and transportation to and from the Facilities and shall supply all medications, vaccines and feed to competently feed, water and otherwise care for the Herd in accordance and full compliance with the America's Best Pork® Participation Agreement and in accordance with the terms of this Agreement so as to ensure timely delivery of Qualifying Market Hogs hereunder. Producer must maintain and comply with PQA Level III certification at all times. Verification of such certification must be provided to Farmland. Producer shall notify Farmland of any problems or conditions that may affect Producer's ability to deliver Qualifying Market Hogs according to the terms of this Agreement, but such notification by Producer does not relieve or limit Producer's obligations or liability hereunder. Moreover, it is the intention of Producer and Farmland that Producer, and only Producer, will be directly involved in conducting the actual day-to-day operations of the Facilities and is in fact the producer of the Qualifying Market Hogs delivered under this contract such that Producer, and no other producer, is the person actually raising the Qualifying Market Hogs. It is agreed that this assurance is a core and essential term of this Agreement.

9. VETERINARY SERVICES. The parties acknowledge that proper management of the Herd by Producer shall include normal veterinary care, which will include normal and regular veterinary review of the management and care of the Herd. In connection therewith, Producer will instruct and direct Producer's veterinarians and other employees to administer medications, vaccines and other animal health care products only in accordance with label directions and instructions. In addition, with respect to any such medications, vaccines or other animal health care products that are subject to USDA approval, only products with such approval will be utilized. In addition, Producer shall use commercially reasonable efforts to insure that any and all medications, vaccines and other animal health care products used with respect to the Herd are reduced to the lowest level possible consistent with good management practices, PQA Level III requirements, and the America's Best Pork® Process Verification Program.

10. USDA INSPECTION. All Qualifying Market Hogs and Nonqualifying Market Hogs delivered under this Agreement are purchased subject to passing inspection by the USDA with deductions to the purchase price for all carcasses or carcass parts that are condemned or not unconditionally approved by USDA inspectors. Nonqualifying Market Hogs will be purchased at the lesser of (a) Farmland's current price for hogs of like kind, grade, and quality on the day these hogs are delivered or (b) the Base Price less $1.00 per carcass cwt.

11. CARCASS YIELD. Carcasses will be skinned or scalded at Farmland's option depending on the configuration of the slaughter facility. Carcass yield for both scalded and skinned carcasses will be determined after removing the head, kidneys, leaf fat, hanging tenders, and spinal cord, and in the case of skinned carcasses, after also removing the skin and feet. Carcass yield or trim loss due to health reasons, carcass defects, bruises, and any other trimming or harvesting procedures conducted by Farmland Foods in its sole and absolute discretion is at Producer's expense.

12. RIGHT OF INSPECTION. Producer acknowledges that animal health is of paramount importance to Farmland. Upon reasonable notice and compliance with reasonable biosecurity requests of Producer, Farmland shall have the right to inspect the Facilities and to inspect Producer's records in order to confirm and verify that Producer is fulfilling Producer's responsibilities hereunder, including without limitation, the management and use of Triumph Genetics and other health, production, and feeding programs called for hereunder. Producer agrees to provide all supporting records and documentation upon request by Farmland.

13. WEIGHING CONDITIONS. All shipments will be weighed at state-inspected scales maintained by Farmland at the slaughter facility. A copy of all scale tickets will be provided to Producer.

14. METHOD OF PAYMENT. Farmland shall make prompt payment to Producer within 48 hours after carcass value has been determined.

15. FAILURE OF DELIVERY. Producer commits 100% of the Qualifying Market Hogs for delivery to Farmland. Farmland has the right to closely monitor Producer's market hog production, sales, and inventories to ensure that 100% of Producer's production of Qualifying Market Hogs are being delivered to Farmland under the terms of this Agreement. In the event Producer fails to deliver 100% of the Qualifying Market Hogs as required hereunder, Farmland may in its sole and absolute discretion elect to terminate this Agreement upon written notice to Producer.

16. BREACH AND REMEDIES. If Producer shall fail to observe or perform any covenant or agreement contained herein, Farmland may terminate this agreement upon written notice to Producer. Farmland will not exercise this right until Farmland has given Producer notice of such failure and thirty (30) days to cure such failure. Notwithstanding the foregoing, Farmland shall have the immediate right to terminate this Agreement in its sole and absolute discretion upon notice to Producer under the provisions of Section 15 under this Agreement, or in the event Producer is given more than one default notice in any one-year period, or in the event it appears to Farmland that Producer's default is material, willful or based on fraud, misrepresentation or deception. In the event of termination, Farmland will have the right to collect liquidated damages from Producer. The parties agree that actual damages in the event of termination will be difficult to determine and that the following method is a fair and accurate estimation of the appropriate damages that would be due Farmland. The liquidated damages shall be determined by calculating the aggregate total of the Base Price payment difference, as defined below, for all Lots delivered under this Agreement at the time of termination, plus the administrative and out-of-pocket costs of enforcement. For purposes of the liquidated damages calculation, the term "Base Price payment difference" shall mean that number determined by calculating the difference between the internal Farmland plant price, as defined below, and the Base Price actually paid for the Lot. The liquidated damages shall then be determined by multiplying the Base Price payment difference by the total carcass hundredweight of the Lot. For purposes of this Section, the internal Farmland plant price shall mean that price defined by Farmland in its sole and absolute discretion as the base price for its open market purchase activity. The election of one remedy shall not foreclose the use of any other remedy by Farmland, and the remedies shall be considered cumulative and not exclusive.

17. FARMLAND DISCLAIMER. FARMLAND EXPRESSLY DISCLAIMS THE MAKING OF, AND PRODUCER ACKNOWLEDGES THAT PRODUCER HAS NOT RECEIVED OR RELIED UPON, ANY WARRANTY OR GUARANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE TRIUMPH GENETICS, BREEDING STOCK, FEED, MEDICATION OR FEEDING PROGRAM PRESCRIBED UNDER THIS AGREEMENT, OR ANY POTENTIAL PROFITS OR SUCCESS OF THE TRANSACTIONS ADDRESSED IN THIS AGREEMENT. PRODUCER SHOULD DISREGARD ANY UNAUTHORIZED INFORMATION, WHETHER ORAL OR WRITTEN, FROM ANY REPRESENTATIVE OF FARMLAND CONCERNING THE VOLUME, PROFITABILITY, OR CHANCE OF SUCCESS OF THE TRANSACTIONS REPRESENTED BY THIS AGREEMENT. PRODUCER RECOGNIZES AND ACCEPTS THE RISKS AND HAZARDS INHERENT IN OR ASSOCIATED WITH LIVESTOCK PRODUCTION.

18. PRODUCER DISCLAIMER. PRODUCER MAKES NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, TO FARMLAND OTHER THAN AS MAY BE SPECIFICALLY SET FORTH HEREIN.

19. FORCE MAJEURE; INDUSTRY DEVELOPMENTS. Either party to this Agreement shall be relieved of its responsibilities and obligations hereunder when performance becomes commercially impossible because of reasons beyond the party's reasonable control including, but not limited to, fire, explosion, strike, riot, accident, governmental regulations, intervention, or acts of God, and with respect to Farmland, when performance is not commercially reasonable due to reduction of Farmland's slaughter capacity. In the event industry-wide developments occur that are beyond the control of the parties, the parties agree to negotiate in good faith a mutually acceptable strategy to address such developments.

20. ASSIGNMENT. This Agreement may not be assigned by Producer without the prior written consent of Farmland. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

21. NO WAIVER. No failure of either party hereto to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by the other party hereto with any obligation or condition hereunder, and no custom