage the risk of anti-competitive activities arising from the exchange and/or sharing of commercially sensitive information between the Applicants and/or their Affiliates through SPH, the Applicants initially submitted that:
- (a) SPH will have a competition compliance programme in place which will include training of relevant employees of SPH and prohibiting the sharing of information that they categorise as "Highly Confidential Information", such as the prices of live chickens and Overlapping Products; output information (excluding the number of live chickens that are delivered to SPH for slaughtering and the number of slaughtered chickens that are returned to the respective Applicants); and product variety (excluding those necessary to identify the breed of live chickens for purposes of carrying out the Slaughtering Services);<sup>87</sup> and
  - (b) A 'Clean Team' of SPH employees will be established comprising certain individuals who over the course of their roles and responsibilities in SPH may receive certain commercially sensitive information. Members of the 'Clean Team' will be required to sign non-disclosure agreements ("NDAs") pertaining to such information, which will outline limitations of the use and disclosure of said information.<sup>88</sup>
39. However, CCCS notes that clause 11.1(d) of the SHA provides that SPH shall provide each shareholder with [X].<sup>89</sup> CCCS notes that the scope of information that each Applicant may require of SPH pursuant to this clause appears very broad, and may potentially extend beyond the scope of information typically commercially required by a shareholder, so long as the information is "*reasonably require[d]*" by the shareholder.<sup>90</sup> When CCCS sought clarifications in this regard, the Applicants indicated that they were unable to identify the information that may be disclosed pursuant to this clause as SPH has not yet commenced operations.<sup>91</sup>

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<sup>86</sup> Clause 8.2 of the SHA; and Paragraph 12.5 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>87</sup> Paragraphs 26.2 and 26.3 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>88</sup> Paragraph 26.4 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>89</sup> Clause 11.1(d) of the SHA.

<sup>90</sup> In contrast, CCCS notes that Clauses 11.1(a) to (c) of the SHA provide for shareholders' information rights with respect to information more typically commercially required by a shareholder, such as [X].

<sup>91</sup> Paragraph 25.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

### Ancillary Restrictions

40. The SHA includes ancillary restrictions imposed on the Applicants for as long as they are SPH shareholders, with effect from the date that SPH commences operations of the Facility. These ancillary restrictions are as follows: (i) an Applicant and its Affiliate shall only solicit the business of any potential customer/client/supplier in respect of SPH's Slaughtering Services; (ii) an Applicant shall not be directly/indirectly involved in a business that is substantially similar to that of SPH; and (iii) all opportunities related to Slaughtering Services shall be undertaken by SPH.<sup>92</sup> Exceptions to these ancillary restrictions exist for any pre-existing agreements or arrangements in relation to the purchase of Slaughtering Services in Singapore from third-parties, and agreements or arrangements made with third-parties for Slaughtering Services in the event that SPH does not have the capacity to fulfil demand from any shareholder.<sup>93</sup>

### Representative Employees of the Applicants and/or their Affiliates

41. The Applicants submitted that, when SPH commences operations, approximately:<sup>94</sup>
- (a) [X] employees from each Applicant (and/or its Affiliates) will be deployed to SPH's premises for supervisory and inspection purposes<sup>95</sup> and will remain onsite at SPH's premises for the allocated slaughtering period; and
  - (b) [X] employees from each Applicant (and/or its Affiliates) will be responsible for negotiating the slaughtering schedule
- (collectively, "**the Representative Employees**").

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<sup>92</sup> Paragraph 14.2 of Form 1; and Clause 15.6 of the SHA.

<sup>93</sup> Paragraph 14.3 of Form 1; and Clause 15.7 of the SHA.

<sup>94</sup> Paragraphs 9.2 and 23.2 of the Applicants' response to CCCS's RFI dated 10 January 2018; and Paragraph 5.1 of the Applicants' response to CCCS's RFI dated 22 February 2018.

<sup>95</sup> The supervisory and inspection responsibilities that will be carried out are as follows:

- (a) Inspecting of the live chickens upon their arrival at the Facility, to ensure that the deliveries are consistent with the Applicant's (or its Affiliates') orders (in terms of quantity, breed, weight) and to review the relevant importation documents;
- (b) Supervising the handling of the live chickens received by SPH at its Facility;
- (c) Supervising the slaughtering process to ensure that the Slaughtering Services (undertaken by SPH's employees) are in accordance with that Applicant's (or its Affiliates') quality standards and customer requirements;
- (d) Inspecting of the freshly slaughtered chickens and grading the freshly slaughtered chickens pursuant to each Applicant's (or its Affiliates') specific grading criteria; and
- (e) Overseeing the delivery of the freshly slaughtered chickens to the Applicant (or its Affiliates).

Paragraph 9.2 of the Applicants' response to CCCS's RFI dated 10 January 2018.



42. In respect of the onsite supervising and inspection, the Applicants submitted that this is necessary because each Applicant (or its Affiliate) has its own specific criteria with regard to the slaughtering process as well as the grading of the freshly slaughtered chickens. The Applicants would accordingly require their respective employees, who have been trained with respect to such quality control issues and customer requirements, to undertake the above-mentioned checks on behalf of their employers.<sup>96</sup>
43. In respect of negotiations on the slaughtering schedule, the Applicants submitted that such negotiations are required to establish the slaughtering schedule (i.e. the timeslots allocated to each customer for the Slaughtering Services to be carried out for that customer's live chickens). For expediency, the Applicants envisage that negotiations on the slaughtering schedule will be on a multi-lateral basis. As the needs of each customer of SPH will change over time (depending also on the orders received from customers in the downstream wholesale market for the Overlapping Products), such negotiations will also be on an on-going basis.<sup>97</sup>
44. The Applicants further submitted that [§<] employees of each Applicant (and/or its Affiliates) will be involved in negotiating that Applicant's Service Agreement with SPH. Such negotiations on each Service Agreement will be conducted on a bilateral basis between each of these employees and SPH. As such negotiations will be on a bilateral basis, the Applicants have submitted that these employees of each Applicant (and/or its Affiliates) will not have access to commercially sensitive information pertaining to another Applicant or customer.<sup>98</sup>

### III. LEGISLATIVE FRAMEWORK

#### (a) Section 34 Prohibition

45. Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore unless it is excluded by the Third Schedule to the Act or meets all of the requirements specified in a block exemption order (**“the section 34 prohibition”**).

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<sup>96</sup> Paragraph 9.2 of the Applicants' response to CCCS's RFI dated 10 January 2018.

<sup>97</sup> Paragraph 23.2 of the Applicants' response to CCCS's RFI dated 10 January 2018; and Paragraphs 5.3 to 5.5, and 5.7 of the Applicants' response to CCCS's RFI dated 22 February 2018.

<sup>98</sup> Paragraphs 5.1 and 5.2, and 5.6 of the Applicants' response to CCCS's RFI dated 22 February 2018.

46. The exchange of information between competitors may have an appreciable adverse effect on competition, where it serves to reduce or remove uncertainties inherent in the process of competition.<sup>99</sup>
47. As a general principle, it is more likely that there would be an appreciable adverse effect on competition the smaller the number of undertakings operating in the market, the simpler and more transparent the market, the more stable the market, the more frequent the exchange, the more sensitive and confidential the nature of the information which is exchanged, and where information exchanged is limited to certain participating undertakings to the exclusion of their competitors and buyers.<sup>100</sup>
48. For example, where the exchange of market information is liable to enable undertakings to be aware of market strategies of their competitors, it may lead to an appreciable adverse effect on competition as it can create mutually consistent expectations regarding the uncertainties present in the market and enable undertakings to reach a common understanding on the terms of co-ordination of their competitive behaviour, even without an explicit agreement on co-ordination.<sup>101</sup>
49. In addition, where the information exchange relates directly to prices charged or to the elements of a pricing policy (for example, discounts, costs, terms of trade and rates and dates of change) and has the objective of restricting competition on the market, it will be considered a restriction of competition by object.<sup>102</sup>

**(b) Application of Section 34 to Undertakings**

50. Section 34 of the Act applies to “agreements between undertakings”. Section 2 of the Act defines “undertaking” to mean “any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services”. The key consideration in assessing whether an entity is an undertaking for the application of the section 34 prohibition is whether it is capable of engaging, or is engaged, in commercial or economic activity.
51. Each of the Applicants is, or operates (in the case of TCL), a separate corporate entity carrying on commercial and economic activities related to the supply of fresh chilled chickens (whole and parts), frozen chickens (whole and parts) and/or frozen processed chickens-related food products

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<sup>99</sup> Paragraph 3.20 of the *CCCS Guidelines on the Section 34 Prohibition 2016* (“**the Section 34 Guidelines**”).

<sup>100</sup> Paragraph 3.20 of the Section 34 Guidelines.

<sup>101</sup> Paragraph 3.20 of the Section 34 Guidelines.

<sup>102</sup> Paragraph 3.22 of the Section 34 Guidelines.

in the poultry industry in Singapore, thereby falling within the definition of “undertaking” under the Act. Accordingly, the Proposed JV constitutes an agreement between undertakings, capable of being assessed within the scope of section 34 of the Act.

#### **IV. COMPETITION ASSESSMENT**

##### **(a) Theory of Harm**

52. The theory of harm arising from the Proposed JV relates to section 34 of the Act, in that the Proposed JV may facilitate the coordination of the Applicants’ behaviours and lead to collusive outcome(s) in one or more markets within the poultry industry in which they participate, through the sharing among the Applicants of confidential and commercially sensitive information pertaining to each Applicant, arising from their position as shareholders of SPH and/or through the Applicants’ Representative Directors on SPH’s BOD, and/or any seconded staff to SPH.
53. The exchange of commercially sensitive information may enable the Applicants to coordinate their commercial behaviour in the relevant market(s) identified below.<sup>103</sup> For example, the Applicants could, through their position as shareholders of SPH, exchange or obtain information on each other’s current or future production and output of fresh chilled chicken products, and input costs (in particular the slaughtering costs), which may serve to dampen competition between them and/or enable them to engage in price-fixing or output restriction in the downstream wholesale market(s) for the Overlapping Products.<sup>104</sup>

##### **(b) The Relevant Market(s)**

###### Applicants’ submissions on product and geographic markets

###### *Slaughtering Services*

54. The Applicants submitted that the relevant product market is the provision of Slaughtering Services in respect of live chickens.<sup>105</sup> Focusing on the Slaughtering Services which is the subject of the Application, the Applicants submitted that there is currently no service that might

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<sup>103</sup> In the *Infringement Decision by CCS in relation to the Price of Ferry Tickets between Singapore and Batam* (CCS 500/006/09) dated 18 July 2012, two ferry operators were found to have infringed section 34 of the Act by having exchanged sensitive and confidential price information in relation to ferry tickets for the passenger routes between Singapore (Harbourfront) and Sekupang, and between Singapore (Harbourfront) and Batam Centre, with the object of restricting competition. These routes were only served by these two ferry operators.

<sup>104</sup> Paragraphs 3.20 and 3.22 of the Section 34 Guidelines.

<sup>105</sup> Paragraph 8.1.1 of Form 1.

reasonably be considered as a close substitute to the Slaughtering Services, from both the customer's and supplier's perspective.<sup>106</sup>

55. The Applicants further submitted that there may be substitutes in respect of the service provider of the Slaughtering Services. Engaging a third-party poultry distributor with slaughtering facilities (for instance, Soonly) to conduct the Slaughtering Services would be an alternative to supplying Slaughtering Services in-house, although the Applicants have highlighted that this is dependent on the availability of capacity of such third-party service providers.<sup>107</sup> According to the Applicants, only where a company with slaughtering facilities (i.e. appropriate land, slaughtering licence granted by AVA, and slaughtering equipment) has insufficient in-house slaughtering capacity to meet its own demand for Slaughtering Services (and in turn, downstream customers' orders/demand), would it consider additionally purchasing Slaughtering Services from a third-party provider.<sup>108</sup> The Applicants also submitted that there is no established or ready market or sustainable demand for Slaughtering Services, and any external demand is mostly ad-hoc, and cannot be considered staple demand or business.<sup>109</sup>
56. Of the five Applicants, three (i.e. KSH, Sinmah, and Tong Huat, and/or their respective Affiliates) do not provide Slaughtering Services to third-parties. Boong and Tysan (and/or their respective Affiliates) do not conduct Slaughtering Services, but instead procure such services from Soonly (a third-party service provider under the Lee Say Group).<sup>110</sup> The Applicants submitted that Soonly is [X] providing Slaughtering Services to third-parties.<sup>111</sup>
57. Given that there are currently no foreign meat establishments approved by AVA for the export of chilled chickens to Singapore and fresh chilled chickens in Singapore are only available through slaughtering live poultry from Malaysia in AVA-licensed slaughterhouses in Singapore,<sup>112</sup> the Applicants also submitted that the relevant geographic market for the Slaughtering Services is Singapore.<sup>113</sup>

#### *Other relevant markets*

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<sup>106</sup> Paragraphs 1.11 and 1.13 of Form 2.

<sup>107</sup> Paragraph 1.15 of Form 2.

<sup>108</sup> Paragraph 9.1 of the Applicants' response to question 9 of CCCS's RFI dated 6 October 2017.

<sup>109</sup> Paragraph 5.1 of Form 2.

<sup>110</sup> Paragraphs 7.6 and 7.7 of Form 1.

<sup>111</sup> Paragraph 40.3 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>112</sup> See paragraph 11 above.

<sup>113</sup> Paragraph 8.2.1 of Form 1.

58. In respect of the Overlapping Products, the Applicants submitted that they are not the subject of this Application and therefore not a relevant market for consideration.<sup>114</sup> Notwithstanding this, the Applicants separately submitted the following in relation to fresh chilled chicken products and frozen chicken products:

- (a) Consumers may consider frozen poultry as a close substitute to fresh chilled poultry, thereby dispensing with the requirement for poultry suppliers to conduct Slaughtering Services in Singapore, as frozen poultry can be imported into Singapore;<sup>115</sup>
- (b) In respect of the differences between fresh chilled chicken products and frozen chicken products, on the demand side, consumers generally prefer fresh chilled chickens due to factors such as freshness, quality and taste, and they are popularly demanded. Prices of fresh chilled chickens are also higher than frozen chickens;<sup>116</sup>
- (c) On the supply side, frozen chickens can be sourced by freezing freshly-slaughtered chickens. Frozen chickens can also be directly imported from overseas, or purchased from frozen chicken wholesalers in Singapore (who in turn import their frozen chickens from overseas);<sup>117</sup> and
- (d) As to supply-side substitutability, there are major barriers to entry for the provision of Slaughtering Services, namely government food safety, worker safety and environmental regulations, and significant costs associated with proper waste disposal. This accordingly makes it difficult for suppliers at other levels of the supply chain to switch to supplying poultry Slaughtering Services.<sup>118</sup>

#### CCCS's assessment

59. In identifying the relevant markets, CCCS considered how the Proposed JV, and its main activity in the provision of Slaughtering Services, could potentially affect competition in Singapore. In particular, CCCS took into consideration that the Applicants are shareholders in SPH, while they and/or their Affiliates remain as competitors in the Retained Activities upstream and downstream to the Slaughtering Services.

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<sup>114</sup> Paragraph 8.1.1 of Form 1; and Paragraph 1.12 of Form 2.

<sup>115</sup> Paragraphs 1.11 and 1.12 of Form 2.

<sup>116</sup> Paragraphs 16.1 to 16.7 of the Applicants' response to CCCS's RFI dated 10 January 2018.

<sup>117</sup> Paragraphs 16.1 to 16.7 of the Applicants' response to CCCS's RFI dated 10 January 2018.

<sup>118</sup> Paragraph 1.13 of Form 2.

60. Given that there are currently no AVA-approved foreign meat establishments for the export of chilled chickens to Singapore and fresh chilled chickens in Singapore are only available through slaughtering live poultry in AVA-licensed local slaughterhouses, Slaughtering Services are intrinsically part of the supply chain for fresh chilled poultry in Singapore, and linked to the upstream and downstream Retained Activities (see the illustration of the supply chain submitted by the Applicants in paragraph 9 above). In particular, Slaughtering Services form a key input and cost component in the downstream supply of fresh chilled chicken products in Singapore. In order to provide Slaughtering Services, SPH would necessarily receive, or otherwise have access to information relating to the chicken supplies and slaughtering requirements of its respective customers (i.e., the Applicants initially),<sup>119</sup> which in turn relates to both the upstream breeding, supply and/or procurement of live chickens, and downstream sale of the Overlapping Products to the wholesale market.
61. Due to the vertically-integrated nature of the Applicants' respective activities and the industry more generally, the effects of any sharing of commercially sensitive information arising through the Proposed JV are likely to extend to, and may impact competition in, the markets for the upstream and downstream Retained Activities. Such effects will also be discussed in further detail below.

#### *Slaughtering Services*

62. On the Applicants' submitted relevant market for the focal product/service of Slaughtering Services, CCCS agrees with the Applicants' submissions that there is no service that might reasonably be considered as a close substitute to the Slaughtering Services.
63. As to substitutability in respect of the service provider of the Slaughtering Services, CCCS notes that the current market structure suggests that Slaughtering Services are usually conducted in-house, except for entities which are not vertically-integrated with slaughtering capabilities (e.g. Boong and Tysan). For these entities, third-party feedback received by CCCS indicates that [3<] (i.e. [3<]<sup>120</sup>), although other existing slaughterhouses could potentially also supply third-party Slaughtering Services<sup>121</sup> or new slaughterhouses could enter the market.

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<sup>119</sup> This is elaborated on in section IV(d) below.

<sup>120</sup> AVA's response to question 5 of CCCS's RFI dated 23 October 2017, received 20 November 2017; and [3<]'s response to question 3(d) of CCCS's RFI dated 8 February 2018.

<sup>121</sup> [3<]. AVA's response to question 6 of CCCS's RFI dated 23 October 2017, received 20 November 2017.

64. Feedback from other third-party poultry suppliers which have their own in-house slaughtering capabilities indicates that:<sup>122</sup>
- (a) In respect of whether they would require third-party Slaughtering Services: They do not envisage needing to procure Slaughtering Services from a third-party slaughterhouse either in the near or long-term, as they have sufficient internal capacity or prefer to conduct Slaughtering Services in-house (e.g. to better control product quality and food safety);
  - (b) In respect of whether they would provide third-party Slaughtering Services: They are not willing to provide Slaughtering Services to third-parties as, while they have some excess capacity, (i) such excess capacity is required to cater to peaks in internal demand; (ii) they lack available space and time to additionally provide Slaughtering Services to third-parties; and/or (iii) there is a lack of manpower to provide such third-party Slaughtering Services; and
  - (c) In respect of whether Slaughtering Services can be provided on a third-party basis only: They do not see a business case for the provision of Slaughtering Services on a third-party basis only, as it is not commercially attractive.
65. Notwithstanding the above, CCCS understands that the Slaughtering Services in and of itself are the same (e.g. the same slaughtering machinery is used), whether provided on an in-house or third-party basis. On the supply side, the decision whether to provide Slaughtering Services to third-parties can take into account factors such as whether internal demand for Slaughtering Services is sufficient to maximise the utilisation of slaughtering capacity.<sup>123</sup> So long as such additional capacity exists, CCCS notes that it would be possible to scale up existing slaughtering activities, with additional manpower and other necessary resources. For example, the Applicants have submitted that SPH intends to supply Slaughtering Services to other poultry distributors in the market eventually, with one consideration being whether SPH is meeting its financial targets.<sup>124</sup> Given the above, CCCS does not consider it necessary to distinguish between Slaughtering Services by service provider (i.e. in-house or third-party basis).

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<sup>122</sup> [X]’s response to questions 3, 5 and 7 of CCCS’s RFI dated 8 February 2018, received 23 February 2018; [Y]’s response to questions 3, 5 and 7 of CCCS’s RFI dated 8 February 2018, received 1 March 2018; and [Z]’s response to questions 3, 5 and 7 of CCCS’s RFI dated 8 February 2018, received 5 March 2018].

<sup>123</sup> [X]’s response to question 3(d) of CCCS’s RFI dated 8 February 2018, received 1 March 2018.

<sup>124</sup> Paragraph 12.4 of Form 2; and Annex F of the Applicants’ response to CCCS’s RFI dated 10 January 2018. See also paragraph 28 and footnote 68 above.

66. CCCS also agrees with the Applicants' submissions that, given there are currently no AVA-approved foreign meat establishments for the export of chilled chicken to Singapore and fresh chilled chickens in Singapore are only available through slaughtering live poultry in AVA-licensed local slaughterhouses, the relevant geographic market for Slaughtering Services is Singapore.

*Other relevant markets*

67. In respect of the upstream Retained Activities, given there are currently no AVA-approved foreign meat establishments for the export of chilled chicken to Singapore, CCCS is of the view that the relevant market is the breeding, supply and/or procurement of live chickens into Singapore.
68. In respect of the downstream Retained Activities, on the scope of Overlapping Products (i.e., fresh chilled chickens (whole and parts), frozen chickens (whole and parts) and/or frozen processed chickens-related food products) that fall within the downstream market, CCCS considers that only chicken products (whole and parts) that are sourced from chickens freshly slaughtered in Singapore fall within the relevant downstream market, i.e., imported frozen chicken products are not part of the relevant market. Although the Applicants had submitted that consumers may consider frozen poultry as a close substitute to fresh chilled poultry, the Applicants had also submitted that, on the demand side, consumers generally prefer fresh chilled chickens due to factors such as freshness, quality and taste. On the supply side, while it is easy for suppliers to switch from producing fresh chilled chickens to producing frozen chicken products by freezing the freshly-slaughtered chickens, CCCS notes that switching in the opposite direction is difficult due to a lack of foreign meat establishments approved for the export of chilled chicken to Singapore and the high barriers to entry (see paragraph 80). As the Applicants do at present supply frozen chicken products by freezing freshly-slaughtered chickens,<sup>125</sup> CCCS considers such frozen chicken products sourced from chickens freshly slaughtered in Singapore to be within the relevant downstream market that may be impacted by the Proposed JV.

*Conclusion on relevant markets*

69. In view of the above analysis, CCCS is of the view that the relevant markets for the purpose of assessing the Proposed JV are the markets for:
- (a) the breeding, supply and/or procurement of live chickens into Singapore;
  - (b) the provision of Slaughtering Services in Singapore; and

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<sup>125</sup> Paragraphs 16.1 to 16.7 of the Applicants' response to CCCS's RFI dated 10 January 2018.



- (c) the marketing and sale of the Overlapping Products (limited to those sourced from chickens freshly slaughtered in Singapore) to the wholesale market in Singapore.

**(c) Structure of the Poultry Industry in Singapore**

Presence of Vertical Integration in the Poultry Industry

70. Of the undertakings licensed to import live chickens into Singapore, 11 of them (including the Applicants) accounted for all the live chickens imported in 2016. In turn, all 11 of them sell the Overlapping Products to the wholesale market in Singapore. Nine of them also participate in at least one other market within the poultry industry.

***Table 2: Extent of Participation of Live Chicken Importer in Singapore Poultry Industry<sup>126</sup>***

	[REDACTED]					[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]						
[REDACTED]	[REDACTED] <sup>127</sup>	[REDACTED] <sup>128</sup>	[REDACTED]	[REDACTED] <sup>129</sup>	[REDACTED] <sup>130</sup>	[REDACTED]	[REDACTED] <sup>131</sup>	[REDACTED] <sup>132</sup>	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] <sup>133</sup>	[REDACTED] <sup>134</sup>	[REDACTED] <sup>135</sup>	[REDACTED] <sup>136</sup>	[REDACTED]	[REDACTED]	[REDACTED] <sup>137</sup>	[REDACTED]	[REDACTED]	[REDACTED] <sup>138</sup>
[REDACTED]	[REDACTED] <sup>139</sup>	[REDACTED] <sup>140</sup>	[REDACTED] <sup>141</sup>	[REDACTED]	[REDACTED] <sup>142</sup>	[REDACTED]	[REDACTED]	[REDACTED] <sup>143</sup>	[REDACTED]	[REDACTED]	[REDACTED] <sup>144</sup>

<sup>126</sup> Based on the Applicants' submissions; information from AVA; ACRA business profiles; and information obtained from third-parties, namely: [REDACTED]'s response to question 1 of CCCS's RFI dated 8 February 2018, received 23 February 2018; [REDACTED]'s response to question 1 of CCCS's RFI dated 8 February 2018, received 1 March 2018; and [REDACTED]'s response to question 1 of CCCS's RFI dated 8 February 2018, received 5 March 2018.

<sup>127</sup> [REDACTED].

<sup>128</sup> [REDACTED].

<sup>129</sup> [REDACTED].

<sup>130</sup> [REDACTED].

<sup>131</sup> [REDACTED].

<sup>132</sup> [REDACTED].

<sup>133</sup> [REDACTED].

<sup>134</sup> [REDACTED].

<sup>135</sup> [REDACTED].

<sup>136</sup> [REDACTED].

<sup>137</sup> [REDACTED].

<sup>138</sup> [REDACTED].

<sup>139</sup> [REDACTED].

<sup>140</sup> [REDACTED].

<sup>141</sup> [REDACTED].

<sup>142</sup> [REDACTED].

<sup>143</sup> [REDACTED].

<sup>144</sup> [REDACTED].

[REDACTED]	[REDACTED]	[REDACTED] <sup>145</sup>	[REDACTED] <sup>146</sup>	[REDACTED]	[REDACTED] <sup>147</sup>	[REDACTED] <sup>148</sup>	[REDACTED]	[REDACTED] <sup>149</sup>	[REDACTED] <sup>150</sup>	[REDACTED] <sup>151</sup>	[REDACTED] <sup>152</sup>
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### Breeding of Live Chickens in Malaysia

71. In the upstream chicken breeding market in Malaysia, CCCS understands from third-party feedback that there is a high level of vertical integration with about [70 – 80]% of the market share of the broiler farming business controlled by 10 businesses which own and operate multiple parts of the poultry supply chain, such as feed mills, broiler farms, and wholesaler/slaughterhouses.<sup>153</sup>

### Import of Live Chickens

72. Based on industry information obtained by CCCS on the number of live chickens imported into Singapore, the market shares of the Applicants and the other competitors in the poultry industry in Singapore are presented in **Table 3** below. All live chickens imported by the Applicants are supplied into the Singapore market (i.e., not exported).<sup>154</sup>

*Table 3: 2016 Data on Import of Live Chickens into Singapore*

	Entity	No. of Chickens Imported	Share of Chickens Imported	Combined Share of Chickens Imported
<b>Applicants (including Affiliates)</b>	<b>Boong</b>	[REDACTED]	[0 – 10]%	[40 – 50]%
	<b>KSH</b>	[REDACTED]	[10 – 20]%	
	<b>Sinmah</b>	[REDACTED]	[0 – 10]%	
	<b>Tong Huat<sup>155</sup></b>	[REDACTED]	[10 – 20]%	
	<b>Tysan</b>	[REDACTED]	[0 – 10]%	
<b>Competitors (including affiliates)</b>	<b>Lee Say Group<sup>156</sup></b>	[REDACTED]	[40 – 50]%	[50 – 60]%
	<b>Gold Chic Poultry Pte. Ltd.</b>	[REDACTED]	[0 – 10]%	
	<b>Hy-fresh Industries Pte. Ltd.</b>	[REDACTED]	[0 – 10]%	
	<b>Lim Cheong Fatt Poultry Supplier Pte. Ltd.</b>	[REDACTED]	[0 – 10]%	
	<b>Mingtak Pte. Ltd.</b>	[REDACTED]	[0 – 10]%	

<sup>145</sup> [REDACTED].

<sup>146</sup> [REDACTED].

<sup>147</sup> [REDACTED].

<sup>148</sup> [REDACTED].

<sup>149</sup> [REDACTED].

<sup>150</sup> [REDACTED].

<sup>151</sup> [REDACTED].

<sup>152</sup> [REDACTED].

<sup>153</sup> Paragraph 3 of the joint feedback by AVA, EnterpriseSG and JTC to CCCS's media release dated 14 September 2017, received 4 October 2017.

<sup>154</sup> Paragraph 27.3 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>155</sup> Includes market shares of Protheme and Ban Hong.

<sup>156</sup> Includes market shares of [REDACTED].

	<b>Ng Ai Group</b>	[X]	[0 – 10]%	
	Total	[X]	100.0%	100.0%

*Source: Industry information*

73. Based on the above 2016 data, Lee Say Group is the largest importer of live chickens into Singapore, with a share of [40 - 50]%. The Applicants have submitted that the Lee Say Group is a vertically-integrated entity involved in the breeding of live chickens in Malaysia for export to Singapore; slaughtering of chickens in Singapore; and processing and wholesale of chickens in Singapore.<sup>157</sup> The Applicants have the [X] shares in the import of live chickens into Singapore individually, with a combined share of [40 - 50]%, [X]. The third largest competitor, [X], is significantly smaller with a share of [0 - 10]%. Out of the eleven licensees, the Applicants and Lee Say Group possess close to [80 - 90]% of the share of import of live chickens into Singapore, with the remaining [10 - 20]% shared between five small competitors.
74. CCCS also observed from 2012 to 2016 industry data that the market shares for the import of live chickens into Singapore are highly stable. Between years 2012 to 2016, Lee Say Group's share of imports of live chickens into Singapore experienced a small variance of between [40 - 50]% and [40 - 50]%, while the combined share of the Applicants similarly experienced a small variance of between [40 - 50]% to [40 - 50]%.

#### Slaughtering Services

75. There are currently 10 licensed chicken slaughtering establishments<sup>158</sup> in Singapore with slaughtering production of about [X] million chickens in total in 2016. The Applicants' combined share of chickens slaughtered (inclusive of the share of chickens slaughtered for Boong and Tysan that do not currently possess in-house slaughtering capabilities) is generally in line with their combined share in the import of live chickens into Singapore.

#### Sale of Overlapping Products to Wholesale Market in Singapore

76. CCCS notes from the Applicants' submissions that most live chickens imported by them into Singapore are for internal sales of the Overlapping Products to the downstream wholesale market in Singapore.<sup>159</sup> According to the Applicants, the sale of any of the Overlapping Products to third-party poultry distributors within Singapore would only occur on an ad-hoc basis

<sup>157</sup> Paragraph 18.3 of Form 1; and Paragraph 8.5 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>158</sup> These are: (i) [X]; (ii) [X]; (iii) [X]; (iv) [X]; (v) [X]; (vi) [X]; (vii) [X]; (viii) [X]; (ix) [X]; and (x) [X]. Based on industry information obtained by CCCS on the number of live chickens slaughtered in Singapore.

<sup>159</sup> Paragraph 7.5 of Form 1; and Paragraph 1.8 of Form 2.

(e.g. in the event of a shortage of live poultry or any of the Overlapping Products, the Applicants may purchase from one another to fulfill their orders to customers).<sup>160</sup>

### Other Features of Poultry Industry

77. *Similarity of key cost components.* The average cost of live chickens forms approximately [60 - 70]% of the price of the fresh chilled chickens<sup>161</sup> and does not appear likely to vary significantly across poultry suppliers at any given point in time, as live chickens are homogenous products. According to the Applicants, prices of live chickens imported from Malaysia are usually determined based on market rates with some limited level of negotiation.<sup>162</sup> Third-party feedback also corroborated that different suppliers' prices of live chickens do not vary significantly.<sup>163</sup> The cost of slaughtering is also a significant cost component and ranges from [0 - 10]% to [10 - 20]% of the price of the fresh chilled chickens.<sup>164</sup>
78. *Cross-supply among market players.* Some market players including the Applicants and their Affiliates supply live chickens to one another,<sup>165</sup> either from related farms in Malaysia or through the sale of live chickens post-import into Singapore, thereby further increasing the extent of transparency and visibility over each other's supply volumes and costs. CCCS notes that the Applicants have also submitted that the sale of live poultry post-import into Singapore or any of the Overlapping Products between the Applicants would only occur on an ad-hoc basis.<sup>166</sup>
79. *Market transparency in the poultry industry.* Due to the vertically-integrated nature of the Applicants' activities and the industry more generally, the homogeneity of the products, the similarity in key cost components and the cross-supply of chickens (and possibly other related items such as poultry feed) among the market players, there is a certain level of transparency and knowledge among competitors of one another's poultry supply, cost structure and levels, output and even customers.

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<sup>160</sup> Paragraph 13.1 of Form 2.

<sup>161</sup> Paragraphs 8.3, 8.4 and 8.7 of the Applicants' response to CCCS's RFI dated 10 January 2018; and [X]'s response to question 9 of CCCS's RFI dated 8 February 2018. The average cost of live chickens was calculated based on [X]'s, [X]'s, [X]'s and [X]'s submissions. The cost of live chickens as a proportion of the price of the fresh chilled chickens ranges from [50 - 60]% to [70 - 80]%.

<sup>162</sup> Paragraphs 2.6 to 2.10 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>163</sup> [X]'s response to question 2(a) of CCCS's RFI dated 8 February 2018.

<sup>164</sup> Paragraphs 8.3, 8.4 and 8.7 of the Applicants' response to CCCS's RFI dated 10 January 2018; and [X]'s response to question 9 of CCCS's RFI dated 8 February 2018.

<sup>165</sup> Paragraph 7.5 of Form 1 and paragraphs 2.8 to 2.9 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>166</sup> Paragraph 13.1 of Form 2.

80. *Barriers to entry may be high.* This is due to the extent of vertical integration in the industry. New entrants may need to operate at multiple levels of the supply chain to compete effectively with the existing vertically-integrated players. To do so, new entrants would need to undertake various activities that may require high upfront costs and/or a significant amount of time.<sup>167</sup> In addition, there are high regulatory barriers such as obtaining the relevant licences and complying with the relevant regulatory requirements including food safety, worker safety and environmental regulation, which the Applicants have acknowledged in their submissions.<sup>168</sup> The likelihood of new entry occurring and being able to credibly challenge the existing players in the market therefore appears to be low.

**(d) Object or Effect of the Prevention, Restriction or Distortion of Competition within Singapore**

Applicants' submissions

81. The Applicants submitted that, as they are currently competitors in the poultry industry in Singapore (particularly in the downstream marketing and sale of fresh chilled poultry to the wholesale market in Singapore), the consolidation of their financial capital, equipment, manpower and expertise to establish the Facility to conduct Slaughtering Services for and on behalf the Applicants (or their respective Affiliates) will raise questions of compatibility with section 34 of the Act.<sup>169</sup>
82. Specific to the provision of Slaughtering Services, the Applicants submitted that the Proposed JV will not result in any appreciable adverse effects on competition in the provision of Slaughtering Services in Singapore. Slaughtering Services are currently part of each poultry producer's internal operations which is generally not sold to third-parties and the relevant slaughterhouses do not compete with each other for Slaughtering Services. Since there is currently no competition in the provision of Slaughtering Services, it is not possible for the Applicants to compete against each other in the provision of Slaughtering Services. As such, the Proposed JV will not result in any anti-competitive effects in the provision of Slaughtering Services.<sup>170</sup>

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<sup>167</sup> For example: (i) constructing a poultry processing facility which may require high upfront costs; (ii) securing land for the facility; (iii) developing a distribution network; and (iv) establishing relationships for the import of live chickens and sale of Overlapping Products. Additional activities would also be required if the new entrant wishes to also undertake the slaughter of chickens. CCCS notes that the Applicants have also submitted that there are significant costs associated with proper waste disposal, in conducting poultry Slaughtering Services. Paragraph 1.13 of Form 2.

<sup>168</sup> Paragraph 1.13 of Form 2.

<sup>169</sup> Paragraph 14.1 of Form 1.

<sup>170</sup> Paragraph 44.3 of the Applicants' response to CCCS's RFI dated 6 October 2017.

83. As to other competition concerns, to better assess the risk of anti-competitive activities arising from the information that will potentially be exchanged through SPH, the Applicants identified the information that (i) SPH would need to receive, or otherwise have access to or come to know, in order to provide Slaughtering Services; and (ii) SPH's BOD would need to receive to monitor SPH's finances and generally carry out its duties (including whether such information would be on an aggregated or individualised basis).
84. The Applicants submitted that certain types of information which SPH requires from its customers (i.e., the Applicants initially) for its operational purpose is confidential and commercially sensitive.<sup>171</sup> Specifically, the Applicants classify this information as **“Commercially Sensitive Information”** and the exhaustive list of such information<sup>172</sup> in respect of a customer is as follows:
- (a) the identity (such as the name of the AVA-approved farm in Malaysia and the AVA code of such farm) of such farm from which the live chickens are procured;
  - (b) the breed of live chickens ordered by the customer and subsequently delivered to SPH's premises;
  - (c) the forecasted and actual quantity of live chickens delivered to SPH's premises;
  - (d) the forecasted and actual weight of the live chickens delivered to SPH's premises;
  - (e) the actual quantity and approximate weight of the freshly slaughtered chickens returned to the customer;
  - (f) whether the live chickens would be slaughtered pursuant to a halal or non-halal method;
  - (g) the estimated total volume of slaughtered chickens that each customer would intend to achieve for each calendar year;
  - (h) the agreed slaughtering capacity allocated to the customer as set out in the Service Agreement;

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<sup>171</sup> Paragraphs 26.1 to 26.4 of the Applicants' response to CCCS's RFI dated 6 October 2017; and Paragraph 13.3 of the Applicants' response to CCCS's RFI dated 21 November 2017.

<sup>172</sup> Paragraph 3(c) of the Applicants' response dated 22 March 2018 to CCCS's email clarifications dated 20 March 2018.

- (i) the agreed slaughtering fees, discounts, allowances and/or credit terms negotiated between the customer and SPH as set out in the Service Agreement; and
  - (j) the duration of the Service Agreement.<sup>173</sup>
85. Further, the Applicants identified a list of **“Highly Confidential Information”** belonging to each Applicant (and/or its Affiliates), that could also raise competition concerns if exchanged through SPH.<sup>174</sup> This list does not overlap with the list of ‘Commercially Sensitive Information’.<sup>175</sup> The list of ‘Highly Confidential Information’ includes:
- (a) the negotiation/contractual terms between each Applicant (or its Affiliates) and the respective exporters (or AVA-approved farms) that they procure live chickens from;
  - (b) the purchase price of live chickens;
  - (c) the total number of live chickens purchased by each Applicant (or its Affiliates);
  - (d) where an Applicant (or its Affiliates) trades live chickens, the names of its customers, the retail price, the volume of live chickens sold and the negotiation/contractual terms between each Applicant (or its Affiliates) and the customer purchasing such live chickens;
  - (e) the negotiation/contractual terms between each Applicant (or its Affiliates) and its customers in the downstream market in respect of products sold in the downstream market;
  - (f) the price of the products sold in the downstream market;
  - (g) the production cost incurred by each Applicant (or its Affiliates) in respect of each type of product sold in the downstream market;
  - (h) the total volume of products sold by each Applicant (or its Affiliates) to customers in the downstream market;
  - (i) the revenue derived from the sales of the products sold to customers in the downstream market;

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<sup>173</sup> Clause 2.1.13 of Commitments.

<sup>174</sup> Paragraphs 26.1 to 26.4 of the Applicants’ response to CCCS’s RFI dated 6 October 2017; and Paragraph 12.3 of the Applicants’ response to CCCS’s RFI dated 21 November 2017.

<sup>175</sup> Paragraph 3(a) of the Applicants’ response dated 22 March 2018 to CCCS’s email clarifications dated 20 March 2018.

- (j) the identity of customers in the downstream market, except where such information is publicly available (for example, published on the Applicant's (or its Affiliates) website due to marketing purposes). Customer details would include information such as the name of the customer, order quantity, order value, frequency of orders and details of negotiations with the customer;
- (k) the types of products sold by each Applicant (or its Affiliates) to the downstream market, except where such information is publicly available (e.g. available on the Applicant's (or its Affiliate) online shop); and
- (l) any other information (excluding the Commercially Sensitive Information) pertaining to a shareholder (or its Affiliates) which if disclosed could give rise to an infringement of section 34 of the Act.<sup>176</sup>

#### CCCS's assessment

86. CCCS agrees with the Applicants that the provision of Slaughtering Services is currently part of each poultry producer's internal operations which is generally not sold to third-parties. This is corroborated by third-party feedback that there is currently no viable demand for third-party Slaughtering Services as such demand is usually catered for by in-house Slaughtering Services. There is also an unwillingness on the part of suppliers to provide Slaughtering Services to third-parties currently due to the need to keep excess capacity in reserve to meet sudden spikes in their own in-house demand, and the lack of time, space and manpower for the provision of such third-party Slaughtering Services. Accordingly, CCCS is of the view that the loss in competition in relation to the provision of Slaughtering Services as a result of the Proposed JV is likely to be minimal, if any.
87. As to the Applicants' Retained Activities, based on the Applicants' submissions on the initially-envisaged organisational structure of SPH and how it would be operationalised, CCCS is of the view that the following features of SPH give rise to concerns that the Proposed JV may facilitate (whether deliberately and/or inadvertently) the sharing of commercially sensitive information relating to the chicken supplies and slaughtering requirements of the respective Applicants (whether such sharing facilitated through the Proposed JV relates only to the "Commercially Sensitive Information" identified by the Applicants, or deliberately and/or inadvertently extends to the "Highly Confidential Information" identified by the Applicants). The sharing of such information arises from the

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<sup>176</sup> Clause 2.1.22 of Commitments.



Applicants' unique position as shareholders of SPH and/or through the Representative Directors whom they will appoint to SPH's BOD. Such information would not otherwise be known to the other Applicants in the absence of the Proposed JV, and may result in an adverse effect on competition among the Applicants in their Retained Activities, thereby potentially infringing section 34 of the Act.

- (a) **Applicants' control of the SPH BOD and Management:** It is clear from the Applicants' submissions on the initial envisaged structure of SPH that SPH's BOD and senior management team (i.e. the CEO or MD, CFO and COO) will respectively be governed, and likely be staffed, almost entirely by representatives and/or appointees of the Applicants and/or their Affiliates. Each Applicant will have the power to remove the Representative Director that it appoints. Through the BOD, the Applicants will also be responsible for determining the remuneration and performance assessments of SPH's senior management team. While the Applicants claimed that no confidential information will be directly received and exchanged by the Applicants, the control that they have over SPH's senior management team is likely to significantly weaken this safeguard. There are no clear checks and balances on the Applicants that would prevent them from exchanging commercially sensitive information and using the information to engage in anti-competitive activities.
- (b) **BOD's Approval of Service Agreements (including the Slaughtering Fees and Allocated Capacity):** As stated at paragraphs 35 to 37 above, the Service Agreements to be entered into between SPH and the Applicants will be negotiated among themselves and approved by the BOD. These activities involve a high risk of commercially sensitive information relating to each Applicant being shared in the process.
- (c) **Use of NDAs on Clean Team:** Any NDAs signed by these 'Clean Team' employees would only be effective if they are sufficiently robust and are properly enforced by SPH's senior management team and BOD. Given the concerns highlighted in paragraph 86(a) above, there remains the question over whether there is the right incentive for SPH's senior management team and/or BOD to enforce these NDAs.
- (d) **Additional Information Rights of BOD:** Clause 11.1(d) of the SHA (see paragraph 39 above) appears to allow the sharing of all information between SPH and the Applicants at any Applicant's request so long as it is a matter relating to SPH's business, given its broad scope.

88. On the extent of adverse effects on competition arising from the sharing of commercially sensitive information among the Applicants through the Proposed JV, the Applicants were not able to provide detailed quantitative information to allow CCCS to conduct significant quantitative analysis in this regard. Nonetheless, given the features of the poultry industry described above (in particular the extent of market transparency), any sharing of commercially sensitive information arising from the Applicants' initial envisaged structure of SPH is likely to further enhance transparency between the Applicants and enable them to work out one another's cost structures or align them, facilitating tacit or explicit collusion in the downstream sale of the Overlapping Products to the wholesale market.
89. Some third-parties raised concerns in relation to the setting up of the Proposed JV by the Applicants, in particular the market power arising from the high combined share of the poultry industry that they would accordingly account for, the reduction in competition for the remaining industry players (e.g. in the supply of fresh chilled chickens in Singapore), and the ability to control supply (e.g. supply of live chickens) and/or increase prices in other levels of the supply chain (e.g. prices of live chickens, costs of slaughtering).<sup>177</sup> CCCS notes that some of these concerns may arise from the Applicants' initial envisaged structure of SPH given the potential sharing of commercially sensitive information. That said, other concerns relating to the Applicants or the Proposed JV collectively controlling other levels of the supply chain are unfounded as they relate to the combination of the Applicants' activities at the other levels of the supply chain, which is not the case as the Applicants have submitted that they will remain as competitors in the Retained Activities upstream and downstream to the Slaughtering Services. As for the concern relating to the Proposed JV resulting in an increase in slaughtering costs/prices, third-party feedback has also indicated that other third-party poultry suppliers which have their own in-house slaughtering capabilities are currently using said in-house slaughtering and do not envisage needing to procure Slaughtering Services from a third-party slaughterhouse (such as SPH) (see paragraph 64(a) above). CCCS notes that competitors' in-house slaughtering costs accordingly will not be influenced by SPH's slaughtering prices.
90. For the reasons set out below, CCCS is of the view that, based on the Applicants' initial envisaged structure of SPH, the sharing of commercially sensitive information arising from the Proposed JV is likely to have an appreciable adverse effect on competition, in particular in the downstream sale of the Overlapping Products to the wholesale market in Singapore:

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<sup>177</sup> [3<]'s response to question 10 of CCCS's RFI dated 8 February 2018; and [3<]'s response to question 10 of CCCS's RFI dated 8 February 2018.

- (a) The Applicants have a high combined share in the import of live chickens into Singapore of [40 - 50]%. The Applicants' combined share of chickens slaughtered (inclusive of the share of chickens slaughtered for Boong and Tysan that do not currently possess in-house slaughtering capabilities) is also generally in line with this. Given that most live chickens imported by the Applicants into Singapore are for internal sales of the Overlapping Products to the downstream wholesale market in Singapore, the Applicants' combined share in the downstream wholesale market is likely to also be in line with this combined share;
- (b) While the Lee Say Group could potentially exert competitive constraints against the Applicants given its comparably high market share, there is also a risk that any information sharing arising from the Proposed JV could give rise to tacit or explicit collusion involving the Lee Say Group and/or the wider poultry industry in Singapore, given the homogeneity of the Overlapping Products, existing high level of market transparency, and high barriers to entry (i.e., low likelihood of new entry being able to credibly challenge the existing players in the market). Other than the Lee Say Group, the Applicants face low competitive constraints due to: (i) the low level of competitiveness in the market as evidenced by its stability, (ii) the limited number of remaining undertakings in the market which collectively only possess a [10 - 20]% share in the market; and (iii) high barriers to entry;
- (c) The effects of any sharing of commercially sensitive information are likely to extend to the upstream market and, in particular, the downstream market for the sale of the Overlapping Products to the wholesale market in Singapore, due to the vertically-integrated nature of the Applicants' activities, and the industry more generally; and
- (d) Even if any information sharing among the Applicants arising from the Proposed JV is limited only to the "Commercially Sensitive Information" identified by the Applicants, such information includes the cost of slaughtering (as charged by SPH to each Applicant and/or its Affiliates). As noted above, the cost of slaughtering is a significant component of the price of the fresh chilled chickens, ranging from [0 - 10]% to [10 - 20]%.<sup>178</sup> Given that the cost of live chickens accounts for approximately [60 - 70]%

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<sup>178</sup> Paragraphs 8.3, 8.4 and 8.7 of the Applicants' response to CCCS's RFI dated 10 January 2018; and [S&P]'s response to question 9 of CCCS's RFI dated 8 February 2018.

of the price of fresh chilled chickens on average<sup>179</sup> and does not appear likely to vary significantly at any given point in time, information sharing relating to the cost of slaughtering is likely to enhance transparency between the Applicants in respect of one another's cost structures, and facilitate tacit or explicit collusion in the downstream wholesale market for the Overlapping Products.

**(e) The Net Economic Benefit Exclusion**

91. Paragraph 9 of the Third Schedule to the Act provides that the section 34 prohibition shall not apply to “any agreement which contributes to (1) improving production or distribution; or promoting technical or economic progress; but which does not (2) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and (3) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question” (“**the NEB Exclusion**”). The three limbs operate cumulatively.
92. In assessing the first limb of the NEB Exclusion, the aim of the analysis is to ascertain what are the objective benefits created by the agreement and the economic importance of such efficiencies. The efficiencies are not assessed from the subjective viewpoint of the parties.<sup>180</sup> The types of efficiencies stated in the criteria are broad categories intended to cover all objective economic efficiencies. There is considerable overlap between the various categories. There is no need therefore to draw clear and firm distinctions between the various categories.<sup>181</sup>
93. The efficiency claims must therefore be substantiated as follows:
  - (a) The claimed efficiencies must be objective in nature;
  - (b) There must normally be a direct causal link between the agreement and the claimed efficiencies; and
  - (c) The efficiencies must be of a significant value, enough to outweigh the anti-competitive effects of the agreement.<sup>182</sup>
94. In evaluating the third factor in paragraph 93(c) above, the likelihood and magnitude of the claimed efficiencies will need to be verified. The undertakings will have to substantiate each efficiency claimed, by demonstrating how and when each efficiency will be achieved.

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<sup>179</sup> Paragraphs 8.3, 8.4 and 8.7 of the Applicants' response to CCCS's RFI dated 10 January 2018; and [3<]'s response to question 9 of CCCS's RFI dated 8 February 2018. See also paragraph 77 above.

<sup>180</sup> Annex C, paragraph 10.3 of the Section 34 Guidelines.

<sup>181</sup> Annex C, paragraph 10.5 of the Section 34 Guidelines.

<sup>182</sup> Annex C, paragraph 10.4 of the Section 34 Guidelines.

Unsubstantiated claims cannot be accepted. Further, the greater the increase in market power that is likely to be brought about, the more significant benefits will have to be.<sup>183</sup>

95. In relation to the indispensability of the restrictions, paragraph 10.8 of the Section 34 Guidelines further states that the criterion implies a two-fold test – *“both the agreement itself, and the individual restrictions of the agreement, must be reasonably necessary to attain the efficiencies.”* Paragraph 10.9 of Annex C to the Section 34 Guidelines further states that an agreement will not be regarded as indispensable if there are other economically practical and less restrictive means of achieving the efficiencies, or if the Applicants are capable of achieving the efficiencies on their own.

#### Applicants’ submissions

96. The Applicants have submitted that the Proposed JV would achieve the following benefits as set out below.

*First limb – improving production or distribution; or promoting technical or economic progress*

*Greater economies of scale with respect to the slaughtering of poultry*

97. The Applicants submitted that by pooling together their resources, they would be able to acquire the appropriate land and relevant technological advancements (in the form of slaughtering machinery).<sup>184</sup> The Applicants’ combined demand for Slaughtering Services also allows for the most efficient use of the new slaughtering machine’s capacity, to reap economies of scale, achieve lower average production costs and ensure that prices of fresh chilled poultry remain stable.<sup>185</sup>
98. The Applicants provided calculations performed by their external business advisor indicating an increase over current slaughtering capacity by [20 - 30]%, which will allow SPH to cater to the growing demand for chickens in the Singapore market.<sup>186</sup> They also estimated that the average slaughtering costs will drop from the current S\$[X] per chicken to S\$[X] per chicken such that the average slaughtering cost savings gained is S\$[X]

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<sup>183</sup> Annex C, paragraph 10.4 of the Section 34 Guidelines.

<sup>184</sup> Paragraph 18.5 of Form 1.

<sup>185</sup> Paragraph 18.7 of Form 1.

<sup>186</sup> Paragraph 18.5 of Form 1. The Applicants further submitted that AVA’s annual reports indicate that the demand for chickens has grown from a per capita consumption of 31 kg in 2014 to 35 kg in 2016. Paragraph 28.1 of the Applicants’ response to CCCS’s RFI dated 6 October 2017.

per chicken slaughtered.<sup>187</sup> The Applicants submitted that these costs savings are unlikely to be passed on to the consumer, but instead will be used to increase SPH's productivity, for example, through machine upgrading,<sup>188</sup> or to fund product innovation.<sup>189</sup>

### *Alleviation of land shortage in Singapore*

99. The Proposed JV will also result in better utilisation of land in Singapore given that the Applicants' Slaughtering Services will be consolidated at the same location, freeing up the respective land space that they (other than Boong and Tysan which do not have in-house slaughtering capabilities) currently separately occupy for the provision of Slaughtering Services.<sup>190</sup> In this regard, the Applicants submitted that the savings in terms of land area is 1,433.10 sqm.<sup>191</sup> The land space freed up will revert back to the owners (e.g. HDB) and may be deployed for better use.<sup>192</sup>

### *Increased worker productivity*

100. The Applicants submitted that the adoption of more advanced slaughtering machinery and technology will alleviate the labour shortage issue and improve workforce productivity. In this regard, the Applicants submitted that less manpower will be required for SPH's operations due to the employment of state-of-the-art slaughtering machinery. In this manner, reliance on foreign labour for rote work is reduced, and the poultry industry benefits from an improvement in workforce productivity with the adoption of more advanced machinery.<sup>193</sup> In this regard, the Applicants have submitted calculations that indicate an estimated labour cost saving of S\$[X] per chicken slaughtered.<sup>194</sup> The Applicants also submitted that it is unlikely that there will be a retrenchment exercise as SPH's employment

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<sup>187</sup> The calculations were based on taking the difference between the projected chicken slaughtering costs for SPH for the year 2019 (i.e. S\$[X] per chicken) and the current average chicken slaughtering costs for [X], [X] and [X] for the year 2016 (i.e. S\$[X] per chicken). The calculations did not include [X] and [X] because they are unable to separate their slaughtering costs from the overall costs incurred due to limitations in their information technology/accounting software. Paragraph 33.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>188</sup> Paragraph 34.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>189</sup> Paragraph 27.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>190</sup> Paragraph 18.9 of Form 1.

<sup>191</sup> Paragraphs 36.1 to 36.4, and 44.2 of the Applicants' response to CCCS's RFI dated 6 October 2017. The Applicants submitted that the sizes of land that KSH, Sinmah and Tong Huat (and/or their Affiliates) currently occupy are 1,776.7 sqm, 0.29 hectares (approximately 2,900 sqm), and 3,224.4 sqm respectively. The total gross floor area that SPH will occupy is envisaged to be approximately 6,468 sqm (subject to final survey by JTC).

<sup>192</sup> Paragraph 35.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>193</sup> Paragraph 18.11 of Form 1.

<sup>194</sup> Paragraph 38.1 of the Applicants' response to CCCS's RFI dated 6 October 2017. This figure is derived from the difference between the average labour cost relating to slaughtering (for Sinmah, KSH and Tong Huat) of S\$[X] per chicken slaughtered, and the projected average labour cost for SPH of S\$[X] per chicken slaughtered.

requirements exceed the current workforce employed for each Applicant's slaughtering facilities.<sup>195</sup>

### *Ensuring food security for Singapore*

101. If the Proposed JV does not materialise, the Applicants submitted that the Kee Song Group, Sinmah Group and Tong Huat Group (i.e. the Applicants with existing in-house chicken slaughtering capabilities) will either have to procure third-party Slaughtering Services or be forced to exit the market after their respective land leases expire, given that currently, fresh chilled chickens are only available through the slaughtering of live poultry from Malaysia, with such Slaughtering Services conducted in AVA-licensed slaughterhouses in Singapore.<sup>196</sup> As these three Applicants contribute to roughly [30 - 40]% of freshly slaughtered poultry in Singapore, this would have the effect of significantly reducing the supply of freshly slaughtered poultry in Singapore if they exit.<sup>197</sup> In this regard, the Applicants submitted that the Proposed JV would promote domestic production such that food security in Singapore is sustained and improved in the long run, given the advanced technology which SPH intends to utilise, which will ensure that Singapore is better buffered against potential food shortages and price volatility.<sup>198</sup>
102. As far as the Applicants are aware, Soonly is [X] providing Slaughtering Services to third-parties. If each of Sinmah, KSH and Tong Huat (or their respective Affiliates) were also to procure Slaughtering Services from Soonly, the Applicants submitted that the Lee Say Group would have increased dominance in the poultry industry in Singapore.<sup>199</sup>
103. In the event of KSH, Sinmah and Tong Huat being forced to exit the market, the Applicants submitted that, while other poultry suppliers may be able to increase their individual capacity, this may be insufficient to meet the share of consumer demand fulfilled by the three parties prior to their exit of the market. It is also unlikely that new players will be able to enter the market to supply fresh poultry products unless they are able to procure the appropriate land, machinery and AVA's slaughtering licence.<sup>200</sup>

### *Environmental benefits*

104. The Applicants submitted that the consolidation of resources through SPH and the employment of upgraded machinery would result in environmental

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<sup>195</sup> Paragraph 39.4 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>196</sup> Paragraph 18.14 of Form 1. See also paragraph 11 above.

<sup>197</sup> Paragraph 18.14 of Form 1.

<sup>198</sup> Paragraph 18.16 of Form 1.

<sup>199</sup> Paragraph 45.3 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>200</sup> Paragraphs 41.1 and 42.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

benefits in the form of increased energy efficiency and the saving of water.<sup>201</sup> In this regard, the new machinery to be purchased would be easier to clean and maintain. It is hence foreseen that the amount of water used to clean the machine would be reduced.<sup>202</sup> The consolidation of slaughtering and processing machinery also helps ensure that waste is generated and disposed of in a single location (as opposed to three separate operations), which will result in a more secured form of waste disposal since the source of pollution is reduced, and will also aid in the containment of any food contamination or bird-related diseases. This will ensure that food hygiene and product safety is increased, which will translate to food security and assurance for consumers.<sup>203</sup>

105. However, the Applicants were unable to provide calculations on the potential water savings, energy savings and reduction in carbon emissions as they are still in negotiations with the manufacturer of the machinery and have not yet identified with certainty the machinery which SPH will acquire for its operations.<sup>204</sup>

*Second limb – restrictions which are not indispensable to the attainment of those objectives*

106. In relation to the claimed benefits of economies of scale, increased worker productivity and environmental benefits, the Applicants submitted that these benefits may potentially be achieved by existing licensed slaughterhouses, i.e. without the Proposed JV, through the acquisition of new machinery. However, the Applicants noted that this would be contingent on the slaughterhouses having the requisite land to house the new machinery as well as the financial capability to acquire such machinery.<sup>205</sup> The Applicants also submitted that by centralising and consolidating the Applicants' (or its Affiliates') resources, large economies of scale can be reaped as the Applicants' (or its Affiliates') combined demand for Slaughtering Services allows the most efficient use of the new slaughtering machine's capacity.<sup>206</sup> In relation to the claimed benefit of reduced land utilisation, the Applicants submitted that there are no other means of achieving this efficiency without taking up the lease at JTC's PPH for the Proposed JV.<sup>207</sup> Without the Proposed JV, each Applicant alone would not be able to afford the cost of the JTC Lease as well as the machinery required.<sup>208</sup>

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<sup>201</sup> Paragraphs 18.17 to 18.19 of Form 1.

<sup>202</sup> Paragraph 27.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>203</sup> Paragraph 27.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>204</sup> Paragraph 43.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>205</sup> Paragraph 45.2 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>206</sup> Paragraph 18.7 of Form 1.

<sup>207</sup> Paragraph 45.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>208</sup> Paragraph 44.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.



107. The Applicants further submitted that due to the shortage of land space in land scarce Singapore, each of KSH, Sinmah and Tong Huat are unlikely to be able to find alternative suitable land space to continue its slaughtering in-house.<sup>209</sup> In support of this, KSH submitted documents from 2011 to 2014 evidencing its past attempts to find alternative suitable land space, while Sinmah and Tong Huat submitted that they had not commenced searching for alternative land space at the time when JTC had developed and shared its PPH concept, and/or did not do so after this point in time.<sup>210</sup> As such, any alternative arrangement involving new land leases is not practically achievable.<sup>211</sup>
108. In relation to the possibility of procuring third-party slaughtering contracts, the Applicants highlighted that it is unlikely that KSH, Sinmah and Tong Huat will be able to procure third-party Slaughtering Services for the following reasons:
- (a) Third-party service providers (e.g., Soonly) may not have capacity to slaughter for all the Applicants (or their relevant Affiliates).<sup>212</sup> [REDACTED];<sup>213</sup>
  - (b) [REDACTED];<sup>214</sup> and
  - (c) [REDACTED].<sup>215</sup>

*Third limb – afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question*

109. The Applicants submitted that the Proposed JV will not result in any appreciable adverse effects on competition in the provision of Slaughtering Services in Singapore. Slaughtering Services are currently part of each poultry producer's internal operations which is not sold to third-parties (with the exception of Soonly which sells its Slaughtering Services to third-parties) and the relevant slaughterhouses do not compete with each other for Slaughtering Services. Since there is currently no competition in the provision of Slaughtering Services, it is not possible for the Applicants to compete against each other in the provision of Slaughtering Services. As

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<sup>209</sup> Paragraph 40.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>210</sup> Paragraphs 16.1 to 16.3 of the Applicants' response to CCCS's RFI dated 21 November 2017.

<sup>211</sup> Paragraph 45.4 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>212</sup> Paragraph 1.15 of Form 2.

<sup>213</sup> Paragraph 40.2 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>214</sup> Paragraph 40.2 of the Applicants' response to CCCS's RFI dated 6 October 2017; and Paragraph 17.1 of the Applicants' response to CCCS's RFI dated 21 November 2017.

<sup>215</sup> Paragraph 17.2 of the Applicants' response to CCCS's RFI dated 21 November 2017.

such, the Proposed JV will not result in any anti-competitive effects in the provision of Slaughtering Services.<sup>216</sup>

#### CCCS's assessment on Net Economic Benefit

110. CCCS has examined the claimed benefits and whether they meet the requirements of the NEB Exclusion under the Act.

#### *First limb – improving production or distribution; or promoting technical or economic progress*

111. CCCS considers that there is merit to the Applicants' claimed benefits in respect of (i) economies of scale and cost savings; (ii) alleviation of land shortage; and (iii) increased worker productivity, as they have substantiated such claims.

112. On the claimed benefits in respect of economies of scale, the submitted increase in slaughtering capacity of [20 - 30]% is objective in nature as it relies on the estimated capacity of the new machinery to be purchased, and is also significant. There is also a causal link between this benefit and the Proposed JV. CCCS notes that without pooling their resources via the Proposed JV, each Applicant alone would not have been able to afford the cost of the JTC Lease as well as the machinery.<sup>217</sup> Further, the most efficient use of the new slaughtering machine's capacity is possible only by combining the demand for Slaughtering Services from the Applicants (or their Affiliates).<sup>218</sup> In this regard, CCCS notes that the purchase of the new slaughtering machinery with increased capacity is commercially feasible only by pooling together the slaughtering requirements of the Applicants through the Proposed JV. Some third-party feedback also supported that there would be benefits arising from the Proposed JV if it allows the Applicants to pool resources together to maximise productivity gains from scale economics, and provide better quality products that are safer and more traceable at a lower cost.<sup>219</sup>

113. In addition, CCCS understands that demand for chickens slaughtered is expected to keep pace with population growth.<sup>220</sup> The Proposed JV's projected increased capacity of [20 - 30]% means that the Proposed JV will

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<sup>216</sup> Paragraph 44.3 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>217</sup> Paragraph 44.1 of the Applicants' response to CCCS's RFI dated 6 October 2017.

<sup>218</sup> Paragraph 18.7 of Form 1.

<sup>219</sup> [3<]'s response to question 3 of CCCS's RFI dated 8 February 2018, received 20 February 2018.

<sup>220</sup> Paragraph 1(a) of the joint feedback by AVA, EnterpriseSG and JTC to CCCS's media release dated 14 September 2017, received 4 October 2017.

be able to meet the demand for slaughtered chickens for approximately the next [3<] years.<sup>221</sup>

114. CCCS also notes that the Applicants have submitted calculations of cost savings that can be reaped from the increase in efficiency in slaughtering chickens. In this regard, although the Applicants only took into account the current average slaughtering costs of Sinmah, Tysan and Boong in the calculations of the projected cost savings, the estimated cost savings nonetheless amount to S\$[3<] per chicken slaughtered. CCCS is of the view that the reduction in slaughtering costs due to economies of scale are objective and likely to be significant, and arise directly from the Proposed JV.
115. On the claimed benefits in respect of alleviation of land shortages, CCCS notes that the Applicants have provided information on the size and value of land currently occupied by Sinmah, KSH and Tong Huat, as well as the size and value of land that SPH will occupy, and the estimated savings in terms of land area. CCCS is of the view that the savings in land area is objective and arises directly as a result of the Proposed JV. In this regard, CCCS also notes that there will be an intensification of land use by a factor of four (4) times from the current average plot ratio of 0.6 to SPH's gross plot ratio<sup>222</sup> of 2.3.<sup>223</sup> According to JTC, this will in turn free up the existing sites that the Applicants occupy for re-allocation with higher land intensification to take place.<sup>224</sup>
116. On the claimed benefits in respect of increased worker productivity, CCCS is of the view that the submitted costs savings and increase in workforce productivity are objective in nature as slaughtering output is projected to increase without a retrenchment of employees. There is a causal link between the benefit claimed and the Proposed JV, as the projected increase in worker productivity is based on increased slaughtering output made possible by the new machinery which SPH will purchase. CCCS is also of the view that the labour cost savings (i.e. S\$0.27 per chicken slaughtered) submitted by the Applicants are substantial and significant in value.

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<sup>221</sup> Estimated based on the projected increase in slaughtering capacity of [20 - 30]% submitted by the Applicants, and the projected annual population growth submitted in paragraph 1(a) of the joint feedback by AVA, EnterpriseSG and JTC to CCCS's media release dated 14 September 2017, received 4 October 2017. This estimated figure also assumes that demand for slaughtered chickens grows at the higher end of the projected annual population growth of [0 - 10]% per year, as submitted by AVA, EnterpriseSG and JTC.

<sup>222</sup> The Gross Plot Ratio of a site is the ratio of the Gross Floor Area of a building(s) to the land area of the site, i.e. Gross Plot Ratio = Gross Floor Area/Site Area. For the definition of the Gross Floor Area, please see <https://www.ura.gov.sg/uol/publications/technical/dc-handbooks/handbook-on-gross-floor-area>.

<sup>223</sup> Paragraph 4(a)(i) of the joint feedback by AVA, EnterpriseSG and JTC to CCCS's media release dated 14 September 2017, received 4 October 2017.

<sup>224</sup> JTC's response to question 4 of CCCS's RFI dated 12 October 2017, received 15 November 2017.

117. AVA, JTC and EnterpriseSG have similarly supported the Applicants' claimed efficiencies. They fed back that the Proposed JV has the potential to increase production capacity, intensify land usage, and reduce the reliance on manpower with processes not being duplicated across the Applicants.<sup>225</sup>
118. On the claimed benefits in respect of food security for Singapore, the Applicants' submissions on the share of supply of freshly slaughtered poultry in Singapore that is accounted for by KSH, Sinmah and Tong Huat, is corroborated by industry data obtained by CCCS on the number of live chickens slaughtered in Singapore (i.e., [30 - 40]% in 2016). CCCS however notes that the Applicants have not submitted further evidence to support their claim that KSH, Sinmah and Tong Huat staying in the market (via the Proposed JV) would promote domestic food production such that food security in Singapore is sustained and improved in the long run. In this regard, CCCS is of the view that the claimed benefit of ensuring food security in Singapore is not objective in nature, nor arises directly from the Proposed JV.
119. On the claimed benefits in respect of environmental benefits, CCCS agrees that there are benefits that arise from the Proposed JV in terms of containment of waste disposal, as mentioned by the Applicants. According to JTC, due to the disamenities such as smell and discharge from poultry slaughtering activities, there is a need to contain such activities. Poultry slaughtering activities are accordingly classified as special industries and have to be located at least 500 metres from residential areas. The clustering of chicken slaughtering establishments will reduce the negative environmental impacts to the vicinity of JTC's PPH instead of spreading it across every establishment's site across Singapore.<sup>226</sup>
120. However, as the Applicants are unable to provide calculations on the estimated savings in water, energy and carbon emissions, CCCS is unable to conclude whether these savings are objective, arise directly from the Proposed JV and whether they are significant in value.

*Second limb – restrictions which are not indispensable to the attainment of those objectives*

121. On the claimed benefits relating to economies of scale, increased worker productivity and environmental benefits, CCCS accepts the Applicants' submissions that while these benefits could potentially be achieved without the Proposed JV, this is subject to such a slaughterhouse having the

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<sup>225</sup> Paragraph 4 of the joint feedback by AVA, EnterpriseSG and JTC to CCCS's media release dated 14 September 2017, received 4 October 2017.

<sup>226</sup> JTC's response to question 7 of CCCS's RFI dated 12 October 2017, received 15 November 2017.

necessary space and financial ability to procure new machinery. EnterpriseSG similarly indicated that, based on the information provided by the Applicants on the limitations of the operating environment of the sector, a shared resource model is likely the best way to overcome high upfront costs. To invest in the latest equipment, sufficient economies of scale are needed in order for the investment in advanced equipment to be commercially viable. Having considered the information presented by the Applicants, EnterpriseSG is of the view that the sharing of resources should be encouraged.<sup>227</sup>

122. Similar to this, EnterpriseSG has also highlighted based on industry feedback that the manpower savings expected from the Proposed JV (with non-duplication of processes) are more sustainable from a manpower resourcing perspective.<sup>228</sup> EnterpriseSG has highlighted that the poultry slaughtering sector continues to face difficulty in attracting and retaining the local workforce given the physically intensive, less comfortable and humid working environment, and further noted the regulatory limitations on hiring a foreign workforce.<sup>229</sup>
123. As to the Applicants' submission that each of KSH, Sinmah and Tong Huat are unlikely to be able to find alternative suitable land space to continue its slaughtering in-house, CCCS is of the view that the Applicants have provided limited information to substantiate their inability to find alternative suitable land space. Only KSH provided limited documentary evidence of its past attempts to find alternative suitable land space. Nonetheless, feedback received from JTC corroborated that the land leases for the sites where [X] existing slaughtering facilities are located expire between [X] and [X], and that there are redevelopment plans for [X] these sites.<sup>230</sup> JTC further confirmed that: [X].<sup>231</sup>
124. As to the Applicants' submissions that it is unlikely that KSH, Sinmah and Tong Huat will be able to procure third-party Slaughtering Services:
  - (a) In respect of procuring third-party Slaughtering Services from existing market players, feedback from other slaughterhouses currently operating in the market had indicated that they are not willing to provide Slaughtering Services to third-parties (see paragraph 64); and

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<sup>227</sup> EnterpriseSG's response to question 2 of CCCS's RFI dated 12 October 2017, received 2 December 2017.

<sup>228</sup> Paragraphs 1(b) and 4(b)(iii) of the joint feedback by AVA, EnterpriseSG and JTC to CCCS's media release dated 14 September 2017, received 4 October 2017.

<sup>229</sup> EnterpriseSG's response to question 1 of CCCS's RFI dated 12 October 2017, received 2 December 2017.

<sup>230</sup> JTC's response to questions 5 and 6 of CCCS's RFI dated 12 October 2017, received 15 November 2017.

<sup>231</sup> JTC's response to questions 3, 3(a) and 3(b) of CCCS's RFI dated 15 December 2017, received 9 January 2018.

- (b) As to the possibility of a new market player entering the provision of Slaughtering Services, feedback from third-parties had indicated that they do not see a business case for the provision of Slaughtering Services on a third-party basis only, as it is not commercially attractive. Further, as noted above, barriers to entry for the provision of Slaughtering Services are high.
125. Based on the above, CCCS is of the view that the Proposed JV is necessary to attain the claimed benefits of economies of scale, reduced land utilisation and increased worker productivity.
126. However, CCCS is of the view that the possible extent of sharing of commercially sensitive information relating to each Applicant under the Applicants' initially-envisaged structure of SPH, is not indispensable to SPH's operations, and in turn the attainment of the claimed benefits. For example, as initially envisaged by the Applicants, their Representative Directors on SPH's BOD would collectively negotiate the allocation of SPH's slaughtering capacity, determine the slaughtering fees charged by SPH, and approve individual Service Agreements. As noted in paragraph 87(b) above, these activities involve a high risk of commercially sensitive information relating to each Applicant being shared (among the Applicants which are competitors) in the process. Other initially-proposed safeguards to manage commercially sensitive information that is received by SPH are weak or insufficiently robust (see paragraph 87(c) above).
127. In this regard, CCCS notes that the Applicants have subsequently submitted changes to the structure of SPH, and offered Commitments<sup>232</sup> which will be discussed further below in section V. These changes include alternative means of carrying out such negotiations and decision-making within SPH, and commitments in relation to the extent of sharing of commercially sensitive information that would be less restrictive to competition among the Applicants in the other markets in the poultry industry. On the basis of these changes to SPH's structure and the Commitments, CCCS is of the view that the Proposed JV, taking these into account, satisfies the second limb of the NEB Exclusion.

*Third limb – afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question*

128. In assessing this third limb of the NEB Exclusion, CCCS notes paragraph 10.12 of Annex C to the Section 34 Guidelines states that CCCS will take into account the degree of competition prior to the agreements, and also the reduction in competition that the agreements bring about. Accordingly, in

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<sup>232</sup> As defined in paragraph 132 below.

a market where competition is already relatively weak, this factor may be more important.

129. As discussed in paragraph 90, CCCS notes that:

- (a) The Applicants account for a substantial combined share of the market in the upstream and downstream levels of the supply chain (i.e., the Retained Activities where they remain as competitors), in which competition among the Applicants could be adversely affected by any deliberate and/or inadvertent sharing of commercially sensitive information arising from the Applicants' initially-envisaged structure of SPH;
- (b) The Overlapping Products are homogenous in nature, and there is a certain level of transparency and knowledge among competitors of one another's poultry supply, cost structure and levels, output and even customers;
- (c) Barriers to entry may be high (i.e., low likelihood of new entry being able to credibly challenge the existing players in the market), given the extent of vertical integration in the industry and the possible need for new entrants to operate at multiple levels of the supply chain to compete effectively with the existing vertically-integrated players. Further, there are high regulatory barriers to entry, as acknowledged by the Applicants in their submissions; and
- (d) While the Lee Say Group has a comparably high market share, as noted in paragraph 90 above, there is a risk that any information sharing arising from the Proposed JV could give rise to tacit or explicit collusion involving the Lee Say Group and/or the wider poultry industry in Singapore, such that the Lee Say Group would not effectively exert competitive constraints against the Applicants if such collusion arises. Other than the Lee Say Group, the Applicants face low competitive constraint due to: (i) the low level of competitiveness in the market as evidenced by its stability, (ii) the limited number of remaining undertakings in the market which collectively only possess a [10 - 20]% share in the market; and (iii) high barriers to entry.

130. Accordingly, CCCS is of the view that the Proposed JV, as initially envisaged, is likely to afford the Applicants the possibility of eliminating competition in respect of a substantial part of the Overlapping Products sold to the downstream wholesale market in Singapore. Although the Applicants had initially proposed some safeguards, CCCS does not consider them to be sufficient.

131. However, as the Applicants have since submitted that there will be changes to the structure of SPH as well as offered Commitments that are sufficient to mitigate the competition concerns identified by CCCS, CCCS assesses that the Proposed JV does not afford the Applicants the possibility of eliminating competition to a substantial extent in respect of the upstream or downstream markets.

## **V. COMMITMENTS AND CHANGES TO STRUCTURE OF SPH BY THE APPLICANTS**

132. In response to the competition concerns raised by the CCCS on the Proposed JV, the Applicants have (i) submitted changes to the initial envisaged structure of SPH; and (ii) provided commitments dated 14 June 2018 (“**Commitments**”), to address the concerns. These are detailed below in turn.

### **(a) Changes to Structure of SPH**

133. The Applicants have submitted the following changes to SPH’s structure to ensure that confidential and commercially sensitive information relating to the business of each Applicant will not be shared with the other Applicants through SPH.

#### Staff and Management<sup>233</sup>

134. To reduce potential conflicts of interest that may arise for any seconded employees in relation to the handling of commercially sensitive information, the Applicants submitted that SPH’s senior management team will have their employment contracts transferred from the relevant Applicant (or its Affiliates) to SPH on a permanent basis.<sup>234</sup> Personnel who will be involved in the production, accounts and human resource departments of SPH will also have their employment contracts transferred over on a permanent basis.<sup>235</sup>
135. However, the Applicants have highlighted the possibility that certain categories of individuals may need to be seconded from the Applicants and/or their Affiliates, instead of having their employment contracts transferred from the relevant Applicant (or its Affiliates) to SPH on a permanent basis. This is [REDACTED]. These categories of individuals are: (i)

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<sup>233</sup> See paragraphs 33 and 34 above for the Applicants’ initial submissions on SPH’s staff and management, in particular regarding possible transfers of employees from the employment of the Applicants or their Affiliates to SPH, and whether such transfers will be on a permanent basis or otherwise (e.g. secondment).

<sup>234</sup> Paragraph 7.1 of the Applicants’ response to CCCS’s RFI dated 10 January 2018.

<sup>235</sup> Paragraphs 7.5 and 7.6 of the Applicants’ response to CCCS’s RFI dated 10 January 2018.



certain individuals in administrative roles and other supervisory roles; and (ii) most individuals undertaking roles specific to slaughtering roles.<sup>236</sup> The Applicants have, in the Commitments, agreed that no individuals shall be seconded to SPH from the Applicants (or their respective Affiliates) without the prior written approval of CCCS for SPH to have such seconded employees involved in the operations of SPH.<sup>237</sup>

136. Additionally, certain ground staff (e.g. veterinary inspector), management level or middle management level employees may hold Employment Passes. While Employment Pass holders are not subject to the same foreign worker quota,<sup>238</sup> the Applicants have highlighted this possibility that such management level and middle management roles (i.e. roles that entail some element of supervisory functions) may not be filled by Singaporeans (i.e. these persons may accordingly be Employment Pass holders). Nonetheless, the Applicants have confirmed that SPH shall ensure that management level or middle management level employees shall be employees of SPH (i.e. not seconded from the Applicants or their Affiliates).<sup>239</sup>
137. To further reduce the risk of anti-competitive activities arising from the exchange of commercially sensitive information, the Applicants have also undertaken to procure each employee and seconded employee (where CCCS has provided its approval in writing for SPH to have such seconded employees) to enter into NDAs with SPH as part of the Commitments. These NDAs will be discussed in paragraph 148 below.

#### Capacity Allocation and Slaughtering Service Agreements<sup>240</sup>

138. The Applicants submitted that they envisage an interim Service Agreement to be in place during the first year of SPH's operations. The initial fixed basic slaughtering fee (which will be charged at the same rate to each Applicant), and methodology of the initial division of slaughtering capacity based on recommendations from SPH's external business advisor, has already been approved in-principle by SPH's BOD.<sup>241</sup> The interim Service Agreement is necessary for SPH to address teething issues during the

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<sup>236</sup> Paragraphs 7.2 to 7.4 of the Applicants' response to CCCS's RFI dated 10 January 2018; and Paragraph 9.2 of the Applicants' response to CCCS's RFI dated 22 February 2018.

<sup>237</sup> Clause 3.3 of the Commitments.

<sup>238</sup> Paragraph 9.2 of the Applicants' response to CCCS's RFI dated 22 February 2018.

<sup>239</sup> Paragraphs 1(a) and 1(b) of the Applicants' response dated 22 March 2018 to CCCS's email clarifications dated 20 March 2018.

<sup>240</sup> See paragraphs 35 to 37 above for the Applicants' initial submissions on how the allocation of slaughtering capacity, the determination of SPH's slaughtering fees, and the approval of the Service Agreements would be collectively conducted by SPH's BOD.

<sup>241</sup> Paragraph 6.1 of the Applicants' response to CCCS's RFI dated 21 November 2017; and Paragraphs 23.3 and 23.4 of the Applicants' response to CCCS's RFI dated 10 January 2018. SPH's external business advisor's methodology for determining the initial fixed basic slaughtering fee and initial division of slaughtering capacity are based on the Applicants' historical costs, slaughtering requirements and sales projections amongst other things.

interim period and for the ease of facilitating the timely commencement of SPH's operations given that the 'Clean Team' may not have yet been established to conduct negotiations.<sup>242</sup>

139. The Applicants have also provided as part of the Commitments, that (i) SPH intends to establish a 'Clean Team' to, amongst other things, assume negotiations of subsequent Service Agreements with the Applicants and their Affiliates upon the expiry of the interim Service Agreements, with the Commitments also providing for more robust safeguards around the 'Clean Team' than under the Applicants' initial submissions;<sup>243</sup> and (ii) the approval function of the individual Service Agreements will be delegated to SPH's CEO (who will be a member of the 'Clean Team').<sup>244</sup> As such, the BOD will only receive information relating to the allocated slaughtering capacity and the basic slaughtering fee charged in terms of ranges, in a form that does not offer opportunities for distinguishing any individual customer information.<sup>245</sup> CCCS notes that this would substantially reduce the risk that the exchange of commercially sensitive information may occur.

**(b) Commitments Provided by the Applicants**

140. The Commitments that the Applicants have provided shall continue in full force with no limit in time, and the Applicants have undertaken to "*use all reasonable endeavours and as determined by CCCS to ensure the satisfaction of the Commitments*".<sup>246</sup> A copy of the Commitments can be found at **Annex A**.

141. In summary, the Commitments include:

- (a) The Applicants undertaking not to exchange any form of 'Highly Confidential Information'.<sup>247</sup> This list of 'Highly Confidential Information' identified by the Applicants, referring to confidential and commercially sensitive information relating to SPH's

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<sup>242</sup> Paragraphs 6.1 and 7.1 of the Applicants' response to CCCS's RFI dated 21 November 2017; and Paragraph 23.3 of the Applicants' response to CCCS's RFI dated 10 January 2018.

<sup>243</sup> Paragraphs 23.1 to 23.4 of the Applicants' response to CCCS's RFI dated 10 January 2018.

<sup>244</sup> Paragraph 28.1 of the Applicants' response to CCCS's RFI dated 10 January 2018.

<sup>245</sup> Paragraph 28.1 of the Applicants' response to CCCS's RFI dated 10 January 2018; and Schedule 8 – "*Parameters of Disclosure to the Board*" of the Commitments. The Applicants had further provided an example to illustrate how information in relation to SPH's renewals or entry into the Service Agreements will be presented to SPH's BOD, with such example disclosing such information only on an aggregated basis and in terms of ranges, in a form that does not offer opportunities for distinguishing any individual customer information. Paragraph 13.3 of the Applicants' response to CCCS's RFI dated 22 February 2018.

<sup>246</sup> Clauses 1.3 and 8.1 of the Commitments. CCCS is however able to release or vary the Commitments under Clause 8.2 upon application by the Applicants where supported by reasons such as a material change in the market structure or competitive conditions therein, or in circumstances where compliance with any of the Commitments exceeds the objective of the Commitments set out in Clause 1.2.

<sup>247</sup> Clause 3.1 of the Commitments.

customers' upstream and/or downstream activities which is not necessary for the purpose of operating SPH, is as set out in paragraph 85 above;

- (b) Establishment of a 'Clean Team'<sup>248</sup> to manage 'Commercially Sensitive Information' within SPH, aggregate and desensitise Commercially Sensitive Information for purposes of disclosure to the BOD, and to represent SPH in negotiations with the respective representatives of each customer.<sup>249</sup> 'Commercially Sensitive Information' refers to an exhaustive list of confidential information of SPH's customers which, for the purpose of operating SPH, is necessary for SPH to receive, have access to and/or deal with ("**Restricted Purpose**"). The exhaustive list identified by the Applicants<sup>250</sup> is as set out in paragraph 84 above;
- (c) The disclosure of 'Commercially Sensitive Information' to the Applicants or the BOD only on an aggregated basis and in accordance with conditions governing the extent of disclosure;<sup>251</sup>
- (d) The Applicants undertaking to procure SPH's BOD to delegate its approval function of the Service Agreements to SPH's CEO;<sup>252</sup>
- (e) Ensuring that the Applicant's Representative Employees,<sup>253</sup> who will be granted certain permissible access to SPH's premises and to certain 'Commercially Sensitive Information',<sup>254</sup> are not involved in any sales, marketing and/or pricing activities for that Applicant (or its Affiliates) and is not a member on SPH's Board

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<sup>248</sup> The 'Clean Team' will comprise SPH's senior management team and all other employees whose job functions would require frequent access to any category of Commercially Sensitive Information, insofar as their inclusion in such roles or functions is reasonably necessary for the operations of SPH. For the avoidance of doubt, the Clean Team will not comprise any individual who is a Representative Director or Seconded Employee, unless it is strictly operationally necessary and with approval from CCCS.

<sup>249</sup> Clause 4.3 of the Commitments.

<sup>250</sup> CCCS notes that, [§<].

<sup>251</sup> Clauses 4.3.2, 4.5, 5.1.1, 5.1.2 and 5.1.3 of the Commitments.

<sup>252</sup> Clause 4.5 of the Commitments.

<sup>253</sup> As noted in paragraph 41 above, about [§<] Representative Employees will be deployed to SPH's premises for supervisory and inspection purposes to remain onsite at SPH's premises for the allocated slaughtering period, and [§<] Representative Employees from each Applicant will be responsible for negotiating the slaughtering schedule. See paragraphs 41 to 43 above for further details.

<sup>254</sup> Clause 4.6 of the Commitments. The Applicants submitted that the types of information that the Representative Employee will have access to in negotiating the slaughtering schedule for and on behalf of its appointing Applicant are as follows:

- (i) the number of live chickens which the other parties intend to deliver to SPH's premises;
- (ii) the breeds of live chickens which the other parties intend to deliver to SPH's premises;
- (iii) slaughtering methods, whether it is pursuant to a halal or non-halal method; and
- (iv) the date and time which the other parties require the processed chickens returned to their premises.

Paragraph 5.7 of the Applicants' response to CCCS's RFI dated 22 February 2018.

or a member on the board of directors of that Applicant (or its Affiliates);<sup>255</sup>

- (f) Mandating the signing of NDAs to enforce (a)<sup>256</sup>, (b)<sup>257</sup> and (c)<sup>258</sup> above, as well as to address the disclosure or inadvertent disclosure of ‘Commercially Sensitive Information’;<sup>259</sup>
- (g) Establishment of an effective competition compliance programme which includes training/briefing sessions, compliance manuals, a whistleblower programme and annual declarations of compliance;<sup>260</sup> and
- (h) Appointment of a Monitoring Trustee to monitor compliance with the Commitments and NDAs from the Commencement Date until such time that the Applicants successfully apply to CCCS for the cessation of this Monitoring Period; such application can be made only after a period of three years from the Commencement Date (“**Monitoring Period**”).<sup>261</sup>

142. CCCS conducted a public consultation of the proposed Commitments between 28 March 2018 and 3 April 2018. CCCS did not receive any feedback from third-parties during the public consultation.

**(c) CCCS’s Assessment of the Applicants’ Commitments and Changes to SPH’s Structure**

143. Following its consultation, and in accordance with the following undertakings provided by the Applicants under the Commitments, CCCS considers the Commitments, together with the changes to SPH’s structure, to be sufficient to mitigate the competition concerns identified by CCCS in respect of the sharing of commercially sensitive information arising from the Proposed JV.

*Exchange of Sensitive Information*

144. To mitigate the concern of the exchange of ‘Highly Confidential Information’, the Applicants undertake not to utilise SPH as a platform to share such ‘Highly Confidential Information’. This will be enforced through the implementation of the (i) Shareholders’ Confidentiality

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<sup>255</sup> Clause 4.7.1 of the Commitments.

<sup>256</sup> Clauses 5.1.1, 5.1.2, 5.1.4 and 5.1.6 of the Commitments.

<sup>257</sup> Clause 5.1.3 of the Commitments.

<sup>258</sup> Clauses 5.1.1, 5.1.2 and 5.1.3 of the Commitments.

<sup>259</sup> Clauses 5.1.2, 5.1.4 to 5.1.7 of the Commitments.

<sup>260</sup> Clauses 6.2.1 to 6.2.4 of the Commitments.

<sup>261</sup> Clause 7.1 of the Commitments.

Agreement; (ii) Representative Director Confidentiality Agreement; (iii) Representative Employee Confidentiality Agreement; and (iv) Seconded Employee Confidentiality Agreement.<sup>262</sup>

145. The Applicants have also undertaken to procure SPH's BOD to delegate its approval function of the Service Agreements to SPH's CEO; and any disclosure to the SPH's BOD relating to a Service Agreement shall always be on an Aggregated Basis (as defined in the Commitments).<sup>263</sup>

*Establishment of 'Clean Team'*

146. The Applicants have also undertaken to establish a 'Clean Team'<sup>264</sup> on or before the date that the first interim Service Agreement is executed by SPH and a customer ("**Commencement Date**"),<sup>265</sup> to undertake the following responsibilities:

- (a) **Management of 'Commercially Sensitive Information'** and ensuring that disclosure of such 'Commercially Sensitive Information' is restricted to SPH's employees, seconded employees and professional advisors, in each case on a 'need to know' basis for the Restricted Purpose.
- (b) **Aggregation and Desensitisation of 'Commercially Sensitive Information'** for purposes of disclosure of the 'Commercially Sensitive Information' to SPH's BOD, except in the case of an 'Excepted Event', whereby Commercially Sensitive Information in individualised form may be disclosed to SPH's BOD only to the extent necessary to ensure an appropriate response to the Excepted Event.<sup>266</sup>
- (c) **Representing SPH in negotiations** with the respective representatives of each customer for purposes of entry into a Service Agreement with that customer and scheduling the delivery

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<sup>262</sup> Clause 3.4 of the Commitments.

<sup>263</sup> Clause 4.5 of the Commitments.

<sup>264</sup> Under Clause 4.4 of the Commitments, the 'Clean Team' will comprise SPH's senior management team and all other employees whose job functions would require frequent access to any category of Commercially Sensitive Information, insofar as their inclusion in such roles or functions is reasonably necessary for the operations of SPH. For the avoidance of doubt, the Clean Team will not comprise any individual who is a Representative Director or Seconded Employee, unless it is strictly operationally necessary and with approval from CCCS.

<sup>265</sup> Clause 4.3 of the Commitments.

<sup>266</sup> Under Clause 2.1.19 of the Commitments, 'Excepted Events' comprise (i) alerts or recalls issued by a local or global regulatory body; (ii) breach of a regulatory body's rules, regulations or standards relating to the Slaughtering Service or food, health and safety; and (iii) matters that may result in the Company commencing, or being the subject of potential legal action. CCCS notes that the frequency of occurrence of 'Excepted Events' appears low; and that the scope of disclosure of information in individualised form will be limited to the extent that it allows the Board to trace the source and undertake follow-up measures.

of live chickens, the Slaughtering Services, and the return of the slaughtered chickens to the customer.<sup>267</sup>

### *Representative Employees*

147. To mitigate against any risk of anti-competitive activities by Representative Employees, the Applicants have undertaken to ensure that each Representative Employee is not involved in any sales, marketing and/or pricing activities for that Applicant (or its Affiliates) and is not a member on SPH's Board or a member on the board of directors of that Applicant (or its Affiliates).

### *Non-Disclosure Agreements*

148. To manage risks of anti-competitive activities arising from unauthorised or inadvertent disclosures of Commercially Sensitive Information, the Applicants have undertaken to procure the relevant parties identified in clause 5.1 of the Commitments to enter into the NDAs on or before the Commencement Date, and for such other individuals who may receive, have access to and/or deal with Commercially Sensitive Information as identified after the Commencement Date to do the same, and shall take all reasonable measures to ensure compliance by the said parties with these confidentiality agreements thereafter. The NDAs and associated confidentiality obligations are summarised in **Table 4** below.

**Table 4: Summary of NDAs**

<b>Confidentiality Agreement ("CA")</b>	<b>Obligations on:</b>	<b>Highly Confidential Information</b>	<b>Commercially Sensitive Information</b>	<b><u>Maximum</u> punitive action for breach of CA</b>
Shareholders CA	Shareholders (i.e. Applicants)	<b>Sharing prohibited</b>	Receive on aggregated basis only	Accountable Shareholder to abstain from discussions and voting on matters that relate to the disclosure giving rise to the breach, for a period of three (3) months
	SPH	N.A	Disclosure only to (i) Clean Team, SPH's Employees, Seconded Employees, professional advisors – need-to-know basis only; and (ii) BOD	

<sup>267</sup> Clause 4.3 of the Commitments.

Representative Director CA	Shareholders' Rep Directors	<b>Sharing prohibited</b>	Receive on aggregated basis only, except for Excepted Events For Excepted Events, no disclosure to any party	Removal from SPH's BOD
Clean Team CA	SPH's Clean Team	N.A	Disclosure only to (i) SPH's Employees, Seconded Employees, professional advisors – need-to-know basis only; (ii) BOD; and (iii) Rep Employees – for schedule planning only	Termination of employment
Representative Employee CA	Shareholders' Rep Employees	<b>Sharing prohibited</b>	Receive or observe during Permissible Access (physical premises, negotiating slaughtering schedule) No disclosure to any party	Termination of employment
Employee CA	SPH's Employees	N.A	No disclosure to any party	Termination of employment
Seconded Employee CA	Seconded Employees from Shareholders	<b>Sharing prohibited</b>	No disclosure to any party	Termination of secondment/employment
Professional Advisor CA	Professional advisors	N.A	No disclosure to any party	Termination of engagement

### *Competition Compliance Programme*

149. The Applicants have undertaken to procure SPH to establish an effective compliance programme on or before the Commencement Date which will comprise:

- (a) Annual compliance training/briefing session, and compliance manuals, for each category of individuals: (i) Representative Directors; (ii) 'Clean Team'; (iii) SPH employees who are not in the 'Clean Team'; and (iv) seconded employees. The compliance manuals will set out the types of information that each group may come into contact with and the parameters of permissible disclosure (if any at all), the reporting of suspected anti-competitive activities, and the disciplinary action for anti-competitive conduct;
- (b) Whistle-blower programme for the same categories of individuals to notify the Monitoring Trustee and/or CCCS of any actual or potential infringement of the Act by any person and/or suspected failure to adhere to the Commitments or a breach of the NDAs;<sup>268</sup> and
- (c) Annual declarations for each category of individuals: (i) Representative Directors; (ii) 'Clean Team'; (iii) Representative Employees with Permissible Access; (iv) SPH employees who are

<sup>268</sup> Clauses 6.1 and 6.2 of the Commitments.

not in the ‘Clean Team’; and (v) seconded employees, stating that they have not engaged in any anti-competitive conduct or breached their respective confidentiality agreements.

### *Monitoring of Commitments*

150. The Applicants have undertaken to appoint a Monitoring Trustee on or before the Commencement Date on the terms and conditions to be agreed with CCCS.<sup>269</sup> The Monitoring Trustee shall monitor the compliance<sup>270</sup> of the Applicants with the Commitments, including any breaches of the NDAs, for such duration until the Applicants make a successful application to CCCS for the cessation of this Monitoring Period, which can only be done after an initial period of three years.<sup>271</sup>
151. The Applicants have undertaken to procure that SPH shall report any breaches of the NDAs during the Monitoring Period to the Monitoring Trustee within a period of one (1) week from the time that SPH is notified of the said breach, and ensure that remedial and/or punitive action is taken against the persons in breach in accordance with the directions of CCCS in consultation with the Monitoring Trustee, and to the reasonable satisfaction of CCCS that the remedial and/or punitive action suffices to cure any breaches of the NDAs.<sup>272</sup>

### *Conclusion*

152. Based on the above, CCCS considers that the Commitments offered, together with the Applicants’ changes to SPH’s structure, are sufficient to mitigate the competition concerns identified by CCCS in respect of the sharing of commercially sensitive information arising from the Proposed JV, such that the Proposed JV, taking these into account, satisfies the requirements of the NEB Exclusion.
153. In respect of the Applicants’ submissions in paragraph 135 above that there are certain categories of individuals who may need to be seconded from the Applicants and/or their Affiliates to SPH [X], and pursuant to clause 3.3 of the Commitments,<sup>273</sup> CCCS also approves SPH to have such seconded employees from the date of this decision until [X]<sup>274</sup> [X].

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<sup>269</sup> Clauses 2.1.23 and 7.1 of the Commitments.

<sup>270</sup> Under Clause 3.1.1 of Schedule 10 – “*Terms and Conditions of Monitoring Trustee*” of the Commitments, the monitoring shall include (i) up to four unannounced audits in the first year of the Monitoring Period; and (ii) up to two unannounced audits in the each of the subsequent years of the Monitoring Period, which audits may include attendance at one or more Board meetings in each year during the Monitoring Period.

<sup>271</sup> Clause 2.1.24 of the Commitments.

<sup>272</sup> Clause 7.3 of the Commitments.

<sup>273</sup> [X]. [X].

<sup>274</sup> [X]. [X].



## **VI. CCCS'S DECISION ON THE APPLICATION**

154. For the reasons set out in this decision, CCCS concludes that as long as the Commitments are implemented and complied with, the Proposed JV will qualify for the exclusion set out in section 35, read together with paragraph 9 of the Third Schedule to the Act. For the avoidance of doubt, this decision shall not apply to any conduct or activities of the Applicants and their respective Affiliates outside of the scope of the Proposed JV and its structure as notified to CCCS.
155. In relation to the enforcement of the Commitments, conditions of acceptance of the Commitments are set out in section 60A(1A) of the Act. The effect and enforcement of the Commitments are set out in sections 60B(1A) and 85 of the Act together with the consequences for any failure to comply. Those consequences include revocation of the clearance decision for non-compliance with the Commitments.<sup>275</sup> CCCS may also apply to the District Court to have the Commitments registered with the Court such that the Commitments would have the same force and effect, as if they had been an order originally obtained in the District Court, which shall have power to enforce it accordingly.<sup>276</sup>
156. For completeness, section 46 of the Act provides that if CCCS has determined an application under section 44 by making a decision that the agreement has not infringed the section 34 prohibition, CCCS shall take no further action with respect to the notified agreement unless:
- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
  - (b) it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.
157. To this end, factors which CCCS may consider as material changes of circumstance include, but are not limited to, the following:
- (a) non-compliance with the Commitments;
  - (b) significant change to the scope of the Proposed JV;
  - (c) material changes in the factual information submitted by the Applicants under this Application; and

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<sup>275</sup> Section 60B(2)(b) of the Act.

<sup>276</sup> Section 85 of the Act.

(d) changes in the parties to the Proposed JV.



Toh Han Li  
Chief Executive  
Competition and Consumer Commission of Singapore

## **ANNEX A**

### **APPLICANTS' COMMITMENTS TO CCCS**

**DATED** 14 JUN 2018

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**CCS 400/005/17**

**COMMITMENTS TO THE COMPETITION AND  
CONSUMER COMMISSION OF SINGAPORE**

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**Dentons Rodyk & Davidson LLP  
80 Raffles Place  
#33-00 UOB Plaza 1  
Singapore 048624**

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**Commitments to the Competition and Consumer Commission of Singapore**

**1. Introduction**

- 1.1. The Applicants have entered into the Shareholders' Agreement to form a joint venture company by the name of Singapore Poultry Hub Pte. Ltd. which will provide Slaughtering Services at the poultry slaughtering facility (the "**Slaughterhouse**") within the JTC's Poultry Processing Hub (the "**Proposed Transaction**"). Notwithstanding the Proposed Transaction, the Applicants (or their respective Affiliates) will continue to operate their businesses in the Upstream Market and Downstream Market, where applicable, independently.
- 1.2. Pursuant to section 44 of the Act, the Applicants have submitted an application for decision to CCCS in respect of the Proposed Transaction. In furtherance of the objective of assuring CCCS that the Proposed Transaction, if carried into effect, would be conducted in a manner which would achieve net economic benefits in Singapore and would not have the object or effect of preventing, restricting or distorting competition within Singapore, as set out at paragraph 9 of the Third Schedule of the Act read with section 34 of the Act, the Applicants shall satisfy the Commitments below.
- 1.3. The Applicants shall use all reasonable endeavours and as determined by CCCS to ensure the satisfaction of the Commitments provided that doing so shall not require the Applicants to take any action which exceeds the objective set out in clause 1.2. If the Applicants consider that any action is likely to have such a detrimental effect on the current or future development of the Company, it shall make an application, supported by reasons, to CCCS as set out in clause 8.2.2 below.

**2. Definitions**

- 2.1. Unless the subject or context otherwise requires, the following words, expressions and abbreviations have the following meanings ascribed to them:
  - 2.1.1. "**Act**" means the Competition Act, Chapter 50B of Singapore, for the time being in force in Singapore, and includes any rules/regulations made thereunder.
  - 2.1.2. "**Affiliate**" means in relation to any person, any Subsidiary or Ultimate Holding Company of that person and any other Subsidiary of that Ultimate Holding Company provided always that neither the Company nor any of its Subsidiaries shall be regarded as being an Affiliate of any Applicant for the purposes of the Shareholders' Agreement.
  - 2.1.3. "**Aggregated Basis**" means individualised information collected from each Customer that shall be compiled by the Clean Team in an aggregated form that does not offer opportunities for distinguishing any individual Customer information.
  - 2.1.4. "**AVA**" means the Agri-Food and Veterinary Authority of Singapore.
  - 2.1.5. "**Applicants**" means Mr. Tan Chin Long, Kee Song Holdings Pte. Ltd., Sinmah Holdings (S) Pte. Ltd., Tong Huat Poultry Processing Factory Pte. Ltd. and Tysan Food Pte. Ltd.

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- 2.1.6. **"Board"** means the board of directors of the Company comprising Representative Directors appointed by each Applicant.
- 2.1.7. **"Business"** means the operation of the Slaughterhouse for the provision of Slaughtering Services by the Company to its Customers.
- 2.1.8. **"CCCS"** means the Competition and Consumer Commission of Singapore.
- 2.1.9. **"CCCS's Decision"** means a decision issued by CCCS to exclude the Proposed Transaction from the section 34 prohibition of the Act.
- 2.1.10. **"Clean Team"** has the meaning set out in clauses 4.3 and 4.4.
- 2.1.11. **"Clean Team Confidentiality Agreement"** means the Clean Team confidentiality agreement containing the principles set out in clause 5.1.3 below and substantially in the terms set out in Schedule 3.
- 2.1.12. **"Commencement Date"** means the date the first interim Service Agreement is executed by a Customer and the Company.
- 2.1.13. **"Commercially Sensitive Information"** means the following types of information in respect of a Customer:
- (i) the identity (such as the name of the AVA-approved farm in Malaysia and the AVA code of such farm) of such farm from which the live chickens are procured;
  - (ii) the breed of live chickens ordered by the Customer and subsequently delivered to the Company's premises;
  - (iii) the forecasted and actual quantity of live chickens delivered to the Company's premises;
  - (iv) the forecasted and actual weight of the live chickens delivered to the Company's premises;
  - (v) the actual quantity and approximate weight of the freshly slaughtered chickens returned to the Customer;
  - (vi) whether the live chickens would be slaughtered pursuant to a halal or non-halal method;
  - (vii) the estimated total volume of slaughtered chickens that each Customer would intend to achieve for each calendar year;
  - (viii) the agreed slaughtering capacity allocated to the Customer as set out in the Service Agreement;
  - (ix) the agreed slaughtering fees, discounts, allowances and/or credit terms negotiated between the Customer and the Company as set out in the Service Agreement; and
  - (x) the duration of the Service Agreement.
- 2.1.14. **"Commitments"** means all the commitments set out in this document.

**Commitments to the Competition and Consumer Commission of Singapore**

**2.1.15. "Company"** means Singapore Poultry Hub Pte. Ltd.

**2.1.16. "Control"** in relation to an entity means:

- (i) the power to dominate decision-making, directly or indirectly, in relation to the financial and operating policies of such entity; and/or
- (ii) the power to exercise, directly or indirectly, more than 50% of the voting rights of the shares or other equity interests or capital of such entity.

**2.1.17. "Customer"** means a customer which has engaged the Company for the provision of Slaughtering Services pursuant to the terms set out in the Service Agreement entered into between that customer and the Company.

**2.1.18. "Downstream Market"** means the market in which Overlapping Products are sold.

**2.1.19. "Excepted Events"** means the following events, as set out in Section B of Schedule 8:

- (i) Alerts or recalls issued by a local or global regulatory body;
- (ii) Breach of a regulatory body's rules, regulations or standards relating to the Slaughtering Service or food, health and safety; and
- (iii) Matters that may result in the Company commencing, or being the subject of potential legal action.

**2.1.20. "Employee"** means an individual who holds employment contracts with the Company and is employed by the Company, for the sole benefit of the Company's Business.

**2.1.21. "Employee Confidentiality Agreement"** means the Employee confidentiality agreement containing the principles set out in clause 5.1.5 below and substantially in the terms set out in Schedule 5.

**2.1.22. "Highly Confidential Information"** means the following types of information in respect of each Applicant (and/or its Affiliates):

- (i) the negotiation/contractual terms between each Applicant (or its Affiliates) and the respective exporters (or AVA-approved farms) that they procure live chickens from;
- (ii) the purchase price of live chickens;
- (iii) the total number of live chickens purchased by each Applicant (or its Affiliates);
- (iv) where an Applicant (or its Affiliates) trades live chickens, the names of its customers, the retail price, the volume of live chickens sold and the negotiation/contractual terms between each Applicant (or its Affiliates) and the customer purchasing such live chickens;
- (v) the negotiation/contractual terms between each Applicant (or its Affiliates) and its customers in the Downstream Market in respect of products sold in the Downstream Market;



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- (vi) the price of the products sold in the Downstream Market;
- (vii) the production cost incurred by each Applicant (or its Affiliates) in respect of each type of product sold in the Downstream Market;
- (viii) the total volume of products sold by each Applicant (or its Affiliates) to customers in the Downstream Market;
- (ix) the revenue derived from the sales of the products sold to customers in the Downstream Market;
- (x) the identity of customers in the Downstream Market, except where such information is publicly available (for example, published on the Applicant's (or its Affiliates) website due to marketing purposes). Customer details would include information such as the name of the customer, order quantity, order value, frequency of orders and details of negotiations with the customer;
- (xi) the types of products sold by each Applicant (or its Affiliates) to the Downstream Market, except where such information is publicly available (e.g. available on the Applicant's (or its Affiliate) online shop); and
- (xii) any other information (excluding the Commercially Sensitive Information) pertaining to a Shareholder (or its Affiliates) which if disclosed could give rise to an infringement of section 34 of the Act.

**2.1.23. "JTC"** means the JTC Corporation.

**2.1.24. "Monitoring Period"** means the period of time from the Commencement Date until such time that the Applicants successfully apply to CCCS for the cessation of such Monitoring Period, which application shall only be made after a period of three (3) years from the Commencement Date.

**2.1.25. "Monitoring Trustee"** means one or more natural or legal persons, independent from the Applicants (and its respective Affiliates) and the Company, approved by CCCS and appointed by the Applicants and which has the duty to monitor the Applicants' compliance with the conditions and obligations as set out in the Commitments during the Monitoring Period.

**2.1.26. "Overlapping Products"** means fresh chilled chickens (whole and parts), frozen chickens (whole and parts) and frozen processed chickens-related food products.

**2.1.27. "Permissible Access"** has the meaning set out in clause 4.6.

**2.1.28. "Professional Advisor Confidentiality Agreement"** means the professional advisor confidentiality agreement, containing the principles set out in clause 5.1.7 below and substantially in the terms set out in Schedule 7.

**2.1.29. "Proposed Transaction"** has the meaning set out in clause 1.1.

**2.1.30. "Representative Director"** means a director appointed by an Applicant to the Board.

**Commitments to the Competition and Consumer Commission of Singapore**

- 2.1.31. "Representative Director Confidentiality Agreement"** means the confidentiality agreement entered into by each Representative Director, containing the principles set out in clause 5.1.2 below and substantially in the terms set out in Schedule 2.
- 2.1.32. "Representative Employee"** means an employee of an Applicant (or its Affiliate) who has been granted Permissible Access.
- 2.1.33. "Representative Employee Confidentiality Agreement"** means the confidentiality agreement entered into by each Representative Employee, containing the principles set out in clause 5.1.4 below and substantially in the terms set out in Schedule 4.
- 2.1.34. "Shareholders"** means the Applicants whose names are set out in the section entitled "Shareholders" in Schedule 1 of the Shareholders' Agreement who hold shares in the Company.
- 2.1.35. "Seconded Employee"** has the meaning set out in clause 3.3.
- 2.1.36. "Seconded Employee Confidentiality Agreement"** means the confidentiality agreement entered into by each Seconded Employee, containing the principles set out in clause 5.1.6 below and substantially in the terms set out in Schedule 6.
- 2.1.37. "Service Agreement"** means the service agreement entered into between the Company and a Customer in respect of the Slaughtering Services provided by the Company to that Customer, as may be amended from time to time.
- 2.1.38. "Shareholders' Agreement"** means the shareholders' agreement dated 12 September 2017 entered into between Mr. Tan Chin Long, Kee Song Holdings Pte. Ltd., Sinmah Holdings (S) Pte. Ltd., Tong Huat Poultry Processing Factory Pte. Ltd. and Tysan Food Pte. Ltd. and the Company.
- 2.1.39. "Shareholders' Confidentiality Agreement"** means the Shareholders' confidentiality agreement, containing the principles set out in clause 5.1.1 below and substantially in the terms set out in Schedule 1.
- 2.1.40. "Slaughterhouse"** has the meaning set out in clause 1.1.
- 2.1.41. "Slaughtering Services"** means primary slaughtering services comprising the following processes: killing and bleeding; scalding and de-feathering; evisceration; inspection of eviscerated carcasses; cooling of carcasses; and tagging of dressed poultry.
- 2.1.42. "Subsidiary"** is a corporation that another corporation exercises Control of.
- 2.1.43. "Ultimate Holding Company"** means a corporation that has another corporation as its Subsidiary and is not itself a Subsidiary of any corporation.
- 2.1.44. "Upstream Market"** means the breeding, supply and/or procurement of live chickens.
- 2.2.** Unless the context otherwise requires or permits:
- 2.2.1** words using the singular or plural number also include the plural or singular number, respectively; and

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- 2.2.2 references to any gender include each other gender and the neuter gender.
- 2.3. References to each Applicant shall include its respective successors and permitted assigns.
- 2.4. The headings herein are for reference only and do not affect the interpretation of the clauses hereof.
3. **The Applicants' Undertaking Not to Participate in Anti-Competitive Activities**
- 3.1. The Applicants acknowledge that notwithstanding the Proposed Transaction, each Applicant (and its respective Affiliates) will continue to operate its businesses in the Upstream Market and Downstream Market, where applicable, independently. In view of the ongoing competition amongst the Applicants (and their respective Affiliates), the Applicants undertake that each Applicant (and its respective Affiliates) shall not utilise the Company as a platform to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information or agree, implement or perpetuate any anti-competitive activities that could infringe the Act.
- 3.2. Where it concerns a Customer which has operations in the Upstream Market and Downstream Market, where applicable, and is not a party to the Shareholders' Agreement, the undertaking set out in clause 3.1 shall be applicable to Highly Confidential Information pertaining to that Customer.
- 3.3. The Applicants commit that no individual shall be seconded to the Company from the Applicants (or their respective Affiliates) without the prior written approval of CCCS for the Company to have seconded employees involved in the operations of the Company ("**Seconded Employees**"). Where CCCS has granted approval for the Company to have Seconded Employees, such approval shall be revoked on the date following the expiry of one (1) year from the date that the Company obtains [REDACTED], unless CCCS grants an extension of time to the said approval to the Company.
- 3.4. To satisfy the commitments set out in clauses 3.1, 3.2 and 3.3. above, each Applicant shall:
- 3.4.1. enter into a Shareholders' Confidentiality Agreement;
- 3.4.2. procure its Representative Director to observe this commitment and require each Representative Director to enter into a Representative Director Confidentiality Agreement;
- 3.4.3. procure its Representative Employees to observe this commitment and require each Representative Employee to enter into a Representative Employee Confidentiality Agreement; and
- 3.4.4. procure its Seconded Employees to observe this commitment and require each Seconded Employee to enter into a Seconded Employee Confidentiality Agreement.
- 3.5. In the event the shares currently held by a Shareholder are transferred or issued to a new shareholder in accordance with the terms of the Shareholders' Agreement, the Applicants shall notify the CCCS and procure the new shareholder to comply with the Commitments herein.

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**4. Ring-fencing Procedures**

- 4.1.** The Applicants acknowledge that for the purpose of operating the Business in an efficient manner which is compliant with the applicable laws in Singapore, it is necessary for the Company to receive, have access to and/or deal with Commercially Sensitive Information of each Customer in the ordinary course of Business (the "Restricted Purpose").
- 4.2.** The Applicants further acknowledge that the Commercially Sensitive Information in respect of each Customer would be considered commercially sensitive information for the reason that each Customer would be a competitor of the Applicants (or its Affiliates) in the Upstream Market and Downstream Market, where applicable.
- 4.3.** For the reasons set out in clauses 4.1 and 4.2, the Applicants shall procure the Company to, on or before the Commencement Date, identify (based on the principles set out in clause 4.4 below) and establish a Clean Team, to undertake the following responsibilities:
- 4.3.1** to manage Commercially Sensitive Information received, accessed or dealt with over the ordinary course of Business and ensure that disclosure of such Commercially Sensitive Information is restricted to Employees, Seconded Employees and professional advisors of the Company, in each case on a 'need to know' basis for the Restricted Purpose;
- 4.3.2** to aggregate and desensitize Commercially Sensitive Information for purposes of disclosure of the Commercially Sensitive Information on an Aggregated Basis to the Board in accordance with Section A of Schedule 8, except in the case of an Excepted Event wherein such disclosure shall be limited to the extent relevant to and in accordance with Section B of Schedule 8; and
- 4.3.3** to represent the Company in negotiations with respective representatives of each Customer for purposes of entry into a Service Agreement with that Customer and scheduling the delivery of live chickens, the Slaughtering Services and the return of the slaughtered chickens to the Customer.
- 4.4.** The Clean Team shall comprise all Employees holding the following roles or functions, to the extent that their inclusion in such roles or functions is reasonably necessary for the operations of the Company:
- 4.4.1** senior management of the Company, such as the Chief Executive Officer or Managing Director (or any other equivalent position), the Chief Financial Officer and the Chief Operating Officer of the Company;
- 4.4.2** middle management personnel or individuals holding supervisory roles in the Company who would frequently have access to any category of Commercially Sensitive Information over the course of their employment with the Company;
- 4.4.3** administrative staff of the Company who would frequently have access to any category of Commercially Sensitive Information for purposes of compiling orders for Customers and reports for submission to AVA or any other regulator;
- 4.4.4** accounts staff of the Company who would frequently have access to any category of Commercially Sensitive Information for invoicing purposes; and

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- 4.4.5** any other Employee who would frequently have access to any category of Commercially Sensitive Information.

For the avoidance of doubt, the Clean Team shall not comprise any individual who is a Representative Director or Seconded Employee, unless it is strictly operationally necessary and with approval by CCCS.

- 4.5.** The Applicants shall procure the Board to delegate its approval function of the Service Agreements to the Chief Executive Officer or Managing Director (or any other equivalent position) of the Company and any disclosure to the Board relating to a Service Agreement shall always be on an Aggregated Basis in accordance with Section A of **Schedule 8** except in the case of the Excepted Events wherein such disclosure shall be limited to the extent relevant to and in accordance with Section B of **Schedule 8**.
- 4.6.** To ensure that the Company conducts the Slaughtering Services with efficiency and to the standards required by each Applicant (or its respective Affiliates), certain Representative Employees shall have the following access:
- 4.6.1** physical access to the Slaughterhouse to oversee the reception of the live chickens upon delivery at the Company's premises and the Slaughtering Services conducted for and on behalf of its employer (the Applicant or its respective Affiliates), to ensure that the standards and quality required by its employer are maintained; and
- 4.6.2** access to certain Commercially Sensitive Information which may be disclosed over the course of negotiations with the Clean Team for the purpose of setting the following schedules:
- (i) the delivery of live chickens;
  - (ii) the Slaughtering Services; and
  - (iii) the return of the slaughtered chickens to the Customer.
- ("Permissible Access").**
- 4.7.** To mitigate against any risk of anti-competitive activities by Representative Employees, the Applicants shall implement the following safeguards:
- 4.7.1** ensure that each Representative Employee representing an Applicant (or its Affiliates) is not involved in any sales, marketing and/or pricing activities for that Applicant (or its Affiliates) and is not a member on the Board or a member on the board of directors of that Applicant (or its Affiliates);
- 4.7.2** procure that each Representative Employee with Permissible Access enters into a Representative Employee Confidentiality Agreement with the Company as described below at clause 5.1.4 below.
- 5. Confidentiality Commitments**
- 5.1.** To manage risks of anti-competitive activities arising from unauthorised or inadvertent disclosures of Commercially Sensitive Information, the Applicants shall procure the following parties to enter

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into the following confidentiality agreements on or before the Commencement Date and such other individuals who may receive, have access to and/or deal with Commercially Sensitive Information as identified after the Commencement Date, and shall take all reasonable measures to ensure compliance by the said parties with these confidentiality agreements thereafter:

**5.1.1 Shareholders Confidentiality Agreement** entered into by the Applicants (in each party's capacity as a shareholder of the Company) and the Company, setting out the following general principles:

- (i) the shareholder undertakes not to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information relating to:
  - (a) another Applicant and/or its Affiliates; or
  - (b) a Customer who has business operations in the Upstream Market and Downstream Market, where applicable, and is not a party to the Shareholders' Agreement,or agree, implement or perpetuate any anti-competitive activities that could infringe the Act;
- (ii) the Company undertakes to only disclose Commercially Sensitive Information in respect of a Customer in the following circumstances:
  - (a) disclosure to the Clean Team, its Employees, Seconded Employees and the Company's professional advisors, in each case strictly on a 'need to know' basis for the Restricted Purpose and only to the extent that such disclosure is necessary for the individual to carry on his roles and responsibilities in the Company for the Restricted Purpose; and
  - (b) disclosure to the Board shall only be on an Aggregated Basis and in accordance with Section A of **Schedule 8** except in the case of the Excepted Events wherein such disclosure shall be limited to the extent relevant to and in accordance with Section B of **Schedule 8**; and
- (iii) the shareholder undertakes not to access or seek to access:
  - (a) any form of Commercially Sensitive Information and agrees to only receive Commercially Sensitive Information on an Aggregated Basis as reported by its Representative Director, notwithstanding that its Representative Director may receive such information in the event of an Excepted Event wherein such disclosure shall be limited to the extent relevant to and in accordance with Section B of **Schedule 8**; and
  - (b) the terms, guidelines, directions given by the Board to the Clean Team in respect of the commercial strategy of the Company applicable to the negotiation of Service Agreements, sourcing of Customers and achieving financial targets of the Company.

**5.1.2 Representative Director Confidentiality Agreement** entered into by each Representative Director and the Company, setting out the following general principles:

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- (i) the Representative Director undertakes not to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information in relation to:
  - (a) another Applicant and/or its Affiliates; or
  - (b) a Customer who has business operations in the Upstream Market and Downstream Market, where applicable, and is not a party to the Shareholders' Agreement,or agree, implement or perpetuate any anti-competitive activities that could infringe the Act;
- (ii) the Representative Director agrees to only receive Commercially Sensitive Information on an Aggregated Basis in accordance with Section A of **Schedule 8** except in the case of the Excepted Events wherein such disclosure shall be limited to the extent relevant to and in accordance with Section B of **Schedule 8**;
- (iii) the Representative Director agrees to only disclose Commercially Sensitive Information on an Aggregated Basis to its appointing Shareholder, in accordance with Section A of **Schedule 8**;
- (iv) where a Representative Director receives or has access to individualised forms of Commercially Sensitive Information in respect of a Customer (that is not in relation to his appointing Applicant) due to an Excepted Event warranting disclosure limited to the extent relevant to and in accordance with Section B of **Schedule 8**, he shall not disclose, provide or inadvertently disclose, such information to any party as such disclosure would be prejudicial to the Company; and
- (v) the Representative Director undertakes not to disclose to his appointing Applicant, the terms, guidelines, directions given by the Board to the Clean Team in respect of the commercial strategy of the Company applicable to the negotiation of Service Agreements, sourcing of Customers and achieving financial targets of the Company.

**5.1.3 Clean Team Confidentiality Agreement entered into by each member of the Clean Team and the Company, setting out the following general principles:**

- (i) the member of the Clean Team agrees to receive any category of Commercially Sensitive Information;
- (ii) the member of the Clean Team agrees to only disclose Commercially Sensitive Information to Employees, Seconded Employees and professional advisors of the Company, in each case strictly on a 'need to know' basis for the Restricted Purpose and only to the extent that such disclosure is necessary for the individual to carry on his responsibilities in the Company for the Restricted Purpose;

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- (iii) the member of the Clean Team agrees to only disclose Commercially Sensitive Information to a Representative Employee with Permissible Access only insofar as it enables the Company to plan the following schedules
  - (a) delivery of live chickens;
  - (b) the Slaughtering Services; and
  - (c) the return of the slaughtered chickens; and
- (iv) the member of the Clean Team agrees to only disclose Commercially Sensitive Information on an Aggregated Basis to the Board in accordance with Section A of **Schedule 8** except in the case of an Excepted Event wherein such disclosure shall be to the extent relevant to and in accordance with Section B of **Schedule 8**.

**5.1.4 Representative Employee Confidentiality Agreement entered into by each Representative Employee with Permissible Access and the Company, setting out the following general principles:**

- (i) the Representative Employee undertakes not to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information in relation to:
  - (a) another Applicant and/or its Affiliates; or
  - (b) a Customer who has business operations in the Upstream Market and Downstream Market, where applicable, and is not a party to the Shareholders' Agreement,or agree, implement or perpetuate any anti-competitive activities that could infringe the Act; and
- (ii) the Representative Employee acknowledges that he may receive, have access to, infer or observe certain Commercially Sensitive Information pertaining to another Customer (that is not his appointing Applicant) over the course of his Permissible Access and undertakes not to disclose or inadvertently disclose to any party such information received, accessed, inferred or observed over the course of his Permissible Access.

**5.1.5 Employee Confidentiality Agreement entered into by each Employee (excluding members of the Clean Team who will enter into Clean Team Confidentiality Agreements) and the Company, acknowledging that the Employee may receive, have access to or observe Commercially Sensitive Information over the course of his employment with the Company and undertaking not to disclose or inadvertently disclose to any party such information received, accessed or observed over the course of his employment with the Company.**

**5.1.6 Seconded Employee Confidentiality Agreement entered into by each Seconded Employee and the Company, setting out the following general principles:**



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- (i) the Seconded Employee undertakes not to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information in relation to:
  - (a) another Applicant and/or its Affiliates; or
  - (b) a Customer who has business operations in the Upstream Market and Downstream Market, where applicable, and is not a party to the Shareholders' Agreement,or agree, implement or perpetuate any anti-competitive activities that could infringe the Act; and
- (ii) the Seconded Employee acknowledges that he may receive, have access to or observe Commercially Sensitive Information over the course of his secondment with the Company and undertakes not to disclose or inadvertently disclose to any party such information received, accessed or observed over the course of his secondment to the Company.

**5.1.7** Professional Advisor Confidentiality Agreement entered into by a third party professional advisor engaged by the Company for the purposes of providing professional services, wherein such advisor shall be required to enter into the Professional Advisor Confidentiality Agreement to undertake not to disclose or inadvertently disclose to any party such information received, accessed or observed over the course of its engagement with the Company.

**5.2.** In the event an individual who is already a party to any of the aforementioned confidentiality agreements has a change in scope of duties and responsibilities owed to the Company and as a result of this, there is a change in the scope of his confidentiality obligations owed to the Company, the Company shall procure that individual to enter a more relevant and applicable confidentiality agreement pursuant to any of the categories described above in clause 5.1.1 to 5.1.7. Where there are any inconsistencies in the confidentiality obligations resulting from entry into the new confidentiality agreement, the confidentiality agreement which is applicable to the individual's current scope and duties shall prevail, provided it is consistent with the principles set out in clause 5.1 above.

**6. Compliance Commitments**

**6.1** The Applicants shall procure the Company to establish an effective compliance programme on or before the Commencement Date, to ensure that the Representative Directors, Clean Team members, Employees and Seconded Employees comply with competition law over the course of the Business.

**6.2** The compliance programme shall include the following:

**6.2.1** Annual compliance training/briefing sessions for each of the following categories of individuals, educating them on competition law and the means of complying:

- (i) Representative Directors;
- (ii) Clean Team;

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- (iii) Employees; and
- (iv) Seconded Employees.

**6.2.2** Compliance manuals for each for the following categories:

- (i) Representative Directors;
- (ii) Clean Team;
- (iii) Employees; and
- (iv) Seconded Employees,

setting out the types of information that each group may come into contact with and the parameters of such permissible disclosure (if any at all), the individuals/team who/which suspected anti-competitive activities should be reported to and the disciplinary action for anti-competitive conduct;

**6.2.3** Whistle-blower programme for Representative Directors, Clean Team, Representative Employees with Permissible Access, Employees and Seconded Employees to notify the Monitoring Trustee and/or CCCS if he has reasonable grounds to suspect any actual or potential infringement of the Act by any person and/or suspected failure to adhere to these Commitments or a breach of the confidentiality agreements; and

**6.2.4** Annual declarations in the respective forms set out under **Schedule 9**, by the following categories of individuals:

- (i) Representative Director;
- (ii) Clean Team;
- (iii) Representative Employees with Permissible Access;
- (iv) Employees; and
- (v) Seconded Employees,

stating that they have not engaged in any anti-competitive conduct or breached their respective confidentiality agreements.

**7. Monitoring of Commitments**

**7.1** The Applicants shall appoint a Monitoring Trustee, on or before the Commencement Date, for the Monitoring Period and for the purposes of monitoring compliance by the Applicants with the Commitments including any breaches of the confidentiality agreements that are referred to in the Commitments, on the terms and conditions set out in **Schedule 10** to be agreed with CCCS.

**7.2** The Applicants agree to voluntarily furnish information to CCCS, produce any documents within their control or custody, or facilitate the attendance at CCCS of any person connected with the Business of the Company, at CCCS's request to answer any questions that CCCS may have, in connection with these Commitments, regardless of whether such request is in connection with

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any failure to adhere to the Commitments and whether CCCS has exercised any of its statutory powers under the Act. The Applicants also agree to voluntarily submit to and facilitate any inspection by CCCS at their premises, those of their Affiliates, and those of the Company, in connection with these Commitments, regardless of whether such inspection is in connection with any failure to adhere to the Commitments and whether CCCS has exercised any of its statutory powers under the Act.

**7.3** In the event that there are any breaches of the confidentiality agreements that are referred to in these Commitments during the Monitoring Period, the Applicants:

**7.3.1** shall procure that the Company must report these breaches to the Monitoring Trustee within a period of one (1) week from the time that the Company is notified of the said breach; and

**7.3.2** will ensure that remedial and/or punitive action is taken against the persons in breach in accordance with the directions of CCCS in consultation with the Monitoring Trustee, and to the reasonable satisfaction of CCCS that the remedial and/or punitive action suffices to cure any breaches of the confidentiality agreements.

**8. Term and Termination**

**8.1** The Commitments herein shall continue in full force with no limit in time save as may be required by law or unless the Company is dissolved or liquidated in which case such obligations in respect of the Commercially Sensitive Information disclosed to any of the authorised recipients for the purpose of the Business shall continue unless such Commercially Sensitive Information has entered or subsequently enters the public domain without the failure to adhere to the Commitments.

**8.2** CCCS may, at any time, release the Applicants from or vary or substitute or temporarily waive compliance with one or more of the Commitments or any part of the Commitments thereof pursuant to an application by the Applicants to CCCS supported by reasons, including but not limited to:

**8.2.1** any material change in the market structure or competitive conditions therein; or

**8.2.2** circumstances where compliance with any of the Commitments exceeds the objective stated in clause 1.2 above.

**9. Consequences of Failure to Adhere to the Commitments and Enforcement**

**9.1** Any failure by the Applicants to comply with, implement and/or perform any obligations, undertakings and/or duties imposed under these Commitments, including any failure to take any remedial and/or punitive action that suffices to cure any breaches of the confidentiality agreements to the reasonable satisfaction of CCCS, may be deemed to constitute a failure to adhere to these Commitments, and CCCS may take such action within CCCS' powers under the Act as it deems necessary, which may include the revocation of CCCS's Decision issued in connection with these Commitments.

**9.2** Nothing in these Commitments is intended to restrict the right of CCCS to review activities relevant to these Commitments and/or to take any action under the Act in order to ensure that the

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Applicants have fully complied with, implemented and/or performed their obligations, undertakings and/or duties under the Commitments.

**10. Governing Law and Jurisdiction**

- 10.1** The terms and conditions of these Commitments shall be governed by, and constructed in accordance with the laws of Singapore. The Singapore courts shall have exclusive jurisdiction over all disputes arising out of or in connection with these Commitments.



**CCS 400/005/17**

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**Schedule 1**

**Shareholders' Confidentiality Agreement**

## SHAREHOLDERS' CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on this                      day of                      (the "Agreement").

### BETWEEN

Each Of The Parties Whose Name And Particulars Are Set Out In Schedule 1 (collectively, the "Shareholders" and individually, a "Shareholder");

### AND

Singapore Poultry Hub Pte. Ltd. (Reg. No. 201541946W), a company incorporated in Singapore and having its registered address at 34 Senoko Crescent Singapore 758281 (the "Company"),

(collectively, the "Parties" and each a "Party").

### WHEREAS:

- (A) The Company is a joint venture company established to give effect to the Transaction pursuant to the Shareholders' Agreement. In furtherance of the objective of assuring CCCS that the Transaction, if carried into effect, would be conducted in a manner which would achieve net economic benefits in Singapore and would not have the object or effect of preventing, restricting or distorting competition within Singapore, as set out at paragraph 9 of the Third Schedule of the Act read with section 34 of the Act, the Shareholders have submitted Commitments to CCCS on [●date], annexed hereto as Schedule 2 (the "Commitments"). Capitalised terms used in this Agreement shall, unless otherwise defined, have the same meaning ascribed to them in the Commitments.
- (B) Therefore, it is necessary for the Parties to enter into this Agreement to ensure that the Commitments are complied with.

NOW IT IS HEREBY AGREED as follows:

#### 1. Interpretation

- 1.1. Unless the subject or context otherwise requires, the following words, expressions and abbreviations have the following meanings ascribed to them:
  - 1.1.1. "Authorised Recipients" has the meaning set out in clause 3.3.1.
  - 1.1.2. "Commitments" has the meaning set out in Recital A above.
  - 1.1.3. "Transaction" means the formation of a joint venture by the Shareholders to form the Company which has the objective of providing Slaughtering Services in Singapore.
  - 1.1.4. "person" means a natural person or an entity, as the case may be.
- 1.2. Unless the context otherwise requires or permits:
  - 1.2.1. words using the singular or plural number also include the plural or singular number, respectively; and
  - 1.2.2. references to any gender include each other gender and the neuter gender.

- 1.3. References to each Shareholder shall include its respective successors and permitted assigns.
- 1.4. The headings in this Agreement are for reference only and do not affect the interpretation of the clauses hereof.
2. **Shareholders' Undertaking Not to Disclose Highly Confidential Information**
  - 2.1. The Shareholders acknowledge that notwithstanding the Transaction, each Shareholder (and its respective Affiliates) will continue to operate its businesses in the Upstream Market and Downstream Market, where applicable, independently. In view of the ongoing competition amongst the Shareholders (and their respective Affiliates), each Shareholder (and its respective Affiliates) undertakes that it shall not utilise the Company as a platform to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information or agree, implement or perpetuate any anti-competitive activities that could infringe the Act.
  - 2.2. Where it concerns a Customer which has operations in the Upstream Market and Downstream Market, where applicable, and is not a Shareholder under the Shareholders' Agreement, the undertaking set out in clause 2.1 shall be applicable to Highly Confidential Information pertaining to that Customer.
3. **Management of Commercially Sensitive Information**
  - 3.1. For the purpose of operating the Business in an efficient manner which is compliant with the applicable laws in Singapore, it is necessary for the Company to receive, have access to and/or deal with Commercially Sensitive Information of each Customer in the ordinary course of Business.
  - 3.2. The Company and the Shareholders acknowledge that the Commercially Sensitive Information in respect of a Customer would be considered commercially sensitive information for the reason that the Customer would be a competitor of the Shareholders (or its Affiliates) in the Upstream Market and Downstream Market, where applicable.
  - 3.3. For the reasons set out in clause 3.2 above, the Company undertakes not to disclose or inadvertently disclose Commercially Sensitive Information in respect of a Customer, in whole or in part, save for the following circumstances:
    - 3.3.1. disclosure of such Commercially Sensitive Information is restricted to the Clean Team, Employees, Seconded Employees and the Company's professional advisers (collectively, the "**Authorised Recipients**"), in each case strictly on a 'need to know' basis for the Restricted Purpose and only to the extent that such disclosure is necessary for the individual to carry on his roles and responsibilities in the Company for the Restricted Purpose;
    - 3.3.2. disclosure to the Board shall only be on an Aggregated Basis in accordance with Section A of **Schedule 3**; and
    - 3.3.3. in the case of the Excepted Events such disclosure shall be limited to the extent relevant to and in accordance with Section B of **Schedule 3**.
  - 3.4. For the reasons set out in clause 3.2 above, each Shareholder undertakes not to access or seek to access:
    - 3.4.1. any form of Commercially Sensitive Information and agrees to only receive Commercially Sensitive Information on an Aggregated Basis as reported by its Representative Director,



notwithstanding that its Representative Director may receive such certain Commercially Sensitive Information in the event of an Excepted Event wherein such disclosure shall be limited to the extent relevant to and in accordance with Section B of **Schedule 3**; and

- 3.4.2.** the terms, guidelines, directions given by the Board to the Clean Team in respect of the commercial strategy of the Company applicable to the negotiation of Service Agreements, sourcing of Customers and achieving financial targets of the Company.
- 3.5.** The Company shall procure that the Authorised Recipients shall keep and take all steps to ensure that all Commercially Sensitive Information in respect of a Customer are segregated at all times from the information of any other party.
- 3.6.** The Company shall not be liable for disclosure or use of the Commercially Sensitive Information in the event and to the extent that such Commercially Sensitive Information:
  - 3.6.1.** has entered or subsequently enters the public domain without the breach of any obligation owed to the Shareholder by the Company or its Authorised Recipients; or
  - 3.6.2.** is disclosed pursuant to an order by a court of competent jurisdiction to do so or is obligated to do so pursuant to a requirement of a stock exchange, government body or regulatory authority having jurisdiction and supervision over the party making the disclosure or which is required to be disclosed by law. If the Company is so legally compelled to disclose any of the Commercially Sensitive Information, to the extent permitted by law, it will provide notice to the Monitoring Trustee within a period of one (1) week, during the Monitoring Period.

#### **4. Shareholders' Representatives to Observe Confidentiality Obligations**

- 4.1.** To satisfy the undertakings set out in clauses 3.1 and 3.2 of the Commitments, each Shareholder shall:
  - 4.1.1.** procure its Representative Director to observe the obligations under this Agreement and require its Representative Director to enter into a Representative Director Confidentiality Agreement;
  - 4.1.2.** procure its Representative Employees to observe the obligations under this Agreement and require each of its Representative Employee to enter into a Representative Employee Confidentiality Agreement; and
  - 4.1.3.** procure its Seconded Employees to observe the obligations under this Agreement and require each of its Seconded Employee to enter into a Seconded Employee Confidentiality Agreement.
- 4.2.** In the event any of any breach of any of the aforementioned confidentiality agreements and subject to clause 6.1 below, the Shareholder responsible for the defaulting representative shall take the following action:
  - 4.2.1.** where it concerns a breach of the Representative Director Confidentiality Agreement, the Shareholder shall remove its Representative Director from the Board;
  - 4.2.2.** where it concerns a breach of the Representative Employee Confidentiality Agreement, the Shareholder shall terminate the employment of that Representative Employee or undertake disciplinary action against that Representative Employee; and

4.2.3. where it concerns a breach of the Seconded Employee Confidentiality Agreement, the Shareholder shall terminate the employment of that Seconded Employee or undertake disciplinary action against that Seconded Employee or where the Seconded Employee is employed by an Affiliate, the Shareholder shall procure that Affiliate to undertake any of the aforementioned actions.

**5. Ongoing Obligations**

5.1. The Parties' obligations under this Agreement will continue in force with no limit in time save as otherwise as disclosed under clause 3.6 of this Agreement.

5.2. All Parties under this Agreement shall provide annual declarations in the form set out under **Schedule 4**, stating to the effect that they have not engaged in any anti-competitive conduct or breached their obligations under this Agreement and duly executed by an authorised signatory of a Party.

**6. Compliance**

6.1. In the event of a breach of this Agreement or any breaches of any other confidentiality agreement referred to in clauses 5.1.2 to 5.1.7 of the Commitments, the Parties:

6.1.1. shall procure that the Company must report such a breach to the Monitoring Trustee within a period of one (1) week from the time the Company becomes aware of the said breach, during the Monitoring Period; and

6.1.2. shall ensure that remedial and/or punitive action is taken against the persons in breach in accordance with the directions of CCCS (which may be issued in consultation with the Monitoring Trustee during the Monitoring Period), and to the reasonable satisfaction of CCCS that the remedial and/or punitive action suffices to cure any breaches of the confidentiality agreements.

6.2. Without prejudice to any other rights or remedies available, each Party acknowledges that damages shall not be an adequate remedy and that the non-disclosing Party shall be entitled to equitable relief, including injunction, specific performance or other equitable relief in the event of any breach or threatened breach by the disclosing Party (or its Affiliates) of this Agreement.

**7. Waiver**

No failure or delay by the non-disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**8. Survival**

The terms of this Agreement shall survive the termination and/or expiry of this Agreement and shall continue until matters are in the public domain due to no breach of this Agreement.

**9. Non-Assignment**

Any assignment of this Agreement or any of its obligations or undertakings under this Agreement by any Party without the prior written consent of the other Parties shall be void.

**10. Severance**

If any provision of this Agreement or any portion of such provision shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the provision or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

**11. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in all respects according to the laws of the Republic of Singapore and the Parties hereby agree to submit to the exclusive jurisdiction of the courts of Singapore.

**12. Rights of Third Parties**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce any term of this Agreement.

**13. Entire Agreement**

**13.1.** If there is any conflict between the Shareholders' Agreement and this Agreement, the terms of this Agreement shall prevail.

**13.2.** This Agreement constitutes the entire agreement between the Parties and supersedes and invalidates all other commitments, representations, promises, understandings and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing.

**Signatories**

**Shareholders**

SIGNED BY )  
 )  
for and on behalf of )  
TONG HUAT POULTRY PROCESSING )  
FACTORY PTE. LTD. )

\_\_\_\_\_  
**TONG HUAT POULTRY PROCESSING  
FACTORY PTE. LTD.**

\_\_\_\_\_  
Witnessed by:

SIGNED BY )  
 )  
for and on behalf of )  
KEE SONG HOLDINGS PTE. LTD. )

\_\_\_\_\_  
**KEE SONG HOLDINGS PTE. LTD**

\_\_\_\_\_  
Witnessed by:

SIGNED BY )  
 )  
for and on behalf of )  
SINMAH HOLDINGS (S) PTE. LTD. )

\_\_\_\_\_  
**SINMAH HOLDINGS (S) PTE. LTD.**

\_\_\_\_\_  
Witnessed by:

SIGNED BY )  
 )  
for and on behalf of )  
TYSAN FOOD PTE LTD )

\_\_\_\_\_  
**TYSAN FOOD PTE LTD**

\_\_\_\_\_  
Witnessed by:

SIGNED BY )  
 )  
TAN CHIN LONG )  
 )

\_\_\_\_\_  
TAN CHIN LONG

\_\_\_\_\_  
Witnessed by:

The Company

SIGNED BY )  
 )  
for and on behalf of )  
SINGAPORE POULTRY HUB PTE. LTD. )

\_\_\_\_\_  
SINGAPORE POULTRY HUB PTE. LTD.

\_\_\_\_\_  
Witnessed by:

**Schedule 1**

Name of Shareholder	Registered Address
Registration No./Identification No.	Email Address/Facsimile Number
<b>Tong Huat Poultry Processing Factory Pte. Ltd.</b>  <b>Registration No.: 199101237G</b>	<b>Address:</b>  34 Senoko Crescent Singapore 758281  <b>Email:</b> <a href="mailto:tonghuatgroup@pacific.net.sg">tonghuatgroup@pacific.net.sg</a> / <a href="mailto:siewdintoo@yahoo.com">siewdintoo@yahoo.com</a>
<b>Kee Song Holdings Pte. Ltd.</b>  <b>Registration No.: 201006935E</b>	<b>Address:</b>  2 Defu Lane 2 Defu Industrial Park A Singapore 539465  <b>Email:</b> <a href="mailto:kiansan@keesong.com">kiansan@keesong.com</a> / <a href="mailto:property@keesong.com">property@keesong.com</a>
<b>Sinmah Holdings (S) Pte. Ltd.</b>  <b>Registration No.: 201526915N</b>	<b>Address:</b>  27 Defu Lane 12 Singapore 539134  <b>Email:</b> <a href="mailto:sinmahgroup@singnet.com.sg">sinmahgroup@singnet.com.sg</a> / <a href="mailto:chester.cwh@gmail.com">chester.cwh@gmail.com</a>
<b>Tysan Food Pte Ltd</b>  <b>Registration No: 199905502M</b>	<b>Address:</b>  684 Hougang Avenue 8 #02-967 Hougang Village Singapore 530684  <b>Email:</b> <a href="mailto:kennytoh@oeo.com.sg">kennytoh@oeo.com.sg</a> / <a href="mailto:alextoh@oeo.com.sg">alextoh@oeo.com.sg</a>
<b>Tan Chin Long</b>  <b>Identification No: A32469061</b>	<b>Address:</b>  631 Ang Mo Kio Avenue 4, #07-922, Singapore 560631  <b>Email:</b> <a href="mailto:steve@aqina.com">steve@aqina.com</a> / <a href="mailto:cl.tan@aqina.com">cl.tan@aqina.com</a>

**Schedule 2**

**Commitments**

***(Please refer to the Executed Commitments)***

**Schedule 3**

**Parameters of Disclosure to the Board**

*(Please refer to Schedule 8 of the Commitments)*



**Schedule 4**

**Declaration**

*(Please refer to Schedule 9 of the Commitments)*



**CCS 400/005/17**

**Commitments to the Competition and Consumer Commission of Singapore**

**Schedule 2**

**Representative Director Confidentiality Agreement**

## REPRESENTATIVE DIRECTOR CONFIDENTIALITY AGREEMENT

This **AGREEMENT** is made on this                      day of                      (the "**Agreement**").

### **BETWEEN**

**SINGAPORE POULTRY HUB PTE. LTD. (Reg. No. 201541946W)**, a company incorporated in Singapore, with its registered address at 34 Senoko Crescent Singapore 758281 (the "**Company**");

### **AND**

[Name of Representative Director] (NRIC/ FIN [•]) of [address] (the "**Authorised Recipient**");

(collectively, the "**Parties**" and each a "**Party**").

### **WHEREAS:**

- (A) The Company is a joint venture company established to give effect to the Transaction pursuant to the Shareholders' Agreement. In furtherance of the objective of assuring CCCS that the Transaction, if carried into effect, would be conducted in a manner which would achieve net economic benefits in Singapore and would not have the object or effect of preventing, restricting or distorting competition within Singapore, as set out at paragraph 9 of the Third Schedule of the Act read with section 34 of the Act, the Shareholders have submitted Commitments to CCCS on [•date] annexed hereto as **Schedule 1** (the "**Commitments**"). Capitalised terms used in this Agreement shall, unless otherwise defined, have the same meaning ascribed to them in the Commitments.
- (B) The Authorised Recipient is appointed by [•Name of Shareholder] (the "**Appointing Shareholder**") to the Board.
- (C) Under the Commitments, it is recognised that due to the Authorised Recipient's appointment as a director on the Board, he would receive, access and/or deal with Commercially Sensitive Information on an Aggregated Basis or in the case of an Excepted Event, Commercially Sensitive Information of Customers limited to the parameters of disclosure limited to the extent to and in accordance with Section B of **Schedule 2**. Therefore, it is necessary for the Parties to enter into this Agreement to address the manner in which information would be handled in order to ensure that would be no unauthorised or inadvertent disclosures of Commercially Sensitive Information to the Shareholders or any other third party.

### **NOW IT IS HEREBY AGREED** as follows:

#### **1. Interpretation**

##### **1.1. In this Agreement, unless the context otherwise requires:-**

**1.1.1. "Appointing Shareholder"** means the party referred to in recital B above.

**1.1.2. "Commitments"** has the meaning set out in Recital A above.

**1.1.3. "Transaction"** means the formation of a joint venture by the Shareholders to form the Company which has the objective of providing Slaughtering Services in Singapore.

1.1.4. "person" means a natural person or an entity, as the case may be.

- 1.2. Unless the context otherwise requires, words importing the singular shall include the plural and *vice versa* and words importing a specific gender shall include the other genders (male, female or neuter).
- 1.3. The headings in this Agreement are for reference only and do not affect the interpretation of the clauses hereof.

## **2. Undertaking Relating to Highly Confidential Information**

- 2.1. The Authorised Recipient acknowledges that due to its relationship with the Appointing Shareholder, it may have knowledge of or access to Highly Confidential Information of the Appointing Shareholder (or its Affiliates). In view of the ongoing competition amongst the Shareholders (and/or their respective Affiliates) at the Upstream Market and Downstream Market, where applicable, the Authorised Recipient undertakes not to utilise the Company as a platform to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information or agree, implement or perpetuate any anti-competitive activities that could infringe the Act.
- 2.2. Where it concerns a Customer which has operations in the Upstream Market and Downstream Market, where applicable, and is not a Shareholder under the Shareholders' Agreement, the undertaking set out in clause 2.1 shall be applicable to Highly Confidential Information pertaining to that Customer.

## **3. Obligations Relating to Commercially Sensitive Information**

- 3.1. The Authorised Recipient acknowledges that over the course of his appointment as a Representative Director, he may be required to receive and have access to certain Commercially Sensitive Information to discharge his duties as a Representative Director. Accordingly, the Authorised Recipient agrees to only receive:

3.1.1 Commercially Sensitive Information on an Aggregated Basis in accordance with Section A of **Schedule 2**; and

3.1.2 where it concerns an Excepted Event, individualised forms of Commercially Sensitive Information where such disclosure is limited to the extent relevant to and in accordance with Section B of **Schedule 2**,

and in respect of the aforementioned information that the Authorised Recipient receives or has access to, the Authorised Recipient undertakes to only disclose such information on an Aggregated Basis to the Appointing Shareholder.

- 3.2. Further, the Authorised Recipient undertakes not to disclose to its Appointing Shareholder, the terms, guidelines, directions given by the Board to the Clean Team in respect of the commercial strategy of the Company applicable to the negotiation of Service Agreements, sourcing of Customers and achieving financial targets of the Company.

- 3.3. The Authorised Recipient's undertakings in clauses 3.1 and 3.2 shall not apply to the extent that:

3.3.1 such information has entered or subsequently enters the public domain without the breach of any obligation owed to the Company by the Authorised Recipient; or

**3.3.2** such information is disclosed pursuant to an order by a court of competent jurisdiction to do so or is obligated to do so pursuant to a requirement of a stock exchange, government body or regulatory authority having jurisdiction and supervision over the party making the disclosure or which is required to be disclosed by law. If the Authorised Recipient is so legally compelled to disclose such information, to the extent permitted by law, he shall as soon as reasonably possible provide notice to the Company which shall notify the Monitoring Trustee and/or CCCS within a period of one (1) week of receiving such notice from the Authorised Recipient.

#### **4. Whistleblowing**

**4.1.** Pursuant to the Company's compliance programme, if the Authorised Recipient has reasonable grounds to suspect any actual or potential infringement of the Act by any person and or any suspected failure to adhere to the Commitments or a breach of a confidentiality agreement, the Authorised Recipient shall notify the Monitoring Trustee and/or CCCS in writing as soon as reasonably possible. An undue delay in notifying the Monitoring Trustee and/or CCCS in writing for such violations shall be deemed a breach of this clause 4.1.

#### **5. Compliance**

**5.1.** The Authorised Recipient shall submit annual declarations substantially in the form set out in **Schedule 3**, stating that he has not engaged in any anti-competitive conduct or breached his obligations under this Agreement.

**5.2.** In the event of a breach of this Agreement, the Authorised Recipient shall as soon as reasonably possible report such breach to the Company which shall notify the Monitoring Trustee within a period of one (1) week of receiving such report from the Authorised Recipient, during the Monitoring Period. The timely reporting of such breaches will be taken into account by the Company and/or its Appointing Shareholder when action is taken against the Authorised Recipient for such breaches in accordance with clause 6 below.

#### **6. Remedies**

**6.1.** In the event of a breach of this Agreement, the Company may:

**6.1.1.** procure the Appointing Shareholder to remove the Authorised Recipient as a Representative Director of the Company; and

**6.1.2.** ensure that any other remedial and/or punitive action is taken against the Authorised Recipient in accordance with the directions of CCCS (which may be issued in consultation with the Monitoring Trustee during the Monitoring Period), and to the reasonable satisfaction of CCCS that the remedial and/or punitive action suffices to cure any breaches of this Agreement.

**6.2.** Notwithstanding clause 6.1 above, upon the vacation or removal of the Authorised Recipient from office in any circumstance and for any reason whatsoever, the Authorised Recipient shall immediately deliver or arrange for collection by the Company any documents, paper, property, and any other material in any medium belonging to the Company, its Affiliates or its Customers in the possession or control of the Authorised Recipient.

**7. Waiver**

- 7.1. No failure or delay by the Company or the Authorised Recipient in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**8. Survival**

- 8.1. The terms of this Agreement shall survive the termination and/or expiry of this Agreement and shall continue until matters are in the public domain due to no breach of this Agreement.

**9. Non-assignment**

- 9.1. Any assignment of this Agreement or any of its obligations or undertakings under this Agreement by the Authorised Recipient without the prior written consent of the Company shall be void.

**10. Severance**

- 10.1. If any clause of this Agreement or any portion of such clause shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the clause or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

**11. Governing Law and Jurisdiction**

- 11.1. This Agreement shall be governed by the laws of Singapore, and the Parties hereby submit to the exclusive jurisdiction of the Courts of the Republic of Singapore.

**12. Rights of Third Parties**

- 12.1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce any term of this Agreement.

**13. Entire Agreement**

- 13.1. If there is any conflict between any agreement which the Authorised Recipient has with the Appointing Shareholder and this Agreement, the terms of this Agreement shall prevail.
- 13.2. This Agreement constitutes the entire agreement between the Parties and supersedes and invalidates all other commitments, representations, promises, understandings and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing.
- 13.3. This Agreement may be unilaterally amended at any time by instrument in writing signed on behalf of the Company and the terms of this Agreement shall include any amendments contained in such instruction, provided that the Company gives written notice to the Authorised Recipient.

Signatories

SIGNED BY )  
 )  
for and on behalf of )  
SINGAPORE POULTRY HUB PTE. LTD. )

SINGAPORE POULTRY HUB PTE. LTD.

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

SIGNED BY )  
 )  
[name of Authorised Recipient] )  
in the presence of: )

\_\_\_\_\_  
Witnessed by  
Name and NRIC:



**Schedule 1**

**Commitments**

***(Please refer to the Executed Commitments)***

**Schedule 2**

**Parameters of Disclosure to the Board**

***(Please refer to Schedule 8 of the Commitments)***

**Schedule 3**

**Declaration**

***(Please refer to Schedule 9 of the Commitments)***



**CCS 400/005/17**

**Commitments to the Competition and Consumer Commission of Singapore**

**Schedule 3**

**Clean Team Confidentiality Agreement**

## CLEAN TEAM CONFIDENTIALITY AGREEMENT

This **AGREEMENT** is made on this                      day of                      (the "**Agreement**").

### **BETWEEN**

**SINGAPORE POULTRY HUB PTE. LTD. (Reg. No. 201541946W)**, a company incorporated in Singapore, with its registered address at 34 Senoko Crescent Singapore 758281 (the "**Company**");

### **AND**

**[Name of Employee] (NRIC/ FIN [•]) of [address]**, an Employee of the Company (the "**Authorised Recipient**");

(collectively, the "**Parties**" and each a "**Party**").

### **WHEREAS:**

- (A) The Company is a joint venture company established to give effect to the Transaction pursuant to the Shareholders' Agreement. In furtherance of the objective of assuring CCCS that the Transaction, if carried into effect, would be conducted in a manner which would achieve net economic benefits in Singapore and would not have the object or effect of preventing, restricting or distorting competition within Singapore, as set out at paragraph 9 of the Third Schedule of the Act read with section 34 of the Act, the Shareholders have submitted Commitments to CCCS on [•date] as annexed hereto as **Schedule 1** (the "**Commitments**"). Capitalised terms used in this Agreement shall, unless otherwise defined, have the same meaning ascribed to them in the Commitments.
- (B) Pursuant to the employment agreement entered into between the Company and the Authorised Recipient on [•date] (the "**Employment Agreement**"), the Authorised Recipient is an Employee of the Company.
- (C) Under the Commitments, it is recognised that due to the Authorised Recipient's role in the Company, he would regularly receive, access and/or deal with any category of Commercially Sensitive Information of Customers for the Restricted Purpose and therefore the Authorised Recipient has been identified to be a member of the Clean Team.
- (D) In view of the Clean Team's responsibilities set out above, additional care must be taken to ensure that the Company does not act as a conduit for the transmission of Commercially Sensitive Information between competitors. Therefore, it is necessary for the Parties to enter into this Agreement to address the manner in which information would be handled in order to ensure that would be no unauthorised or inadvertent disclosures of Commercially Sensitive Information to the Shareholders or any third party.

### **NOW IT IS HEREBY AGREED** as follows:

#### **1. Interpretation**

##### **1.1. In this Agreement, unless the context otherwise requires:-**

- 1.1.1. "Commitments"** has the meaning set out in Recital A above.

- 1.1.2. **"Employment Agreement"** has the meaning set out in Recital B above.
- 1.1.3. **"Transaction"** means the formation of a joint venture by the Shareholders to form the Company which has the objective of providing Slaughtering Services in Singapore.
- 1.1.4. **"person"** means a natural person or an entity, as the case may be.
- 1.2. Unless the context otherwise requires, words importing the singular shall include the plural and *vice versa* and words importing a specific gender shall include the other genders (male, female or neuter).
- 1.3. The headings in this Agreement are for reference only and do not affect the interpretation of the clauses hereof.
- 2. Obligations Relating to Commercially Sensitive Information**
- 2.1. Subject to clause 2.2, in respect of any category of Commercially Sensitive Information that the Authorised Recipient agrees to receive, access or observe over the course of his employment with the Company, whether inadvertently or not, the Authorised Recipient undertakes:
- 2.1.1. to maintain the utmost secrecy and confidence of such Commercially Sensitive Information and the terms of this Agreement;
- 2.1.2. not to disclose, or permit to be disclosed, such Commercially Sensitive Information, in whole or in part, to any third party, whether inadvertently or not;
- 2.1.3. not to make any use (whether commercial or otherwise) of such Commercially Sensitive Information nor permit such use to be made thereof, for which the benefit of such use or permission for use is obtained by any person other than the Company;
- 2.1.4. not to make nor authorise nor permit any copies of any Commercially Sensitive Information to be made at any time for any purpose, and to keep any Commercially Sensitive Information in the Authorised Recipient's possession in a safe and secure manner and take all reasonable steps to ensure that no unauthorised person gains access to such Commercially Sensitive Information; and
- 2.1.5. not to announce, publish (in any media) or otherwise publicise such Commercially Sensitive Information nor to permit such announcement or publication of the same, whether inadvertently or not.
- 2.2. The Authorised Recipient's undertakings in clause 2.1 above shall not apply to the extent that:
- 2.2.1. Commercially Sensitive Information is disclosed to Employees, Seconded Employees and the professional advisors of the Company, in each case strictly on a 'need to know' basis for the Restricted Purpose and only to the extent that such disclosure is necessary for the individual to carry on his responsibilities in the Company for the Restricted Purpose;
- 2.2.2. the member of the Clean Team agrees to only disclose Commercially Sensitive Information to Representative Employees with Permissible Access insofar as it enables the Company to plan the following schedules:
- (i) delivery of live chickens;

- (ii) the Slaughtering Services; and
- (iii) the return of the slaughtered chickens;

- 2.2.3. disclosure of Commercially Sensitive Information to the Board shall only be on an Aggregated Basis in accordance with Section A of **Schedule 2** except in the case of the Excepted Events wherein such disclosure shall be limited to the extent relevant to and in accordance with Section B of **Schedule 2**;
- 2.2.4. the Commercially Sensitive Information has entered or subsequently enters the public domain without the breach of any obligation owed to the Company by the Authorised Recipient; or
- 2.2.5. the Commercially Sensitive Information is disclosed pursuant to an order by a court of competent jurisdiction to do so or is obligated to do so pursuant to a requirement of a stock exchange, government body or regulatory authority having jurisdiction and supervision over the party making the disclosure or which is required to be disclosed by law. If the Authorised Recipient is so legally compelled to disclose any of the Commercially Sensitive Information, to the extent permitted by law, he shall as soon as reasonably possible provide notice to the Company which shall notify the Monitoring Trustee and/or CCCS within a period of one (1) week of receiving such notice from the Authorised Recipient.

### **3. Whistleblowing**

- 3.1. Pursuant to the Company's compliance programme, if the Authorised Recipient has reasonable grounds to suspect any actual or potential infringement of the Act by any person and/or any suspected failure to adhere to the Commitments or a breach of a confidentiality agreement, the Authorised Recipient shall notify the Monitoring Trustee and/or CCCS in writing as soon as reasonably possible. An undue delay in notifying the Monitoring Trustee and/or CCCS in writing for such violations shall be deemed a breach of this clause 3.1.

### **4. Compliance**

- 4.1. The Authorised Recipient shall submit annual declarations substantially in the form set out in **Schedule 3**, stating that he has not engaged in any anti-competitive conduct or breached his obligations under this Agreement.
- 4.2. In the event of a breach of this Agreement, the Authorised Recipient shall as soon as reasonably possible report such breach to the Company which shall notify the Monitoring Trustee within a period of one (1) week of receiving such report from the Authorised Recipient, during the Monitoring Period. The timely reporting of such breaches will be taken into account by the Company when action is taken against the Authorised Recipient for such breaches in accordance with clause 5 below.

### **5. Remedies**

- 5.1. In the event of a breach of the Agreement, the Company may:
  - 5.1.1. terminate the employment of the Authorised Recipient without notice;
  - 5.1.2. take disciplinary actions against the Authorised Recipient which may include suspension with immediate effect and without payment of salary in lieu of notice; or



- 5.1.3. or ensure that any other remedial and/or punitive action is taken against the Authorised Recipient in accordance with the directions of CCCS in consultation with the Monitoring Trustee, and to the reasonable satisfaction of CCCS that the remedial and/or punitive action suffices to cure any breaches of this Agreement,

and the Authorised Recipient shall have no claim for damages or otherwise with regard to such termination or disciplinary actions, if the Authorised Recipient acts in breach of any condition of this Agreement.

- 5.2. Upon termination of the Authorised Recipient's employment with the Company, the Authorised Recipient shall immediately deliver or arrange for collection by the Company any documents, paper, property, and any other material in any medium belonging to the Company, its Affiliates or its Customers in the possession or control of the Authorised Recipient.

## **6. Waiver**

- 6.1. No failure or delay by the Company or the Authorised Recipient in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

## **7. Survival**

- 7.1. The terms of this Agreement shall survive the termination and/or expiry of this Agreement and shall continue until matters are in the public domain due to no breach of this Agreement.

## **8. Non-assignment**

- 8.1. Any assignment of this Agreement or any of its obligations or undertakings under this Agreement by the Authorised Recipient without the prior written consent of the Company shall be void.

## **9. Severance**

- 9.1. If any clause of this Agreement or any portion of such clause shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the clause or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

## **10. Governing Law and Jurisdiction**

- 10.1. This Agreement shall be governed by the laws of Singapore, and the Parties hereby submit to the exclusive jurisdiction of the Courts of the Republic of Singapore.

## **11. Rights of Third Parties**

- 11.1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce any term of this Agreement.

**12. Entire Agreement**

- 12.1.** If there is any conflict between the Employment Agreement and this Agreement, the terms of this Agreement shall prevail.
- 12.2.** Subject to clause 12.3 below, this Agreement constitutes the entire agreement between the Parties and supersedes and invalidates all other commitments, representations, promises, understandings and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing.
- 12.3.** This Agreement may be unilaterally amended at any time by instrument in writing signed on behalf of the Company and the terms of this Agreement shall include any amendments contained in such instruction, provided that the Company gives written notice to the Authorised Recipient.

**Signatories**

SIGNED BY )  
 )  
for and on behalf of )  
SINGAPORE POULTRY HUB PTE. LTD. )

\_\_\_\_\_  
**SINGAPORE POULTRY HUB PTE. LTD.**

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

SIGNED BY )  
 )  
[name of Authorised Recipient] )  
in the presence of: )

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

**Schedule 1**

**Commitments**

***(Please refer to the Executed Commitments)***

**Schedule 2**

**Parameters of Disclosure to the Board**

***(Please refer to Schedule 8 of the Commitments)***

**Schedule 3**

**Declaration**

***(Please refer to Schedule 9 of the Commitments)***



**CCS 400/005/17**

**Commitments to the Competition and Consumer Commission of Singapore**

**Schedule 4**

**Representative Employee Confidentiality Agreement**



## REPRESENTATIVE EMPLOYEE CONFIDENTIALITY AGREEMENT

This **AGREEMENT** is made on this                      day of                      (the "Agreement").

### BETWEEN

**SINGAPORE POULTRY HUB PTE. LTD. (Reg. No. 201541946W)**, a company incorporated in Singapore, with its registered address at 34 Senoko Crescent Singapore 758281 (the "Company");

### AND

**[Name of Representative Employee] (NRIC/ FIN [•]) of [address], an employee of [•name of Appointing Shareholder] (the "Authorised Recipient")**;

(collectively, the "**Parties**" and each a "**Party**").

### WHEREAS:

- (A) The Company is a joint venture company established to give effect to the Transaction pursuant to the Shareholders' Agreement. In furtherance of the objective of assuring CCCS that the Transaction, if carried into effect, would be conducted in a manner which would achieve net economic benefits in Singapore and would not have the object or effect of preventing, restricting or distorting competition within Singapore, as set out at paragraph 9 of the Third Schedule of the Act read with section 34 of the Act, the Shareholders have submitted Commitments to CCCS on [•date], annexed hereto as **Schedule 1** (the "**Commitments**"). Capitalised terms used in this Agreement shall, unless otherwise defined, have the same meaning ascribed to them in the Commitments.
- (B) To ensure that the Company conducts the Slaughtering Services with efficiency and to the standards required by each Shareholder (or its Affiliate), the Authorised Recipient shall be granted Permissible Access for and on behalf of his employer, [•name of employer] (the "**Appointing Shareholder**").
- (C) Under the Commitments, it is recognised that due to the Authorised Recipient's Permissible Access, the Authorised Recipient may have access to, infer or observe certain Commercially Sensitive Information pertaining to another Customer (that is not his Appointing Shareholder) over the course of his Permissible Access. Therefore, it is necessary for the Parties to enter into this Agreement to address the manner in which information would be handled in order to ensure that would be no unauthorised or inadvertent disclosures of such Commercially Sensitive Information to the Shareholders or any other third party.

### NOW IT IS HEREBY AGREED as follows:

#### 1. Interpretation

##### 1.1. In this Agreement, unless the context otherwise requires:-

1.1.1. "**Appointing Shareholder**" has the meaning set out in recital B above.

1.1.2. "**Commitments**" has the meaning set out in recital A above.

1.1.3. "**Transaction**" means the formation of a joint venture by the Shareholders to form the Company which has the objective of providing Slaughtering Services in Singapore.

1.1.4. "**person**" means a natural person or an entity, as the case may be;

##### 1.2. Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing a specific gender shall include the other genders (male, female or neuter).

- 1.3. The headings in this Agreement are for reference only and do not affect the interpretation of the clauses hereof.

**2. Undertaking Relating to Highly Confidential Information**

- 2.1. The Authorised Recipient acknowledges that due to its relationship with the Appointing Shareholder, it may have knowledge of or access to Highly Confidential Information of the Appointing Shareholder (or its Affiliates). In view of the ongoing competition amongst the Shareholders (and/or their respective Affiliates) at the Upstream Market and Downstream Market, where applicable, the Authorised Recipient undertakes not to utilise the Company as a platform to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information or agree, implement or perpetuate any anti-competitive activities that could infringe the Act.
- 2.2. Where it concerns a Customer which has operations in the Upstream Market and Downstream Market, where applicable, and is not a Shareholder under the Shareholders' Agreement, the undertaking set out in clause 2.1 shall be applicable to Highly Confidential Information pertaining to that Customer.

**3. Obligations Relating to Commercially Sensitive Information**

- 3.1. Subject to clause 3.2 below, in respect of any Commercially Sensitive Information that the Authorised Recipient may receive, access, infer or observe over the course of his Permissible Access, whether inadvertently or not, the Authorised Recipient undertakes:
- 3.1.1. to maintain the utmost secrecy and confidence of such Commercially Sensitive Information and the terms of this Agreement;
  - 3.1.2. not to disclose, or permit to be disclosed, such Commercially Sensitive Information, in whole or in part, to any third party, whether inadvertently or not;
  - 3.1.3. not to make any use (whether commercial or otherwise) nor permit such use to be made of Commercially Sensitive Information, for which the benefit of such use or permission for use is obtained by any person other than the Company;
  - 3.1.4. not to make nor authorise nor permit any copies of any Commercially Sensitive Information to be made at any time for any purpose, and to keep any Commercially Sensitive Information in the Authorised Recipient's possession in a safe and secure manner and take all reasonable steps to ensure that no unauthorised person gains access to such Commercially Sensitive Information; and
  - 3.1.5. not to announce, publish (in any media) or otherwise publicise such Commercially Sensitive Information nor to permit such announcement or publication of the same, whether inadvertently or not.
- 3.2. The Authorised Recipient's undertakings in clause 3.1 above shall not apply to the extent that:
- 3.2.1. the Commercially Sensitive Information disclosed relates to its Appointing Shareholder and such disclosure is in line with the purpose for which the Company has agreed to grant Permissible Access to the Authorised Recipient;
  - 3.2.2. the Commercially Sensitive Information has entered or subsequently enters the public domain without the breach of any obligation owed to the Company by the Authorised Recipient; or
  - 3.2.3. the Commercially Sensitive Information is disclosed pursuant to an order by a court of competent jurisdiction to do so or is obligated to do so pursuant to a requirement of a stock exchange, government body or regulatory authority having jurisdiction and supervision over the party making the disclosure or which is required to be disclosed by law. If the Authorised Recipient is so legally compelled to disclose any of the

Commercially Sensitive Information, to the extent permitted by law, he shall as soon as reasonably possible provide notice to the Company which shall notify the Monitoring Trustee and/or CCCS within a period of one (1) week of receiving such notice from the Authorised Recipient.

#### **4. Whistleblowing**

- 4.1. Pursuant to the Company's compliance programme, if the Authorised Recipient has reasonable grounds to suspect any actual or potential violation of the Act by any person and/or any suspected failure to adhere to the Commitments or a breach of a confidentiality agreement, the Authorised Recipient shall notify the Monitoring Trustee and/or CCCS in writing as soon as reasonably possible. An undue delay in notifying the Monitoring Trustee and/or CCCS in writing for such violations shall be deemed a breach of this clause 4.1.

#### **5. Compliance**

- 5.1. The Authorised Recipient shall submit annual declarations substantially in the form set out in **Schedule 2**, stating that he has not engaged in any anti-competitive conduct or breached obligations under this Agreement.
- 5.2. In the event of a breach of this Agreement, the Authorised Recipient shall report such breaches to the Company which shall notify the Monitoring Trustee within a period of one (1) week of receiving such report from the Authorised Recipient, during the Monitoring Period. The timely reporting of such breaches will be taken into account by the Company when action is taken against the Authorised Recipient for such breaches in accordance with clause 6 below.

#### **6. Remedies**

- 6.1. In the event of a breach of this Agreement, the Company may undertake the following actions:
- 6.1.1. revoke the Permissible Access of the Authorised Recipient with immediate effect;
- 6.1.2. procure the Appointing Shareholder to terminate the employment of the Authorised Recipient or take disciplinary action against the Authorised Recipient which may include suspension with immediate effect and without payment of salary in lieu; and/or
- 6.1.3. ensure that any other remedial and/or punitive action is taken against the Authorised Recipient in accordance with the directions of CCCS (which may be issued in consultation with the Monitoring Trustee during the Monitoring Period), and to the reasonable satisfaction of CCCS that the remedial and/or punitive action suffices to cure any breaches of this Agreement.
- 6.2. Upon the revocation of Permissible Access pursuant to clause 6.1 above, the Authorised Recipient shall immediately deliver or arrange for collection by the Company any documents, paper, property, and any other material in any medium belonging to the Company, its Affiliates or its Customers in the possession or control of the Authorised Recipient.

#### **7. Waiver**

- 7.1. No failure or delay by the Company or the Authorised Recipient in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

#### **8. Survival**

- 8.1. The terms of this Agreement shall survive the termination and/or expiry of this Agreement and shall continue until matters are in the public domain due to no breach of this Agreement.

**9. Non-assignment**

- 9.1.** Any assignment of this Agreement or any of its obligations or undertakings under this Agreement by the Authorised Recipient without the prior written consent of the Company shall be void.

**10. Severance**

- 10.1.** If any clause of this Agreement or any portion of such clause shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the clause or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

**11. Governing Law and Jurisdiction**

- 11.1.** This Agreement shall be governed by the laws of Singapore, and the Parties hereby submit to the exclusive jurisdiction of the Courts of the Republic of Singapore.

**12. Rights of Third Parties**

- 12.1.** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce any term of this Agreement.

**13. Entire Agreement**

- 13.1.** If there is any conflict between any agreement which the Authorised Recipient has with the Appointing Shareholder and this Agreement, the terms of this Agreement shall prevail.
- 13.2.** Subject to clause 13.2 below, this Agreement constitutes the entire agreement between the Parties and supersedes and invalidates all other commitments, representations, promises, understandings and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing.
- 13.3.** This Agreement may be unilaterally amended at any time by instrument in writing signed on behalf of the Company and the terms of this Agreement shall include any amendments contained in such instruction, provided that the Company gives written notice to the Authorised Recipient.

**Signatories**

SIGNED BY )  
 )  
for and on behalf of )  
SINGAPORE POULTRY HUB PTE. LTD. )

\_\_\_\_\_  
**SINGAPORE POULTRY HUB PTE. LTD.**

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

SIGNED BY )  
 )  
[name of Authorised Recipient] )  
in the presence of: )

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

**Schedule 1**

**Commitments**

***(Please refer to the Executed Commitments)***

**Schedule 2**

**Declaration**

***(Please refer to Schedule 9 of the Commitments)***





**CCS 400/005/17**

**Commitments to the Competition and Consumer Commission of Singapore**

**Schedule 5**

**Employee Confidentiality Agreement**

## EMPLOYEE CONFIDENTIALITY AGREEMENT

This **AGREEMENT** is made on this                      day of                      (the "**Agreement**").

### **BETWEEN**

**SINGAPORE POULTRY HUB PTE. LTD. (Reg. No. 201541946W)**, a company incorporated in Singapore, with its registered address at 34 Senoko Crescent Singapore 758281 (the "**Company**");

### **AND**

**[Name of Employee] (NRIC/ FIN [•]) of [address]**, an Employee of the Company (the "**Authorised Recipient**");

(collectively, the "**Parties**" and each a "**Party**").

### **WHEREAS:**

- (A) The Company is a joint venture company established to give effect to the Transaction pursuant to the Shareholders' Agreement. In furtherance of the objective of assuring CCCS that the Transaction, if carried into effect, would be conducted in a manner which would achieve net economic benefits in Singapore and would not have the object or effect of preventing, restricting or distorting competition within Singapore, as set out at paragraph 9 of the Third Schedule of the Act read with section 34 of the Act, the Shareholders have submitted Commitments to CCCS on [•date] annexed hereto as **Schedule 1** (the "**Commitments**"). Capitalised terms used in this Agreement shall, unless otherwise defined, have the same meaning ascribed to them in the Commitments.
- (B) Pursuant to the employment agreement entered into between the Company and the Authorised Recipient on [•date] (the "**Employment Agreement**"), the Authorised Recipient is an Employee of the Company.
- (C) Under the Commitments, it is recognised that over the course of an Employee's employment with the Company, an Employee may receive, have access to or observe with Commercially Sensitive Information of Customers on a 'need to know' basis for the Restricted Purpose and it is therefore necessary for the Parties to enter into this Agreement to address the manner in which information would be handled in order to ensure that would be no unauthorised or inadvertent disclosures of Commercially Sensitive Information to any party.

### **NOW IT IS HEREBY AGREED** as follows:

#### **1. Interpretation**

##### **1.1. In this Agreement, unless the context otherwise requires:-**

**1.1.1. "Commitments"** has the meaning set out in recital A above.

**1.1.2. "Employment Agreement"** has the meaning set out in recital B above.

**1.1.3. "Transaction"** means the formation of a joint venture by the Shareholders to form the Company which has the objective of providing Slaughtering Services in Singapore.

**1.1.4.** "person" means a natural person or an entity, as the case may be.

**1.2.** Unless the context otherwise requires, words importing the singular shall include the plural and *vice versa* and words importing a specific gender shall include the other genders (male, female or neuter).

**1.3.** The headings in this Agreement are for reference only and do not affect the interpretation of the clauses hereof.

## **2. Obligations Relating to Commercially Sensitive Information**

**2.1.** Subject to clause 2.2, in respect of any Commercially Sensitive Information that the Authorised Recipient may receive, access or observe over the course of his employment with the Company, whether inadvertently or not, the Authorised Recipient undertakes:

**2.1.1** to maintain the utmost secrecy and confidence of such Commercially Sensitive Information and the terms of this Agreement;

**2.1.2** not to disclose, or permit to be disclosed, such Commercially Sensitive Information, in whole or in part, to any third party, whether inadvertently or not;

**2.1.3** not to make any use (whether commercial or otherwise) of such Commercially Sensitive Information nor permit such use to be made thereof, for which the benefit of such use or permission for use is obtained by any person other than the Company;

**2.1.4** not to make nor authorise nor permit any copies of any Commercially Sensitive Information to be made at any time for any purpose, and to keep any Commercially Sensitive Information in the Authorised Recipient's possession in a safe and secure manner and take all reasonable steps to ensure that no unauthorised person gains access to such Commercially Sensitive Information; and

**2.1.5** not to announce, publish (in any media) or otherwise publicise such Commercially Sensitive Information nor to permit such announcement or publication of the same, whether inadvertently or not.

**2.2.** The Authorised Recipient's undertakings in clause 2.1 above shall not apply to the extent that:

**2.2.1** the Commercially Sensitive Information has entered or subsequently enters the public domain without the breach of any obligation owed to the Company by the Authorised Recipient; or

**2.2.2** the Commercially Sensitive Information is disclosed pursuant to an order by a court of competent jurisdiction to do so or is obligated to do so pursuant to a requirement of a stock exchange, government body or regulatory authority having jurisdiction and supervision over the party making the disclosure or which is required to be disclosed by law. If the Authorised Recipient is so legally compelled to disclose any of the Commercially Sensitive Information, to the extent permitted by law, he shall as soon as reasonably possible provide notice to the Company which shall notify the Monitoring Trustee and/or CCCS within a period of one (1) week of receiving such notice from the Authorised Recipient.

## **3. Whistleblowing**

**3.1.** Pursuant to the Company's compliance programme, if the Authorised Recipient has reasonable grounds to suspect any actual or potential violation of the Act by any person and/or any suspected failure to adhere to the Commitments or a breach of a confidentiality

agreement, the Authorised Recipient shall notify the Monitoring Trustee and/or CCCS in writing as soon as reasonably possible. An undue delay in notifying the Monitoring Trustee and/or CCCS in writing for such violations shall be deemed a breach of this clause 3.1.

#### **4. Compliance**

- 4.1.** The Authorised Recipient shall submit annual declarations substantially in the form set out in **Schedule 2**, stating that he has not engaged in any anti-competitive conduct or breached any condition of this Agreement.
- 4.2.** In the event of a breach of this Agreement, the Authorised Recipient shall as soon as reasonably possible report such breach to the Company which shall notify the Monitoring Trustee within a period of one (1) week of receiving such report from the Authorised Recipient, during the Monitoring Period. The timely reporting of such breaches will be taken into account by the Company when action is taken against the Authorised Recipient for such breaches in accordance with clause 5 below.

#### **5. Remedies**

- 5.1.** In the event of a breach of this Agreement, the Company may:

- 5.1.1.** terminate the employment of the Authorised Recipient without notice;
  - 5.1.2.** take disciplinary actions against the Authorised Recipient which may include suspension with immediate effect and without payment of salary in lieu of notice; or
  - 5.1.3.** or ensure that any other remedial and/or punitive action is taken against the Authorised Recipient in accordance with the directions of CCCS in consultation with the Monitoring Trustee, and to the reasonable satisfaction of CCCS that the remedial and/or punitive action suffices to cure any breaches of this Agreement,

and the Authorised Recipient shall have no claim for damages or otherwise with regard to such termination or disciplinary actions, if the Authorised Recipient acts in breach of any condition of this Agreement.

- 5.2.** Upon termination of the Authorised Recipient's employment with the Company, the Authorised Recipient shall immediately deliver or arrange for collection by the Company any documents, paper, property, and any other material in any medium belonging to the Company, its Affiliates or its Customers in the possession or control of the Authorised Recipient.

#### **6. Waiver**

- 6.1.** No failure or delay by the Company or the Authorised Recipient in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

#### **7. Survival**

- 7.1.** The terms of this Agreement shall survive the termination and/or expiry of this Agreement and shall continue until matters are in the public domain due to no breach of this Agreement.

**8. Non-assignment**

- 8.1.** Any assignment of this Agreement or any of its obligations or undertakings under this Agreement by the Authorised Recipient without the prior written consent of the Company shall be void.

**9. Severance**

- 9.1.** If any clause of this Agreement or any portion of such clause shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the clause or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

**10. Governing Law and Jurisdiction**

- 10.1.** This Agreement shall be governed by the laws of Singapore, and the Parties hereby submit to the exclusive jurisdiction of the Courts of the Republic of Singapore.

**11. Rights of Third Parties**

- 11.1.** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce any term of this Agreement.

**12. Entire Agreement**

- 12.1.** If there is any conflict between the Employment Agreement and this Agreement, the terms of this Agreement shall prevail.
- 12.2.** Subject to clause 12.3 below, this Agreement constitutes the entire agreement between the Parties and supersedes and invalidates all other commitments, representations, promises, understandings and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing.
- 12.3.** This Agreement may be unilaterally amended at any time by instrument in writing signed on behalf of the Company and the terms of this Agreement shall include any amendments contained in such instruction, provided that the Company gives written notice to the Authorised Recipient.

**Signatories**

SIGNED BY )  
 )  
for and on behalf of )  
SINGAPORE POULTRY HUB PTE. LTD. )

SINGAPORE POULTRY HUB PTE. LTD.

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

SIGNED BY )  
 )  
[name of Authorised Recipient] )  
in the presence of: )

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

**Schedule 1**

**Commitments**

***(Please refer to the Executed Commitments)***

**Schedule 2**

**Declaration**

***(Please refer to Schedule 9 of the Commitments)***





**CCS 400/005/17**

**Commitments to the Competition and Consumer Commission of Singapore**

**Schedule 6**

**Seconded Employee Confidentiality Agreement**

## SECONDED EMPLOYEE CONFIDENTIALITY AGREEMENT

This **AGREEMENT** is made on this                      day of                      (the "**Agreement**").

### **BETWEEN**

**SINGAPORE POULTRY HUB PTE. LTD. (Reg. No. 201541946W)**, a company incorporated in Singapore, with its registered address at 34 Senoko Crescent Singapore 758281 (the "**Company**");

### **AND**

[Name of Seconded Employee] (NRIC/ FIN [•]) of [address], (the "**Authorised Recipient**") an employee of [•name of employer];

(collectively, the "**Parties**" and each a "**Party**").

### **WHEREAS:**

- (A) The Company is a joint venture company established to give effect to the Transaction pursuant to the Shareholders' Agreement. In furtherance of the objective of assuring CCCS that the Transaction, if carried into effect, would be conducted in a manner which would achieve net economic benefits in Singapore and would not have the object or effect of preventing, restricting or distorting competition within Singapore, as set out at paragraph 9 of the Third Schedule of the Act read with section 34 of the Act, the Shareholders have submitted Commitments to CCCS on [•date], annexed hereto as **Schedule 1** (the "**Commitments**"). Capitalised terms used in this Agreement shall, unless otherwise defined, have the same meaning ascribed to them in the Commitments.
- (B) The Authorised Recipient is an employee of [•name of Employer] (the "**Employer**") pursuant to the employment agreement entered on [•date of employment agreement] (the "**Employment Agreement**"). The Employer has agreed to second the Authorised Recipient for a period of [•duration of secondment period] (the "**Secondment Period**") to the Company.
- (C) Under the Commitments, it is recognised that, during the Secondment Period, the Authorised Recipient may receive, have access to or observe with Commercially Sensitive Information of Customers on a 'need to know' basis for the Restricted Purpose. Therefore, it is necessary for the Parties to enter into this Agreement to address the manner in which information would be handled in order to ensure that there would be no unauthorised or inadvertent disclosures of Commercially Sensitive Information to any party.

**NOW IT IS HEREBY AGREED** as follows:

#### **1. Interpretation**

**1.1** In this Agreement, unless the context otherwise requires:-

**1.1.1.** "**Commitments**" has the meaning set out in recital A above.

**1.1.2.** "**Employer**" has the meaning set out in recital B above.

**1.1.3.** "**Employment Agreement**" has the meaning set out in recital B above.

**1.1.4. "Secondment Period"** has the meaning set out in recital B above.

**1.1.5. "Transaction"** means the formation of a joint venture by the Shareholders to form the Company which has the objective of providing Slaughtering Services in Singapore.

**1.1.6. "person"** means a natural person or an entity, as the case may be.

**1.2** Unless the context otherwise requires, words importing the singular shall include the plural and *vice versa* and words importing a specific gender shall include the other genders (male, female or neuter).

**1.3** The headings in this Agreement are for reference only and do not affect the interpretation of the clauses hereof.

## **2. Undertaking Relating to Highly Confidential Information**

**2.1** The Authorised Recipient acknowledges that due to its relationship with its Employer, it may have knowledge of or access to Highly Confidential Information of its Employer (or its Affiliates). In view of the ongoing competition amongst the Shareholders (and/or their respective Affiliates) at the Upstream Market and Downstream Market, where applicable, the Authorised Recipient undertakes not to utilise the Company as a platform to discuss, disclose, receive, access, seek to access or communicate, any form of Highly Confidential Information or agree, implement or perpetuate any anti-competitive activities that could infringe the Act.

**2.2** Where it concerns a Customer which has operations in the Upstream Market and Downstream Market, where applicable, and is not a Shareholder under the Shareholders' Agreement, the undertaking set out in clause 2.1 shall be applicable to Highly Confidential Information pertaining to that Customer.

## **3. Obligations Relating to Commercially Sensitive Information**

**3.1** Subject to clause 3.3 below, in respect of any Commercially Sensitive Information that the Authorised Recipient may receive, have access to or observe over the course of his secondment with the Company, whether inadvertently or not, the Authorised Recipient undertakes:

**3.1.1** to maintain the utmost secrecy and confidence of such Commercially Sensitive Information and the terms of this Agreement;

**3.1.2** not to disclose, or permit to be disclosed, such Commercially Sensitive Information, in whole or in part, to any third party, whether inadvertently or not;

**3.1.3** not to make any use (whether commercial or otherwise) of such Commercially Sensitive Information nor permit such use to be made thereof, for which the benefit of such use or permission for use is obtained by any person other than the Company;

**3.1.4** not to make nor authorise nor permit any copies of any Commercially Sensitive Information to be made at any time for any purpose, and to keep any Commercially Sensitive Information in the Authorised Recipient's possession in a safe and secure manner and take all reasonable steps to ensure that no unauthorised person gains access to such Commercially Sensitive Information; and

- 3.1.5** not to announce, publish (in any media) or otherwise publicise such Commercially Sensitive Information nor to permit such announcement or publication of the same, whether inadvertently or not.
- 3.2** Subject to clause 8.1 herein, the Authorised Recipient's undertakings in clause 3.1 above shall continue after expiry of the Secondment Period or the early termination of the Secondment Period pursuant to clause 6.1.1 below (as the case may be).
- 3.3** The Authorised Recipient's undertakings in clause 3.1 above shall not apply to the extent that:
- 3.3.1** the Commercially Sensitive Information has entered or subsequently enters the public domain without the breach of any obligation owed to the Company by the Authorised Recipient; or
- 3.3.2** the Commercially Sensitive Information is disclosed pursuant to an order by a court of competent jurisdiction to do so or is obligated to do so pursuant to a requirement of a stock exchange, government body or regulatory authority having jurisdiction and supervision over the party making the disclosure or which is required to be disclosed by law. If the Authorised Recipient is so legally compelled to disclose any of the Commercially Sensitive Information, to the extent permitted by law, he shall as soon as reasonably possible provide notice to the Company which shall notify the Monitoring Trustee and/or CCCS within a period of one (1) week of receiving such notice from the Authorised Recipient.

#### **4. Whistleblowing**

- 4.1** Pursuant to the Company's compliance programme, if the Authorised Recipient has reasonable grounds to suspect any actual or potential violation of the Act by any person and/or any suspected failure to adhere to the Commitments or a breach of a confidentiality agreement, the Authorised Recipient shall notify the Monitoring Trustee and/or CCCS in writing as soon as reasonably possible. An undue delay in notifying the Monitoring Trustee and/or CCCS in writing for such violations shall be deemed a breach of this clause 4.1.

#### **5. Compliance**

- 5.1** The Authorised Recipient shall submit annual declarations substantially in the form set out in **Schedule 2**, stating that he has not engaged in any anti-competitive conduct or breached any condition of this Agreement.
- 5.2** In the event of a breach of this Agreement, the Authorised Recipient shall as soon as reasonably possible report such breach to the Company which shall notify the Monitoring Trustee within a period of one (1) week of receiving such report from the Authorised Recipient, during the Monitoring Period. The timely reporting of such breaches will be taken into account by the Company when action is taken against the Authorised Recipient for such breaches in accordance with clause 6 below.

#### **6. Remedies**

- 6.1** In the event of a breach of this Agreement, the Company may undertake the following actions:
- 6.1.1** terminate the Secondment Period with immediate effect;

- 6.1.2** procure the Employer to terminate the employment of the Authorised Recipient or take disciplinary action against the Authorised Recipient which may include suspension with immediate effect and without payment of salary in lieu;
- 6.1.3** ensure that remedial and/or punitive action is taken against the defaulting Authorised Recipient with the directions of CCCS in consultation with the Monitoring Trustee, and to the reasonable satisfaction of CCCS that the remedial and/or punitive action suffices to cure any breaches of this Agreement;

and the defaulting Authorised Recipient shall have no claim for damages or otherwise with regard to such termination or disciplinary actions, if the Authorised Recipient acts in breach of any condition of this Agreement.

- 6.2** Upon the expiry of the Secondment Period or the early termination of Secondment Period under clause 6.1.1, the Authorised Recipient shall immediately deliver or arrange for collection by the Company any documents, paper, property, and any other material in any medium belonging to the Company, its Affiliates or its Customers in the possession or control of the Authorised Recipient.

## **7. Waiver**

- 7.1** No failure or delay by the Company or the Authorised Recipient in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

## **8. Survival**

- 8.1** The terms of this Agreement shall survive the termination and/or expiry of this Agreement and shall continue until matters are in the public domain due to no breach of this Agreement.

## **9. Non-assignment**

- 9.1** Any assignment of this Agreement or any of its obligations or undertakings under this Agreement by the Authorised Recipient without the prior written consent of the Company shall be void.

## **10. Severance**

- 10.1** If any clause of this Agreement or any portion of such clause shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the clause or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

## **11. Governing Law and Jurisdiction**

- 11.1** This Agreement shall be governed by the laws of Singapore, and the Parties hereby submit to the exclusive jurisdiction of the Courts of the Republic of Singapore.

**12. Rights of Third Parties**

- 12.1** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce any term of this Agreement.

**13. Entire Agreement**

- 13.1** In the event of a conflict between the Employment Agreement and this Agreement, the terms of this Agreement shall prevail.
- 13.2** Subject to clause 13.3 below, this Agreement constitutes the entire agreement between the Parties and supersedes and invalidates all other commitments, representations, promises, understandings and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing.
- 13.3** This Agreement may be unilaterally amended at any time by instrument in writing signed on behalf of the Company and the terms of this Agreement shall include any amendments contained in such instruction, provided that the Company gives written notice to the Authorised Recipient.

**Signatories**

SIGNED BY )  
 )  
for and on behalf of )  
SINGAPORE POULTRY HUB PTE. LTD. )

\_\_\_\_\_  
SINGAPORE POULTRY HUB PTE. LTD.

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

SIGNED BY )  
 )  
[name of Authorised Recipient] )  
in the presence of: )

\_\_\_\_\_  
Witnessed by  
Name and NRIC:



**Schedule 1**

**Commitments**

***(Please refer to the Executed Commitments)***

**Schedule 2**

**Declaration**

***(Please refer to Schedule 9 of the Commitments)***



**CCS 400/005/17**

**Commitments to the Competition and Consumer Commission of Singapore**

**Schedule 7**

**Professional Advisor Confidentiality Agreement**

## PROFESSIONAL ADVISOR CONFIDENTIALITY AGREEMENT

This **AGREEMENT** is made on this                      day of                      (the "**Agreement**").

### BETWEEN

**SINGAPORE POULTRY HUB PTE. LTD. (Reg. No. 201541946W)**, a company incorporated in Singapore, with its registered address at 34 Senoko Crescent Singapore 758281 (the "**Company**");

### AND

**[Name of Professional Advisor] (Reg No. [●]) of [address]**, (the "**Authorised Recipient**");

(collectively, the "**Parties**" and each a "**Party**").

### WHEREAS:

- (A) The Company has engaged the Authorised Recipient to provide the scope of services (the "**Purpose**") set out under the terms of engagement dated [●date] (the "**Engagement Agreement**").
- (B) In furtherance of the Purpose, the Parties agree to enter into this Agreement and be bound by the terms and conditions hereinafter set forth governing the disclosure, use and protection of the Confidential Information.

### NOW IT IS HEREBY AGREED as follows:

#### 1. Interpretation

##### 1.1 In this Agreement, unless the context otherwise requires:-

1.1.1. "**AVA**" means the Agri-Food and Veterinary Authority of Singapore.

1.1.2. "**Commercially Sensitive Information**" means the following types of information in respect of a Customer:

- (i) the identity (such as the name of the AVA-approved farm in Malaysia and the AVA code of such farm) of such farm from which the live chickens are procured;
- (ii) the breed of live chickens ordered by the Customer and subsequently delivered to the Company's premises;
- (iii) the forecasted and actual quantity of live chickens delivered to the Company's premises;
- (iv) the forecasted and actual weight of the live chickens delivered to the Company's premises;
- (v) the actual quantity and approximate weight of the freshly slaughtered chickens returned to the Customer;
- (vi) whether the live chickens would be slaughtered pursuant to a halal or non-halal method;
- (vii) the estimated total volume of slaughtered chickens that each Customer would

intend to achieve for each calendar year;

- (viii) the agreed slaughtering capacity allocated to the Customer as set out in the Service Agreement;
- (ix) the agreed slaughtering fees, discounts, allowances and/or credit terms negotiated between the Customer and the Company as set out in the Service Agreement; and
- (x) the duration of the Service Agreement.

**1.1.3. "Confidential Information"** means all information, materials and documents which are furnished or to be furnished (whether provided in writing or orally or transmitted electronically, or howsoever conveyed, contained, packaged or stored) by or on behalf of the Company to the Authorised Recipient in connection with the Purpose and the business and financial information of the Company and any information which by its nature should be proprietary, confidential or secret, including but not limited to the Commercially Sensitive Information relating to Customers of the Company.

**1.1.4. "Customer"** means a customer which has engaged the Company for the provision of Slaughtering Services pursuant to the terms set out in the Service Agreement entered into between that customer and the Company.

**1.1.5. "Engagement Agreement"** has the meaning set out under recital A above.

**1.1.6. "Service Agreement"** means the service agreement entered into between the Company and a Customer in respect of the Slaughtering Services provided by the Company to that Customer, as may be amended from time to time.

**1.1.7. "Slaughtering Services"** means primary slaughtering services comprising the following processes: killing and bleeding; scalding and de-feathering; evisceration; inspection of eviscerated carcasses; cooling of carcasses; and tagging of dressed poultry.

**1.1.8. "Purpose"** has the meaning set out under recital A above.

**1.1.9. "Representatives"** has the meaning set out under clause 2.1.

**1.1.10. "Transaction"** means the formation of a joint venture by the Shareholders to form the Company which has the objective of providing Slaughtering Services in Singapore.

**1.1.11. "person"** means a natural person or an entity, as the case may be.

**1.2** Unless the context otherwise requires, words importing the singular shall include the plural and *vice versa* and words importing a specific gender shall include the other genders (male, female or neuter).

**1.3** The headings in this Agreement are for reference only and do not affect the interpretation of the clauses hereof.

## **2. Confidentiality Obligations**

**2.1** The Authorised Recipient hereby undertakes that at all times:

**2.1.1** it shall treat the Confidential Information as strictly confidential and shall not disclose the Confidential Information to anyone save for its respective employees (the

**"Representatives"**) in each case on a 'need to know' basis for the Purpose and only to the extent that such disclosure is necessary for the Purpose;

- 2.1.2** it shall use the Confidential Information solely for the Purpose and it shall not use the Confidential Information for the benefit of any other person or entity except the Company;
- 2.1.3** it shall not use, and shall procure that each of its Representatives shall not use the Confidential Information for any purpose other than for the Purpose alone;
- 2.1.4** it shall procure that each of its Representatives shall keep and take all steps to ensure that all Confidential Information are segregated at all times from the information of any other party;
- 2.1.5** it shall ensure that each of its Representatives complies with the terms of this Agreement as if he/she were a party hereto;
- 2.1.6** it agrees that any analysis, compilation, study or report prepared by the Authorised Recipient on the basis of or derived from or making reference to individualised Confidential Information shall only be disclosed to management of the Company, namely, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer; and
- 2.1.7** it agrees and acknowledges that all Confidential Information are and shall remain the property of the Company and that no rights, express or implied, in or to the Confidential Information (including patents, copyrights, trademarks, designs, licences or other intellectual property rights) are granted to the Authorised Recipient or any of its Representatives.

**2.2** The Authorised Recipient's undertakings in clause 2.1 above shall not apply to the extent that:

- 2.2.1** the Confidential Information has entered or subsequently enters the public domain without the breach of any obligation owed to the Company by the Authorised Recipient; or
- 2.2.2** the Confidential Information is disclosed pursuant to an order by a court of competent jurisdiction to do so or is obligated to do so pursuant to a requirement of a stock exchange, government body or regulatory authority having jurisdiction and supervision over the party making the disclosure or which is required to be disclosed by law. If the Authorised Recipient is so legally compelled to disclose any of the Commercially Sensitive Information, to the extent permitted by law, he shall as soon as reasonably possible provide notice to the Company which shall notify the Monitoring Trustee within a period of one (1) week of receiving such notice from the Authorised Recipient, during the Monitoring Period.

### **3. Remedies**

- 3.1** In the event of a breach of the Agreement, the Company shall terminate the Engagement Agreement and may seek claims against the Authorised Recipient for all losses, damages and liabilities arising from or connected with any unauthorised disclosure, use or misuse of the Confidential Information or any other breach of the terms of this Agreement, whether by the Authorised Recipient or its Representative.

**4. Waiver**

- 4.1** No failure or delay by the Company in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**5. Survival**

- 5.1** The terms of this Agreement shall survive the termination and/or expiry of this Agreement and shall continue until matters are in public domain due to no breach of this Agreement.

**6. Non-assignment**

- 6.1** Any assignment of this Agreement or any of its obligations or undertakings under this Agreement by the Authorised Recipient without the prior written consent of the Company shall be void.

**7. Severance**

- 7.1** If any clause of this Agreement or any portion of such clause shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the clause or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

**8. Governing Law and Jurisdiction**

- 8.1** This Agreement shall be governed by the laws of Singapore, and the Parties hereby submit to the exclusive jurisdiction of the Courts of the Republic of Singapore.

**9. Rights of Third Parties**

- 9.1** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act (Chapter 53B) of Singapore to enforce any term of this Agreement.

**10. Entire Agreement**

- 10.1** Subject to clause 10.2 below, this Agreement constitutes the entire agreement between the Parties and supersedes and invalidates all other commitments, representations, promises, understandings and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing.
- 10.2** This Agreement may be unilaterally amended at any time by instrument in writing signed on behalf of the Company and the terms of this Agreement shall include any amendments contained in such instruction, provided that the Company gives written notice to the Authorised Recipient.



**Signatories**

SIGNED BY )  
 )  
for and on behalf of )  
SINGAPORE POULTRY HUB PTE. LTD. )

SINGAPORE POULTRY HUB PTE. LTD

\_\_\_\_\_  
Witnessed by  
Name and NRIC:

SIGNED BY )  
 )  
for and on behalf of )  
[name of Authorised Recipient] )

\_\_\_\_\_  
[name of Authorised Recipient]

\_\_\_\_\_  
Witnessed by  
Name and NRIC:



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**Schedule 8**

**Parameters of Disclosure to the Board**

**Schedule 8**

**Parameters of Disclosure to the Board**

<b>Section A - Routine Matters Disclosed on Aggregated Basis (with no opportunities for distinguishing individual customer information)</b>				
	<b>When Provided</b>	<b>Type of Information</b>	<b>Level of Detail Required</b>	<b>Rationale for Disclosure to Board</b>
(A)	Renewal of Service Agreements	Summary of the terms that a Service Agreement is renewed upon, in particular the basic slaughtering fee and the slaughtering capacity allocated for the term of the agreement will be summarised in ranges, in a form that does not offer opportunities for distinguishing any individual Customer information	Aggregated (in terms of ranges)	<ul style="list-style-type: none"> <li>The Board may require aggregated data in respect of the renewal terms as it will need to satisfy its financial loans</li> <li>Such summary updates may be disclosed in the Monthly Reports prepared by the "Clean Team"</li> </ul>
(B)	Monthly Reports prepared by "Clean Team"	Total revenue received from Slaughtering Services for the month	Aggregated	<ul style="list-style-type: none"> <li>The Board would require such summaries set out in a monthly report to ensure that SPH is meeting its financial targets (or the target rate of the return of investments) such that it is able to make its monthly payments for the loan obtained from a third party financial institution.</li> </ul>
(C)		Total number of live chickens slaughtered for the month	Aggregated	<ul style="list-style-type: none"> <li>The Board may also decide to have management source for alternative business in the event the Company does not meet its financial targets.</li> </ul>
(D)		Accounts receivables for the month	Aggregated	
(E)		Bad debts for the month	Aggregated	<ul style="list-style-type: none"> <li>The Board may also give general instructions as to the collection of the bad debts which have accrued.</li> </ul>
(F)	Alternative third party arrangement	Clean Team's view on the impact of such arrangement on the financial targets of SPH	Aggregated	<ul style="list-style-type: none"> <li>The Board should be apprised of the financial impact such alternative third party arrangement would have on the Company's business.</li> <li>The Board may direct management to source for alternative business in the event the Company does not meet its targets.</li> </ul>

## Schedule 8

### Parameters of Disclosure to the Board

(G)	Routine maintenance and/or repair works pursuant to machinery malfunction	Breeds of chickens identified to cause wear and tear or the malfunctioning of the machinery	Aggregated	<ul style="list-style-type: none"><li>The Board will require details relating to the routine maintenance and repair works to enable their assessment of the machinery's suitability for the breeds of birds slaughtered in Singapore and whether they should consider any other recourse in the event of persistent malfunctioning or advanced wear and tear.</li></ul>
(H)		The number of chickens slaughtered (and a breakdown of the breeds) from the last maintenance session	Aggregated	
Section B – Excepted Events				
	When Provided	Type of Information	Level of Detail Required	Rationale for Disclosure to Board
(A)	Alerts or recalls issued by a local or global regulatory body	Number of live chickens subject to the recall or breach (as the case may be)	Individualised (to the extent it allows the Board to trace the source and undertake follow-up measures)	<ul style="list-style-type: none"><li>In the event a regulatory body (e.g. AVA, NEA, Ministry of Health ("MOH") or World Health Organisation ("WHO") issues a recall or alert which requires the Company to notify its Customer (which in turn would need to notify its customers in the Downstream Market), the Board would need to be apprised on such issues which would go towards risk management (directions to management to address the issues with the regulator or addressing it directly) and dealing with its insurer(s) where a claim is necessary.</li><li>The appointing Shareholders shall not receive or have access to the individualised data revealed to their appointed director.</li></ul>
		The party whose live chickens are subject to the recall or the breach (as the case may be)		
		The farm which is subject to the recall or the breach (as the case may be)		
		The dates in which the live chickens (subject to the recall or breach (as the case may be)) were received and slaughtered		
(B)	Breach of a local or global regulatory body's rules, regulations or	Number of live chickens subject to the recall or breach (as the case may be)	Individualised (to the extent it allows the Board to trace the source and undertake follow-	<ul style="list-style-type: none"><li>In the event a regulatory body (e.g. AVA, NEA, MUIS, WHO) notifies of a breach of its regulations, rules or standards that has a</li></ul>

## Schedule 8

### Parameters of Disclosure to the Board

	standards relating to the Slaughtering Service or food, health and safety	<table><tr><td>The party whose live chickens are subject to the recall or the breach (as the case may be)</td><td rowspan="3">The farm which is subject to the recall or the breach (as the case may be)</td><td rowspan="3">The dates in which the live chickens (subject to the recall or breach (as the case may be)) were received and slaughtered</td></tr><tr><td>Name of the customer</td></tr><tr><td>Number of live chickens subject to the dispute</td></tr><tr><td>The farm which is subject to the dispute</td><td rowspan="3">The dates in which the live chickens (subject to the dispute) were received and slaughtered</td><td rowspan="3">Credit terms agreed with the customer in the Service Agreement (if this is the subject of the dispute)</td></tr></table>	The party whose live chickens are subject to the recall or the breach (as the case may be)	The farm which is subject to the recall or the breach (as the case may be)	The dates in which the live chickens (subject to the recall or breach (as the case may be)) were received and slaughtered	Name of the customer	Number of live chickens subject to the dispute	The farm which is subject to the dispute	The dates in which the live chickens (subject to the dispute) were received and slaughtered	Credit terms agreed with the customer in the Service Agreement (if this is the subject of the dispute)	up measures)	<ul style="list-style-type: none"><li>material impact on the Company's operations (e.g., AVA's licence), the Board would need to be apprised on such issues which go towards risk management (e.g. their insurers may be required to be notified), addressing any of the regulator's inquiries (because it would be their duties as directors of the Company to do so) and advising management on the measures that are required to address the issue at hand.</li><li>The appointing Shareholders shall not receive or have access to the individualised data revealed to their appointed director.</li></ul>
The party whose live chickens are subject to the recall or the breach (as the case may be)	The farm which is subject to the recall or the breach (as the case may be)	The dates in which the live chickens (subject to the recall or breach (as the case may be)) were received and slaughtered										
Name of the customer												
Number of live chickens subject to the dispute												
The farm which is subject to the dispute	The dates in which the live chickens (subject to the dispute) were received and slaughtered	Credit terms agreed with the customer in the Service Agreement (if this is the subject of the dispute)										
(C)			Matters that may result in potential legal action	<table><tr><td>Name of the customer</td><td rowspan="3">Individualised (to the extent necessary to resolve the dispute)</td></tr><tr><td>Number of live chickens subject to the dispute</td></tr><tr><td>The farm which is subject to the dispute</td></tr><tr><td>The dates in which the live chickens (subject to the dispute) were received and slaughtered</td><td rowspan="3">In the event that there is a matter (e.g. customer complaint, bad debts which the Company intends to pursue or a dispute arising from the credit terms) which has the potential to or has become litigious, the Board would need to be apprised on such issues which go towards risk management (e.g. their insurers may be required to be notified), instructing legal counsel and advising on the measures that are required to address the issue.</td></tr><tr><td>Credit terms agreed with the customer in the Service Agreement (if this is the subject of the dispute)</td></tr></table>	Name of the customer	Individualised (to the extent necessary to resolve the dispute)	Number of live chickens subject to the dispute	The farm which is subject to the dispute	The dates in which the live chickens (subject to the dispute) were received and slaughtered	In the event that there is a matter (e.g. customer complaint, bad debts which the Company intends to pursue or a dispute arising from the credit terms) which has the potential to or has become litigious, the Board would need to be apprised on such issues which go towards risk management (e.g. their insurers may be required to be notified), instructing legal counsel and advising on the measures that are required to address the issue.	Credit terms agreed with the customer in the Service Agreement (if this is the subject of the dispute)	<ul style="list-style-type: none"><li>In the event that there is a matter (e.g. customer complaint, bad debts which the Company intends to pursue or a dispute arising from the credit terms) which has the potential to or has become litigious, the Board would need to be apprised on such issues which go towards risk management (e.g. their insurers may be required to be notified), instructing legal counsel and advising on the measures that are required to address the issue.</li><li>The appointing Shareholders shall not receive or have access to the individualised data revealed to their appointed director.</li></ul>
Name of the customer			Individualised (to the extent necessary to resolve the dispute)									
Number of live chickens subject to the dispute												
The farm which is subject to the dispute												
The dates in which the live chickens (subject to the dispute) were received and slaughtered	In the event that there is a matter (e.g. customer complaint, bad debts which the Company intends to pursue or a dispute arising from the credit terms) which has the potential to or has become litigious, the Board would need to be apprised on such issues which go towards risk management (e.g. their insurers may be required to be notified), instructing legal counsel and advising on the measures that are required to address the issue.											
Credit terms agreed with the customer in the Service Agreement (if this is the subject of the dispute)												



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**Commitments to the Competition and Consumer Commission of Singapore**

**Schedule 9**

**Form of Declaration**



## Schedule 9

### Form of Declaration

**[Date]**

To:

Singapore Poultry Hub Pte. Ltd.

**[address]**

#### COMPLIANCE DECLARATION

1. I, **[name]** hereby confirm that I have:
  - (a) \*entered into the **[reference to the relevant confidentiality agreement]** issued by Singapore Poultry Hub Pte. Ltd. (the "Company") on **[date]** (the "Confidentiality Agreement");
  - (b) \*\*attended the Competition Compliance Law Training held on **[date]**; and
  - (c) \*\*received the Company's Competition Law Compliance Manual on **[date]**.
2. Pursuant to the \*\*[Confidentiality Agreement/ Compliance Law Training/ Competition Law Compliance Manual], I hereby acknowledge and understand that the principles of competition laws in Singapore are paramount in the scope of my responsibilities and duties to the Company.
3. I confirm that since **[date]** to-date, I have not undertaken any activities which are anti-competitive in nature or have breached and/or are inconsistent with the provisions set out in the \*\* [Confidentiality Agreement/Compliance Law Training/Competition Law Compliance Manual].
4. To the best of my abilities, I will ensure that I do not intentionally or negligently violate competition laws in Singapore.
5. If I do not understand, or do not agree with anything contained in the \*\*[Confidentiality Agreement/ Compliance Law Training/ Competition Law Compliance Manual]. I should immediately inform **[legal counsel]** at **[direct telephone number]** or **[email address]**.
6. If I am aware of any behaviour which I believe to be inconsistent with the principles set out in the \*\* [Confidentiality Agreement/ Compliance Law Training/ Competition Law Compliance Manual], I should immediately inform **[Monitoring Trustee]** at **[direct telephone number]** or **[email address]**.

\_\_\_\_\_  
**[Name ] / [Authorised Signatory for and on behalf of [•Entity]]**

\*Please complete details.

\*\*Please delete where inapplicable.



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**Schedule 10**

**Terms and Conditions of the Appointment of the Monitoring Trustee**

**Schedule 10**  
**Terms and conditions of the appointment of the Monitoring Trustee**

- 1. General**
- 1.1.** The Monitoring Trustee appointed by the Applicants in accordance with the terms and conditions below shall monitor the compliance by the Applicants with the Commitments and carry out the functions specified in this Schedule.
- 1.2.** The Monitoring Trustee shall:
  - 1.2.1.** be independent of the Applicants (and its Affiliates) and the Company;
  - 1.2.2.** possess the necessary qualifications to carry out its mandate as a Monitoring Trustee; and
  - 1.2.3.** neither have been nor will become exposed to a conflict of interest.
- 1.3.** Without limitation, the Monitoring Trustee is not independent if he or she:
  - 1.3.1.** is a current employee or officer of any of the Applicants (or its Affiliates) and/or the Company;
  - 1.3.2.** is a person who has been an employee or officer of any of the Applicants (or its Affiliates) and/or the Company in the past three (3) years;
  - 1.3.3.** is a person who, in the opinion of the CCCS, holds a material interest in any Applicant (or its Affiliates) and/or the Company; or
  - 1.3.4.** has or has had any other relationship with any Applicant (or its Affiliates) and/or the Company which, in the opinion of the CCCS, is likely to affect the ability of that person to act independently.
- 1.4.** The Monitoring Trustee shall be remunerated by the Applicants in a way that does not impede the independent and effective fulfilment of its mandate.
- 1.5.** Prior to the Commencement Date, the Applicants shall submit the name or names of one or more natural or legal persons whom the Applicants propose to appoint as the Monitoring Trustee to the CCCS for its approval such that CCCS may grant its approval of the proposed candidate by the Commencement Date. The list shall contain sufficient information for the CCCS to verify that the proposed Monitoring Trustee fulfils the requirements set out in paragraphs 1.2 and 1.3 of this Schedule.
- 1.6.** The CCCS shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the terms and conditions of appointment of the Monitoring Trustee and any audit plan provided by the Monitoring Trustee, subject to any modification it deems necessary for the Monitoring Trustee to effectively fulfil its obligations:
  - 1.6.1.** if only one name is approved, the Applicants shall appoint or cause to be appointed, the individual or institution concerned as Monitoring Trustee, in accordance with the terms and conditions of appointment approved by the CCCS; and
  - 1.6.2.** if more than one name is approved, the Applicants shall be free to choose the Monitoring Trustee to be appointed from among the names approved.

- 1.7. The Monitoring Trustee shall be appointed within seven (7) calendar days of the CCCS' approval, in accordance with the terms and conditions of appointment approved by the CCCS.
- 1.8. If all the proposed Monitoring Trustees are rejected by the CCCS, the CCCS shall nominate a Monitoring Trustee, subject to the same criteria set out in paragraphs 1.2 and 1.3 of this Schedule, whom the Applicants shall appoint, or cause to be appointed, in accordance with the terms and conditions of appointment approved by the CCCS. The Monitoring Trustee shall assume its specified duties in order to ensure compliance by the Applicants with the Commitments including any breaches of the confidentiality agreements that are referred to in the Commitments, on the terms and conditions set out in this Schedule 10.
- 1.9. The CCCS may, on its own initiative or at the request of the Monitoring Trustee or the Applicants, give any orders or instructions to the Monitoring Trustee in order to ensure compliance of the Applicants with the Commitments during the Monitoring Period.

## **2. Terms of Appointment**

- 2.1. The Applicants must procure that the terms and conditions of appointment of the Monitoring Trustee include obligations on the Monitoring Trustee to continue to satisfy the independence criteria in paragraphs 1.2 and 1.3 of this Schedule.
- 2.2. The Applicants shall provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to monitor compliance with the Commitments during the Monitoring Period. Specifically, the Applicants will ensure that the Monitoring Trustee shall have full and complete access to the Company's premises, books, documents, and information reasonably necessary for the Monitoring Trustee to verify compliance by the Applicants and their affiliates with the Commitments.
- 2.3. If during the Monitoring Period, the Monitoring Trustee ceases to perform its functions under this paragraph or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest,
- 2.3.1. the CCCS may, after hearing the reasons of the Monitoring Trustee, require the Applicants to replace the Monitoring Trustee; or
- 2.3.2. The Applicants, with the prior approval of the CCCS, may replace the Monitoring Trustee.
- 2.4. If the Monitoring Trustee is removed according to paragraph 2.3 of this Schedule, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 1.5 to 1.8 of this Schedule.
- 2.5. Unless removed according to paragraph 2.3 of this Schedule, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the CCCS has discharged it from its duties or after the end of the Monitoring Period, whichever is earlier.
- 2.6. For a period of one (1) year following termination of the Monitoring Trustee's appointment, the Monitoring Trustee shall not provide services to any of the Applicants (or their Affiliates) and/or the Company without prior approval of the CCCS.

**3. The Audit and Audit Report**

**3.1. The Monitoring Trustee shall, following its appointment and for the term of the Monitoring Period:**

- 3.1.1.** monitor the compliance of the Applicants with the Commitments in accordance with the audit plan provided by the Monitoring Trustee and approved by CCCS, which shall include but is not limited to:
- (i) up to four (4) unannounced audits in the first year of the Monitoring Period, which may include attendance at one (1) or more Board meetings in the first year of the Monitoring Period; and
  - (ii) up to two (2) unannounced audits in each of the subsequent years of the Monitoring Period, which may include attendance at one (1) or more Board meetings in each subsequent year of the Monitoring Period;

**("Approved Audit Plan");**

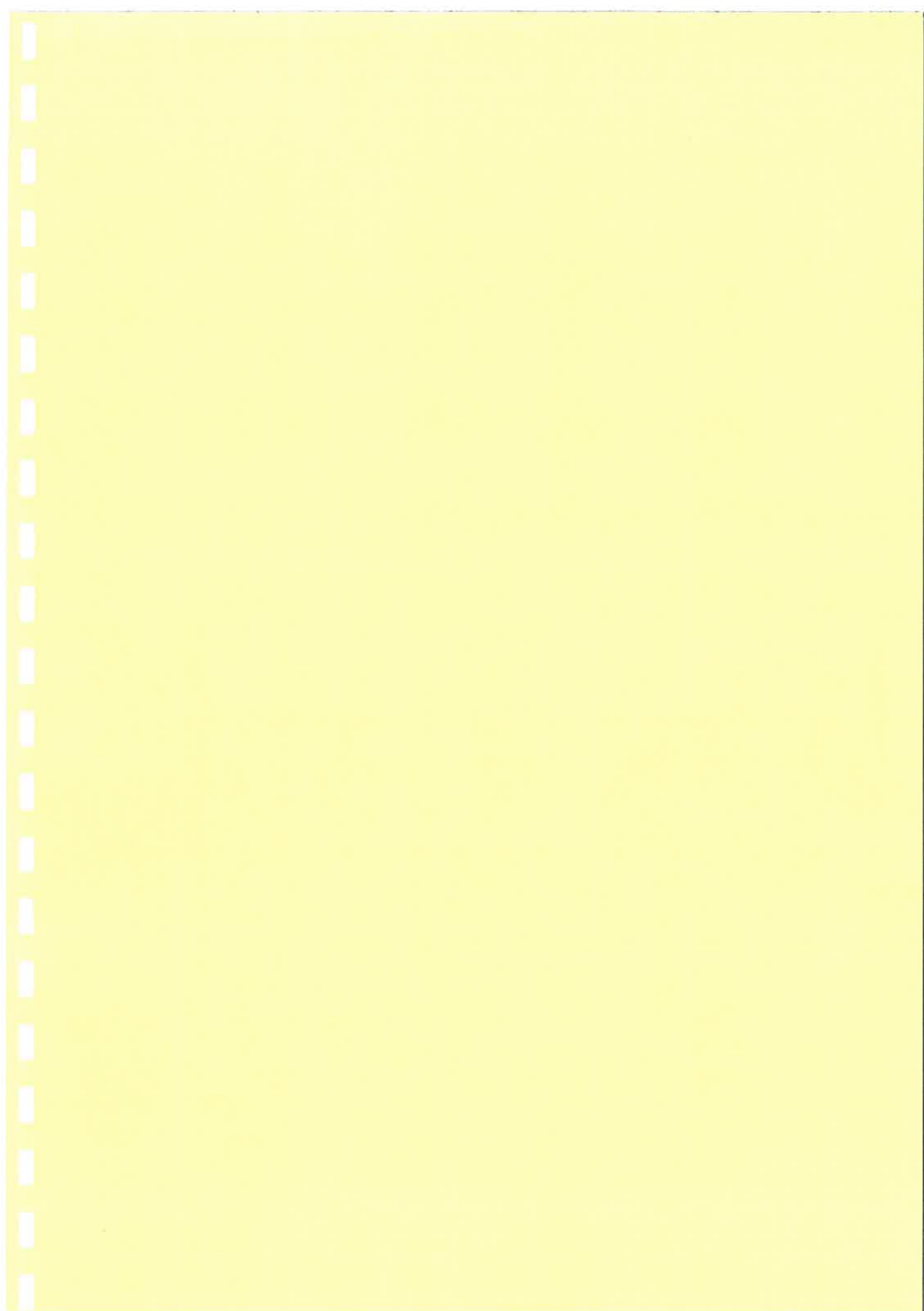
- 3.1.2.** provide to the CCCS, with a simultaneous non-confidential copy to the Applicants, a written report within 15 working days of such audit or such longer period as the CCCS considers reasonable and practicable, concerning the compliance by the Applicants' with the Commitments ("**Audit Report**"); and

- 3.1.3.** be responsible for assessing all complaints relating to a potential failure to adhere to the Commitments, either received from the CCCS or any party, and shall promptly report, within 20 working days of the receipt of the complaint, in writing to the CCCS, with a simultaneous non-confidential copy to the Applicants, if the Monitoring Trustee concludes on reasonable grounds that the Applicants are failing to comply with any of the conditions or obligations under the Commitments.

**3.2. The Audit Report, including the non-confidential copy to the Applicants, shall include:**

- 3.2.1.** the Monitoring Trustee's procedures in conducting the audit, or any change to audit procedures since the previous Audit Report, as the case may be;
- 3.2.2.** an audit of the Applicants' compliance with the Commitments in accordance with the Approved Audit Plan;
- 3.2.3.** all the reasons for the conclusions reached in the Audit Reports;
- 3.2.4.** any recommendations by the Monitoring Trustee to improve the Approved Audit Plan, the integrity of the auditing process and the Applicants' compliance with the Commitments;
- 3.2.5.** implementation and outcome of any prior recommendations by the Monitoring Trustee; and
- 3.2.6.** statement declaring continued compliance with the independence of the Monitoring Trustee from the Applicants.

**3.3. The Applicants shall implement, and will procure the implementation of, any recommendations of the Monitoring Trustee made in the Audit Reports on the Applicants' compliance with the Commitments, and the Applicants shall notify the CCCS of the implementation of the recommendations, within 14 working days, or such longer period as the Monitoring Trustee considers reasonable and practicable in the circumstances, after receiving the Audit Reports.**



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SIGNATORIES

SIGNED BY TOO SEW DIN  
for and on behalf of  
**TONG HUAT POULTRY PROCESSING  
FACTORY PTE. LTD.**

Witnessed by: NICOLE TEO

  
**TONG HUAT POULTRY PROCESSING  
FACTORY PTE. LTD.**

SIGNED BY ONG KIAN SAN  
for and on behalf of  
**KEE SONG HOLDINGS PTE. LTD.**

Witnessed by: NICOLE TEO

  
**KEE SONG HOLDINGS PTE. LTD.**

SIGNED BY CHIEW HOCK YOUNG  
for and on behalf of  
**SINMAH HOLDINGS (S) PTE. LTD.**

Witnessed by: NICOLE TEO

  
**SINMAH HOLDINGS (S) PTE. LTD.**

SIGNED BY TOH CHENG HAT  
for and on behalf of  
**TYSAN FOOD PTE LTD**

Witnessed by: KEVINY-LOH

  
**TYSAN FOOD PTE LTD**

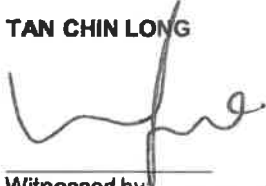


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SIGNED BY

TAN CHIN LONG



Witnessed by: NICOLE TED

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)  
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TAN CHIN LONG