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**Agricultural Production Contracts:  
Drafting Considerations**

by

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## AGRICULTURAL PRODUCTION CONTRACTS: DRAFTING CONSIDERATIONS

*Christopher R. Kelley<sup>1</sup>*

Of course, there is always the perspective of the neoclassical micro-economist: no farmer enters a contract with an agribusiness integrator unless that farmer has rationally internalized all the risks of that decision. Perhaps the complaint of a disappointed contract farmer is nothing more than the lament of one who has belatedly discovered that freedom and security cannot coexist. Moreover, as Ronald Coase might suggest, contract farming consists of nothing more remarkable than the way through which farmers and integrators have bargained around legal impediments to Pareto-optimal uses of capital.<sup>2</sup>

Growers say they feel trapped and intimidated by the companies they supply. Their contracts offer them little protection; most can be terminated with just a few days notice. Processors control how many chicks a farmer gets, and they also set the price when they buy the adult birds. As one Florida grower puts it, the processors "hold both ends of the pencil."<sup>3</sup>

### I. INTRODUCTION

Agricultural production contracts are agreements for the growing of crops, livestock, or poultry. Production contracts for crops typically contain provisions covering the crop's entire production process, often specifying planting periods, husbandry practices, and other matters intended to ensure delivery of a certain quality and quantity of the crop to the purchaser. Livestock and poultry production contracts also typically specify the standards that must be satisfied during the production period covered by the contract.<sup>4</sup> Because of their scope, agricultural production contracts differ from contracts contemplating only the sale of "a certain amount of grain of a certain grade at a certain price at a certain time to the purchaser."<sup>5</sup> In fact, under some agricultural production contracts, title to the seed, to the growing crop, and to the harvested crop is

1. Of Counsel, Lindquist & Venum P.L.L.P., Minneapolis, Minnesota. B.A., Louisiana State University; J.D., Howard University, LL.M., University of Arkansas.

2. JIM CHEN, CASES AND MATERIALS ON AGRICULTURAL PUBLIC LAW 235 (1994) (footnotes omitted).

3. Marj Charlier, *Chicken Economics: The Broiler Business Consolidates, and That Is Bad News to Farmers*, WALL STREET J., Jan. 4, 1990, at 1.

4. More elaborately defined, an "agricultural production contract" is a legally binding agreement of a fixed term, entered before production begins, under which a producer either: agrees to sell or deliver all of a specifically designated crop raised on identified acres in a manner set in the agreement to the contractor, and is paid according to a price or payment method, and at a time, determined in advance; or agrees to feed and care for livestock or poultry owned by the contractor until such time as the animals are removed, in exchange for a payment based on the performance of the animals.

NEIL D. HAMILTON, A FARMER'S LEGAL GUIDE TO PRODUCTION CONTRACTS 3 (1995).

5. Richard A. Mahin, *Contracts for Future Delivery of Grain: An Overview of Common Legal Problems*, 2 AGRIC. L. J. 483, 484 (1980-81).

never held by the grower. Agricultural production contracts, therefore, are not to be confused with "forward contracts" under which the crop is simply sold prior to harvest.<sup>6</sup>

Drafting agricultural production contracts involves many of the same considerations encountered with other contracts. The most fundamental consideration is the need to plainly and completely specify how the parties have agreed to do business. More precisely, because production contracts are usually adhesion contracts and are rarely subject to negotiation, the contract must plainly and completely specify how the person or entity presenting the contract to the grower expects the parties to do business. Although the contract's drafter will not always be a processor of the product or commodity, for convenience this article refers to the person or entity who prepares the contract as the "processor."<sup>7</sup>

Coupled with these generic drafting considerations, however, is a unique one - the increasing scrutiny of agricultural production contracts and of the relationships they create. This scrutiny has two focuses. The first focus is on the tensions that have already developed between processors and contract growers. A recent \$16 million jury verdict in Mississippi illustrates this tension.<sup>8</sup> In that action, the plaintiff contract poultry producers alleged they had been charged for undelivered feed, thereby negatively affecting their feed conversion ratios on which their contract payments were based. Two years earlier, a verdict in excess of \$1 million based on the misweighing of poultry produced under contract was upheld by the Eleventh Circuit.<sup>9</sup>

The second focus is on the changes in the nature and structure of American agriculture resulting from the trend toward contract production.<sup>10</sup> American agriculture is entering "the last phase of industrialization—the integration

6. The function of the forward contract has been explained as follows:

Forward grain contracting has always been a useful tool to both farmers and grain dealers. In such contracts, a farmer will agree to sell and a grain dealer will agree to buy a certain volume of grain at a set price with delivery to be made in the future. Generally, farmers enter into these contracts as economic protection for the crops they raise, because such crops are usually their primary source of annual income. The contract provides protection against future price declines by ensuring that the grain price will at least be sufficient to cover expenses of raising the crop. Protection from inadequate market demand is also assured because the contract provides a market for the farmer's crops when harvested. Conversely, the grain dealer has secured protection from future price increase and shortages of supply.

David C. Bugg, *Crop Destruction and Forward Grain Contracts: Why Don't Sections 2-613 and 2-615 of the U.C.C. Provide More Relief?*, 12 *HAMLINE L. REV.* 669 (1989) (footnote omitted). As is the use of agricultural production contracts, the use of forward pricing contracts is increasing. See Ted C. Schroeder & Barry K. Goodwin, *Risks Unique to Ag Markets Bring Changes in Producer Marketing Practices*, *FEEDSTUFFS*, Mar. 14, 1994, at 1.

7. Although some who contract for agricultural production sell the contract-produced goods to food and feed processors or to industrial users, production contracts are more commonly used by food processors who have vertically integrated production, processing, and marketing. Referring to the contract drafter as a "processor" underscores the fact that production contracts are instruments of vertical integration.

8. Steve Marbery, *Lawsuit Shows Tension Between Integrators, Poultry Growers*, *FEEDSTUFFS*, May 17, 1993, at 9; see also Steve Marbery, *Poultry Growers Suing Contractors, Organizing for Clout*, *FEEDSTUFFS*, Jan. 18, 1993, at 22.

9. *Braswell v. ConAgra, Inc.*, 936 F.2d 1169, 1177 (11th Cir. 1991).

10. Contract production replaces public markets with private markets. From the producer's perspective, therefore, the "real question is whether producers want open markets or command and control pricing." Steve Marbery, *Structure Is Real Issue Facing Mega Farms*, *FEEDSTUFFS*, Sept. 5, 1994, at 16 (quoting Harold Briemyer, professor and extension economist emeritus, University of Missouri).

of each step in the food production system."<sup>11</sup> The "defining features" of this industrialization "include a shift from food commodities to food products and a shift from spot auction markets to more direct market channels, such as production contracts."<sup>12</sup>

As agriculture becomes industrialized, the role of the farmer will change. Most fundamental, farmers face a loss of their historical independence as they shift from producing for an open market to producing under contract.<sup>13</sup> Federal farm policy will also change because the "farmers' safety net, or risk sharing, will come to depend as much on their link to an industrialized system as on federal farm programs."<sup>14</sup> Consequently, "[t]he rationalization for a public system to protect the independent commodity producer—the family farmer—will begin to erode."<sup>15</sup> Finally, as farmers' well-being becomes increasingly dependent on their "link" to the industrialized system, farmers may organize labor unions to protect their interests in an agricultural system dominated by production contracting. Federal and state legislation designed to enhance farmers' bargaining power and to protect against unfair contracting practices may become a prominent part of future farm policy.<sup>16</sup>

As the basic legal instruments fostering the social and economic changes associated with agriculture's entry into the final stages of industrialization, production contracts are being closely examined by those who observe or react to changes in agriculture's structure, including legislatures. When, for example, the Minnesota Legislature looked at production contracting, it decided to dictate some of the contract terms.<sup>17</sup> Production contracts and the related issue of vertical integration are also drawing attention in other states.<sup>18</sup> In essence, the primary motivation for this attention is the perception that "[t]here is a strong need to provide economic protection for producers who contract out their

11. Thomas N. Urban, *Agricultural Industrialization: Its Inevitability*, CHOICES, Fourth Quarter 1991, at 4 ("The production segment is rapidly becoming part of an industrialized food system.") (hereinafter Urban). See also Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 NEB. L. REV. 210, 213-18 (1993). "American agriculture is changing rapidly - becoming more concentrated, more technically advanced, and more integrated with the input and marketing sectors. In other words, American agriculture is rapidly becoming industrialized." *Id.* at 213 (footnote omitted).

12. Mark Drabenstott, *Industrialization: Steady Current or Tidal Wave?*, CHOICES, Fourth Quarter 1994, at 4.

13. Commenting on the loss of independence associated with becoming a contract hog producer, a North Carolina farmer remarked:

"We tried to be independent with tobacco, corn and soybeans, but sometimes you can just independent yourself into a hole," Mrs. Stroud said. "There are some out there who just want to be independent, but I don't mind taking the direction of the company. I'd rather have part of something than all of nothing."

Ronald Smothers, *Stopping the Hogs, the Assembly-Line Way*, N.Y. TIMES, Jan. 30, 1995, at A8.

14. Urban, *supra* note 11, at 6. For a traditional agrarian perspective on the effects of industrialization on family farming, see MARTY STRANGE, *FAMILY FARMING: A NEW ECONOMIC VISION* 33-42 (1988). For much the same discussion using "paradigms" of alternative and conventional agriculture, see Curtis E. Beus & Riley E. Dunlop, *Conventional Versus Alternative Agriculture: The Paradigmatic Roots of the Debate*, 55 RURAL SOCIOLOGY 590 (1990).

15. Urban, *supra* note 11, at 6.

16. Urban, *supra* note 11, at 5. For a discussion of the organizing difficulties experienced by chicken producers, see Richard Behar, *Arkansas Pecking Order*, TIME, Oct. 26, 1992, at 52, 54.

17. See MINN. STAT. §§ 17.90-98; 27.131 (1994). For a discussion of Minnesota's Agricultural Contracts statute, see *infra* notes 56-75 and accompanying text.

18. See, e.g., Neil D. Hamilton & Greg Andrews, *State Regulation of Contract Feeding and Packer Integration in the Swine Industry*, AGRIC. L. UPDATE, Jan. 1993, at 4; Keith D. Haroldson, *Two Issues in Corporate Agriculture: Anticorporate Farming Statutes and Production Contracts*, 41 DRAKE L. REV. 393 (1992); Alan L. Billings, Note, *The Family Farm: Regulating Farm Act Avoidance Techniques Through Restrictions on Vertical Integration and Production Contracting*, 16 VAL. U. L. REV. 277 (1981).

crops and labor."<sup>19</sup>

Even the industry is beginning to recognize the need to closely examine production contracts and contracting practices. As an editorial in a leading trade publication asserted, "[N]o one wants the trouble that could come from poor—or even perceived to be poor—contracts . . . With the interest in contracting growing, and with trouble from poorly executed contracts increasingly likely, anyone in agriculture will have a strong interest in using good contracts."<sup>20</sup>

## II. WHAT DOES THE FOOD PROCESSING INDUSTRY WANT FROM PRODUCTION CONTRACTS, AND WHY DOES IT WANT IT?

The food processing industry faces slow growth in the demand for food products. With less than five percent of processed food going to the export market, the domestic market is becoming increasingly saturated. American consumers now spend a record low eleven percent of their income on food. As a result, competition among firms for market share is intense, margins are generally narrow, and volume sales and cost savings are important. At the same time, the industry must reckon with capital-intensive, fast-paced technological changes. Achieving economies of scale and full capacity utilization have become driving concerns. Firms that have successfully dealt with these forces have produced the sector's relatively high profits.<sup>21</sup>

While contract production offers a number of advantages over open-market transactions, most of these benefits are attributable to the use of contract production to manage risks. Because of the competitive forces within the industry, the penalty for poor risk management has grown sharply. The food processing industry views risk management as critical to success, and one way to reduce risk is to acquire or "line-up" supplies and markets. Always subject to the inherent uncertainties associated with agricultural production, the acquisition of sufficient supplies increasingly requires attention to the quality of the commodity or livestock product. In other words, "[t]he challenge becomes one not only of 'lining up' supplies but insuring the supplies lined up meet an increasingly sophisticated set of processing and manufacturing requirements."<sup>22</sup>

In addition to acquiring reliable sources of supplies, markets must be developed and maintained. "[L]ining up' markets can prove equally important in a sector where products are often perishable and demand can prove inelas-

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19. AGRICULTURAL CONTRACTS TASKFORCE, MINN. DEPT' OF AGRIC., FINAL REPORT TO THE 1990 LEGISLATURE 6 (1990). The work of the Minnesota Agricultural Contracts Taskforce led to the passage of Minnesota's Agricultural Contracts legislation in 1990. MINN. STAT. § 17.90-98 (1994). The "major contract problem areas" identified by the Taskforce were the following.

- 1) Non-payment, slow payment, bankruptcy and bonding.
- 2) Problems with interpretation of contract rights and responsibilities.
- 3) Problems due to unequal bargaining power, contracts of adhesion
- 4) Producers unaware of their rights and the programs available to them

AGRICULTURAL CONTRACTS TASKFORCE at 1.

20. *Opinion: Industry Must Develop Contract Policemen*, FEEDSTUFFS, July 18, 1994, at 8.

21. Patrick M. O'Brien, *From Commodity Markets to Contracts: Changes in the U.S. Food and Agricultural Marketing System*, Address before the Conference on the Future of the U.S. Food System 6 (Apr. 1, 1993) (transcript on file with the author).

22. *Id.* at 8-9.

tic."<sup>23</sup> Acquiring supplies and markets has "price as well as quantity dimensions," because, "[w]ith margins narrow, even slightly higher input prices or slightly lower product prices can make the difference between profit and loss."<sup>24</sup>

Production contracts are an important device for acquiring supplies and reducing the risks inherent in agricultural production. While all production contracts seek to give the processor greater control over price, quality, and quantity, the degree of the control assumed by the processor will vary. Viewed on a continuum defined by the degree of the processor's control, there are at least four types of production contracts:

[1] The simplest type of contract, called a *market-specification* contract, sets the price, quantity, and quality of products to be traded in a future transaction.<sup>25</sup>

[2] The *production-management* contract can give the food processor direct control of farm production methods . . . [and] is useful when farm production methods influence the quality of the food processor's product. This type of contract is useful when farm production methods influence the quality of the food processor's product.<sup>26</sup>

[3] Processors can assume even tighter control over the quality of farm products with a *resource-providing* contract. With this contract, processors provide all or part of the inputs used to produce farm products.<sup>27</sup>

[4] *Vertical integration* shifts complete control of farm production to the food processor. Much of the uncertainty present in open production is eliminated, by ensuring greater control over product price,

23. *Id.*

24. *Id.*

25. Alan Barkema, et al., *The Quiet Revolution in the U.S. Food Market*, ECONOMIC REV., May-June, 1991, at 31 (emphasis in original). For example, "[a] contract of this type between a cattle feeder and a beef processor . . . controls price risks for the cattle feeder and the beef processor. In addition, the processor is ensured of a steady supply of cattle to keep high-capacity processing plants running." *Id.*

26. *Id.* (emphasis in original). This type of contract is likely to become more prevalent as technologies enhance capabilities to produce products for niche markets:

For example, say a beef processor wishes to market a new line of fresh, low-fat, low-cholesterol beef products. The processor may contract with a feedlot operator to feed cattle specifically for the new product market. The contract may specify certain production practices, such as the mix of feed ingredients or the length of time on feed. The contract may even ensure compliance by dictating periodic inspection of the cattle and feedlot by the food processor

*Id.* at 31-32.

27. Barkema at 32 (emphasis in original). For example, quality control can be enhanced by controlling both the genetics and feeding of livestock. Thus "a beef processor may provide cattle of a specific genetic makeup to be fed by a feedlot operator. The contract ensures that the cattle are fed to the processor's specifications. In exchange, the feedlot operator is guaranteed a reasonable return for feeding the operator's cattle." *Id.*

quantity, and quality.<sup>28</sup>

Processors may want the control offered by production contracts for reasons other than "lining up" supplies, ensuring quality, and implementing new technologies. For example, a processor may use production contracts "to preserve the confidentiality of the pricing and marketing arrangements for the special commodity and the identity of the end-use or purchaser. . . ." <sup>29</sup> Also, "non-public pricing and marketing of the commodities . . . allow for concealment of the true magnitude of any price premium obtained for the special trait. . . ." <sup>30</sup> And finally, production contracts allow "the company to become involved more directly in production without worrying about investments in farmland, which are prohibited under the anti-corporate farming laws of several midwestern states."<sup>31</sup> In other words, a process may reason "why own the farm if we can own the farmer."<sup>32</sup>

In addition to seeking to manage risk, food processors are exhibiting a desire to minimize transaction costs in contracting. The trend is reflected in the use of intermediaries, such as country elevators, cooperatives, or ad hoc marketing groups, to contract with producers.<sup>33</sup> The recent decision of some processors to reduce the number of their contract producers in favor of contracting with a smaller number of larger producers also reflects this trend. Such strategies have attracted considerable attention in the Red River Valley in Minnesota, North Dakota, and South Dakota, as Frito-Lay and other companies have reduced the number of contract producers.<sup>34</sup>

For the production contract drafter, the trend to minimize transaction costs means that contracts should be understandable and substantively attractive to encourage contract formation. Also, as producers increasingly become aware of the risks and consequences of contract termination or nonrenewal and demand greater protection for their investment, contract terms may have to recognize producer demands for contract security.<sup>35</sup>

28. *Id.* (emphasis in original) "Vertical integration is especially well-suited for controlling risks associated with investment in highly specialized assets." *Id.* See also *Business Briefs: Smithfield Attributes Performance to Integration*, FEEDSTUFFS, Aug. 1, 1994, at 6 (quoting Joseph W. Luter III, president of Smithfield Foods, as stating that "the company's strategy to vertically integrate 'permits us to control our product quality to an extent unmatched' by other high-volume U.S. pork producers").

29. Neil D. Hamilton, *Why Own the Farm If You Can Own the Farmer (and the Crop)? Contract Production and Intellectual Property Protection of Grain Crops*, 73 NEB. L. REV. 48, 58 (1994).

30. *Id.*

31. *Id.* (footnote omitted).

32. *Id.* For a Coasean analysis of this point, see CHEN, *supra* note 2, at 194-97.

33. See Karen McMahon, *Putting the Meat behind the Contract*, FARM JOURNAL, Jan. 1994, at B-5.

34. See, e.g., Rona K. Johnson, *Frito-Lay Plans to Reduce Its Potato Grower Contracts*, AGWEEK, Dec. 6, 1993, at 20; Greg D. Horstmeier, *Farming By Invitation Only: Landing New Specialty Grain Contracts Will Be a Matter of Who You Know*, TOP PRODUCER, Feb. 1993, at 36; Robin Hoffman, *"Super Farmers" Grab Crop Contracts: Chalk Up Another Advantage for the Big Guys*, TOP PRODUCER, May-June 1992, at 24.

35. See Arthur Buckler, *Tyson Foods Isn't Chicken-Hearted About Expansion*, WALL STREET J., Jan. 18, 1994, at B4 "[Tyson Foods] may find it increasingly hard to recruit farmers willing to work under contract to raise Tyson's chickens. In fact, the company has already ruled out its home base of northwestern Arkansas as a location for any of the new plants, citing a labor shortage there." *Id.*

### III. WHAT DO PRODUCERS WANT FROM PRODUCTION CONTRACTS, AND WHY DO THEY WANT IT?

Relatively few producers process the commodities they produce. Accordingly, their economic fate is inextricably tied to those who ultimately must find a consumer market for agricultural products. That market is changing across the full spectrum of potential consumers, including food, feed, and industrial users. Capturing specific markets is becoming more important than producing commodities in volume:

For an increasing number of farmers and agribusiness firms, the key to higher profits will lie more in marketing than production. Firms increasingly will design products for specific groups. Promotional activities, niche markets, product differentiation, and contract and specification buying will become increasingly important.<sup>36</sup>

Production contracts can permit producers to gain access to otherwise inaccessible markets by improving "communication" between the production and marketing processes. When a market is developed or otherwise emerges for a product, production contracts allow processors to quickly acquire that product. Because production contracts allow the acquisition of supplies meeting specified quantity, quality, and price requirements, "[b]oth contracting and vertical integration are better suited than open production for addressing the specific communication needs and special risks of the high-technology food market."<sup>37</sup>

Production contracts can also help producers to manage certain risks. For example, by offering a guaranteed price, production contracts eliminate the risks associated with a volatile open market. Contracts also permit risk-reduction through diversification, often with a lower capital investment than would have been required without the participation of the processor. The assistance offered by the processor in the production process can lower the producer's management costs and improve management skills.

Although production contracts reduce some risks, new risks can arise. For example, the failure to produce to contract standards will result in loss of the contract's premium prices.<sup>38</sup> Other risks include the nonrenewal or termination of the contract, perhaps for noneconomic reasons.<sup>39</sup> Some types of contracts impose unique risks, particularly those involving the construction or mainte-

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36. MICHAEL J. PHILLIPS & MARIE WALSH, INT'L AGRIBUSINESS MGMT. ASS'N, *NEW TECHNOLOGIES AND NEW MARKETS: IMPLICATIONS FOR AGRIBUSINESS AND FOOD INDUSTRIES* 147 (1992) (as published in *Symposium II Proceedings*).

37. *Barkema*, *supra* note 25, at 32-33.

38. *Hamilton*, *supra* note 29, at 66.

39. *See Baldree v. Cargill, Inc.*, 758 F. Supp. 704, 706 (M.D. Fla. 1990), *aff'd without opinion*, 925 F.2d 1474 (11th Cir. 1991).

nance of specialized buildings.<sup>40</sup>

#### IV. PROCESSOR PERSPECTIVES ON PRODUCTION CONTRACTS

Because contract production's primary function is the management of risk, processor perspectives on production contracts focus on how well the contract manages potential risks. There are at least two broad categories of risk: "performance risks" and "contract-created risks."

##### A. Performance Risks

The first broad category of risk, performance risks, can be subdivided into three subcategories. The first subcategory is the risk of losing timely receipt of the desired quantity and quality of the crop or animal product, a risk that can be characterized as the *risk of failure to "line-up" supply*. For example, the producer might secretly encumber the crop in a third party's favor, fail to plant or to care for the crop, use substandard animal feed or veterinary products, sell the crop at a higher price to another buyer, or deliver a substandard or pesticide residue-laden crop, any one of which could result in the processor's failure to "line-up" supply.

The second subcategory of performance risk is the risk of losing control over proprietary technology, such as protected seeds, and the related risk of losing the opportunity to promote the use of a desired technology, such as animal growth hormones. This risk can be described as the *risk of loss of technological advantage*. If, for example, the producer resold or put proprietary seed to his or her own use or refused to adopt processor-desired technologies or production practices, the processor would lose those technological advantages.

The final subcategory of performance risk is the risk of liability to the producer and to third-parties, a risk that can be characterized simply as *liability risk*. Thus, there is the risk that the producer may claim a loss because of reliance on the processor's advice; use a pesticide inconsistent with its labeling; violate applicable labor and environmental laws; injure a worker during harvesting; deny access to processor representatives seeking to inspect the crop; drive off the highway while delivering the crop; assert that the parties' relationship was a partnership, joint venture, or employment relationship when an independent contractor relationship was intended; or do something else that might be detrimental to the processor's interests.

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40. Even if the contract relationship continues for the useful life of the structure, the income realized under the contract may not be sufficient to replace the structure. See Rod Smith, *Advocate Charges Contracts Loaded Against Poultry Growers*, FEEDSTUFFS, June 6, 1994, at 11.

A common contract . . . requires the [poultry] grower to build his barns, buy his equipment and provide his labor and requires the company to provide birds, feed, medicine and management strategies. . . . [As a result,] the grower . . . has . . . a \$100,000-investment in a traditional two-barn operation and a seven-week contract that can be terminated at the end of the seventh week.

*Id.* See also MICHÈLE RUMMENS, ET AL., IOWA STATE U., STAFF PAPER NO. 233, INVESTMENT, RETURNS AND MARKETING PRACTICES IN IOWA CONTRACT HOG PRODUCTION 7 (Sept. 1991).

### B. Contract-Created Risks

The production contract's management of risks should be reasonable because a lopsided contract creates its own risks. Among these risks are the risk that no one will accept the contract, that one or more of the contract's provisions will be unenforceable, or that the conduct associated with the processor's performance will be deemed to be an unfair trade practice.

The primary contract-created risk is the *risk of "no-takers."* If the contract is too one-sided or fails to contain provisions desired by producers, producers will not sign it.<sup>41</sup> Whether that risk is a serious one depends on a number of variables, including the likelihood that producers will seek guidance from a competent advisor before signing the contract.<sup>42</sup> The failure of parties to contracts to seek legal advice before signing is notorious. In fact, the biggest problem faced by attorneys who want to advise producers or processors before they sign a production contract is likely to be "the lack of a client."<sup>43</sup>

Another contract-created risk is the *risk of unenforceability.* Producers will sign the contract but the contract will invite litigation, possibly leading to all or a portion of the contract's provisions being declared unenforceable. Alternatively, the contract might prompt legislative reform. For example, many vegetable contracts permit the processor to enter the producer's premises to apply pesticides when the grower has failed to apply pesticides as required under the contract. These contracts typically place all liability for the processor's improper pesticide application on the producer.<sup>44</sup> The ability of such provisions to insulate the processor from all liability arising out of a failure to follow the pesticide's labeling or other misuse is doubtful,<sup>45</sup> and public policy considerations may limit the total risk-shifting contemplated by such provisions.<sup>46</sup>

The final contract-created risk is *risk of unfair trade practices*, a risk that is ultimately grounded on federal and state laws. For example, the federal Agricultural Fair Practices Act of 1968<sup>47</sup> has been invoked in challenges to production contract terminations.<sup>48</sup> In Minnesota, a risk is that the contract or one of

41. When commodities eligible for enrollment in a federal acreage reduction program or price support program are involved, the ability of the producer to receive program benefits may determine whether the producer signs the contract. To receive acreage reduction program payments, also known as deficiency payments, the producer must "share in the risk of producing the crop, and [be] . . . entitled to share in the crops available for marketing." 7 C.F.R. § 1413.3 (1994). To enroll an eligible commodity in a price support program, the producer must always have had the "beneficial interest" in the commodity, essentially an ownership interest. 7 C.F.R. § 1421.5(c) (1994).

42. See, e.g., Bill Fleming, *Contracting: Don't Get Trapped in a Lop-sided Contract*, NAT'L HOG FARMER, Aug. 15, 1993, at 20.

43. See Christopher R. Kelley, *Representing the Arkansas Timber Owner in Timber Sale Transactions: Some Contract Drafting Considerations*, 8 U. ARK. LITTLE ROCK L. J. 637, 639 (1985-86) (citation omitted).

44. For an example of a similar provision, albeit one that is considerably less onerous from the producer's perspective, see Hamilton, *supra* note 29, at 73-74.

45. See generally *United States v. Corbin Farm Service*, 444 F. Supp. 510, 519-20 (E.D. Cal. 1978); JOHN M. JOHNSON & GEORGE W. WARE, *PESTICIDE LITIGATION MANUAL* (1993) (discussing culpability for damages caused by pesticide misuse).

46. Such provisions have already been criticized by one governmental authority. WIS. DEPT OF AGRIC., TRADE & CONSUMER PROTECTION, *PROCESSING VEGETABLE INDUSTRY: TRADE PRACTICE STUDY 49-50* (1989) (citing *College Mobile Home Park & Sales v. Hoffman*, 241 N.W.2d 174 (Wis. 1976), as authority for questioning the legality of a processor's disclaimer of liability for its own application of pesticide). While pesticide use involves unique considerations because it is a regulated activity, the allocation of the responsibility to avoid environmental contamination in agricultural production contracts is drawing increasing attention, a trend that can be expected to continue. See Martha L. Noble & J.W. Looney, *The Emerging Legal Framework for Animal Agricultural Waste Management in Arkansas*, 47 ARK. L. REV. 159, 202-06 (1994) (discussing the disposal of dead poultry produced under contract).

47. 7 U.S.C. § 2302(a) (1988).

48. Hamilton, *supra* note 29, at 85-86.

its provisions will be deemed an unfair trade practice under rules promulgated by the Commissioner of Agriculture under the state's Agricultural Contracts Statute. Minnesota's Agricultural Contracts statute gives the Commissioner of Agriculture the authority to prohibit "specific trade practices."<sup>49</sup> The Commissioner has done so by proscribing "conduct" prohibited by the federal Packers and Stockyards Act,<sup>50</sup> the federal Perishable Agricultural Commodities Act,<sup>51</sup> and the regulations adopted under each Act.<sup>52</sup> Among other things, the Packers and Stockyards Act prohibits the use of "any unfair, unjustly discriminatory, or deceptive practice or device. . . ."<sup>53</sup> The scope of that prohibition is broad, extending beyond anticompetitive practices to include every unjust practice involved in the marketing of livestock.<sup>54</sup> Given the broad scope of the Packers and Stockyards Act's prohibition against "unfair" and "deceptive" conduct, avoiding problems under Minnesota's Agricultural Contracts statute and rules may mean avoiding contract provisions that could reasonably be characterized as oppressive to the other party or offensive to public policy.<sup>55</sup>

## V. BASIC DRAFTING CONSIDERATIONS

Most production contracts now in use were probably copied wholly or partially from other contracts. Virtually any collection of contracts will exhibit considerable variations in contract scope and clarity. While the practice of "borrowing" from other contracts is likely to continue, the use of a checklist can help ensure that the contract will be as complete as desired.

The most important contract provisions, such as those relating to identity of the parties, the identity of the commodity, price, quantity, and quality, usually will be set forth first, followed by the "general terms." While that ordering of provisions is generally consistent with the expectation of the parties, one way to construct an initial, contract-specific checklist is to focus on the chronology of the crop's or animal's production. At each significant stage in that production chronology, the possibility of risks and misunderstandings should be considered and, if appropriate, addressed in plain English in the contract. In addition, referencing a checklist of basic provisions can help close any gaps. Subpart B of this section contains a checklist of common, generic contract provisions.

49. MINN. STAT. § 17.945 (1994).

50. 7 U.S.C. §§ 181 - 229 (1988).

51. 7 U.S.C. §§ 499a - 499s (1988).

52. MINN. R. 1572.0045 (1994). The Packers and Stockyards Act regulations are found at 9 C.F.R. §§ 201-203 (1994), and the Perishable Agricultural Commodities Act regulations are found at 7 C.F.R. §§ 46-47 (1994).

53. 7 U.S.C. § 192(a) (1988).

54. See, e.g., *Rice v. Wilcox*, 630 F.2d 586, 589 (8th Cir. 1980). "The words, 'unfair, unjustly discriminatory, or deceptive practice or device,' as used in . . . the Act are not defined, and their meaning must be determined by the facts of each case within the purposes of the Packers and Stockyards Act." *Capitol Packing Co. v. United States*, 350 F.2d 67, 76 (10th Cir. 1965) (citations omitted).

55. See generally Randi Ilyse Roth, *Contract Farming Breeds Big Problems for Growers*, 7 FARMERS' LEGAL ACTION REP. 12 (1992) (suggesting ten "arguable" examples of "unfair" practices under the Packers and Stockyards Act, including early termination of the contract, requiring the grower to bear cost of unneeded facility improvements, misrepresenting the profitability of the contract, and improper grading of the product); David H. Rosenberg, *Vertical Integration in the Cattle Feeding Industry and the Packers and Stockyards Administration*, 7 TOLEDO L. REV. 935 (1976).

### A. Minnesota's Agricultural Contracts Statute

In Minnesota, production contracts for crops grown in Minnesota must comply with Minnesota's "Agricultural Contracts" statute enacted in 1990.<sup>56</sup> The statute has five main features: (1) it requires an arbitration or mediation clause in production contracts; (2) it limits termination of production contracts that require the producer to make a "capital investment in buildings or equipment that cost \$100,000 or more and have a useful life of five or more years;" (3) it imposes parent company responsibility for contracts of subsidiaries; (4) it imposes the Uniform Commercial Code's implied promise of good faith on all parties;<sup>57</sup> and (5) it authorizes the Commissioner of Agriculture to adopt rules prohibiting unfair trade practices.<sup>58</sup> Of these features, only the first directly presents contract drafting considerations, although language disclaiming any requirement that the producer make a capital investment sufficient to trigger the limitation on contract termination might be appropriate in some contracts.

Under the Minnesota Agricultural Contracts statute, production contracts for agricultural commodities grown or raised in Minnesota must "contain language providing for resolution of contract disputes by either mediation or arbitration."<sup>59</sup> The contract drafter thus needs to know whether the processor wants contract disputes decided by arbitration or mediated with the assistance of a neutral person who has no authority to impose a settlement.<sup>60</sup>

The choice of arbitrator or mediator is for the contracting parties to decide. The Minnesota Commissioner of Agriculture may be designated as the provider of arbitration or mediation services. If the Commissioner is designated, the Commissioner may conduct the arbitration or mediation or refer the matter to outside arbitration or mediation services. In either event, the arbitration or mediation will be conducted under the Minnesota Uniform Arbitration Act<sup>61</sup> or the Minnesota Civil Mediation Act.<sup>62</sup>

56. MINN. STAT. § 17.90-.98 (1994).

57. MINN. STAT. § 17.91-.94 (1994) (citing MINN. STAT. § 336.1-201 (1994)).

58. MINN. STAT. § 17.945 (1994). See generally Randi Ilyse Roth, *Breeding Change—Legislative Remedies for Contract Growers*, 7 MINNESOTA FAMILY FARM LAW UPDATE 10 (1992).

59. MINN. STAT. § 17.91 (1994). The Minnesota Wholesale Produce Dealers Act also requires the inclusion of an arbitration or a mediation clause in "a contract for produce between a buyer and a seller." MINN. STAT. § 27.131 (1994). "Produce" means "(1) perishable fresh fruits and vegetables; (2) milk and cream and products manufactured from milk and cream; and (3) poultry and poultry products." MINN. STAT. § 27.01(2) (1994). A "seller" includes a "farmer" or a "wholesale produce dealer." MINN. STAT. § 27.01(10) (1994). "Farmer" is broadly defined, MINN. STAT. § 27.01(9) (1994), as is a "wholesale produce dealer." MINN. STAT. § 27.01(8) (1994). "Buyer" and "contract" are not defined. As a result, the literal (but probably unintended) reach of section 27.131 is extraordinarily broad. Read literally, the purchase of an egg from a farmer would be subject to section 27.131.

The Minnesota Wholesale Produce Dealers Act has potential pitfalls for processors subject to it, and it should be reviewed when "produce" will be the subject of the contract. For example, a recently filed administrative proceeding involved the issue of whether, under MINN. STAT. § 27.19(1)(12) (1994), a processor's setting of the planting date obligates the processor to compensate the producers even if the processor's failure to harvest the crop was due to wet field conditions. *In re Claims Against the Wholesale Produce Dealer's Bond of United Foods, Inc., d/b/a Pictsweet Frozen Foods, Principal, United States Fire Insurance Co., Surety*, before the Minnesota Department of Agriculture (Complaint filed June 10, 1993). See generally Randi Ilyse Roth, *supra* note 58, at 10 (1992).

60. See MINN. R. 1572.0010(2), 1572.0010(5) (1993) (defining "arbitration" and "mediation" for purposes of MINN. STAT. § 17.91). The Commissioner's rules provide that "[t]he findings and order of an arbitrator under this part are prima facie evidence of the matters contained in them." MINN. R. 1572.0020(4) (1993). While the purpose of the provision is not clear on its face, it may be intended to avoid relitigation of the issues in court. Under the Minnesota Uniform Arbitration Act, however, a court's authority to vacate, modify, or correct an award does not include reviewing the evidence on which the findings and order is based. See MINN. STAT. § 572.19 (1994). Whether the provision might be used to make an arbitrator's decision the basis of an "unfair trade practices" determination by the Commissioner under the Commissioner's authority pursuant to MINN. STAT. § 17.945 to prohibit unfair trade practices is unclear.

61. MINN. STAT. § 572.08-.30 (1994).

While the arbitration or mediation clause requirement presents obvious contract drafting considerations, other provisions of the Minnesota Agricultural Contracts statute may need to be addressed in the contract. For example, if the producer is not required to make a capital investment large enough to trigger the statute's "recapture of capital investment" provision, consideration should be given to a clause disclaiming the potential for such a recapture. This could be accomplished by reciting that the contract does not contain, and should not be interpreted to contain by implication or otherwise, an obligation on the part of the producer to provide a capital improvement in buildings or equipment costing \$100,000 or more and having a useful life of five or more years. If, in fact, the producer has "a written contractual obligation to provide a capital improvement of \$100,000 or more,"<sup>63</sup> the processor (the "contractor") cannot terminate or cancel the contract without 180 days notice and without reimbursing the producer "for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract."<sup>64</sup> Notice and reimbursement are waived if the producer voluntarily abandons the contract or is convicted of an offense directly related to the business conducted under the contract.<sup>65</sup>

Minnesota's Agricultural Contracts are not without shortcomings and ambiguities. An obvious shortcoming from the producer's perspective is the apparent ease with which the capital investment recapture provision can be avoided. The ambiguities may be less obvious. For example, some production contracts provide that the producer is to purchase seed for the contract crop from the processor. Does the seed contract also need an arbitration or mediation clause? Arguably, Minnesota's Agricultural Contracts statute can be read to require an arbitration or mediation clause in such seed sale contracts. The statute provides that "[a] contract for an agricultural commodity between a contractor and a producer must contain language for providing for resolution of contract disputes by either mediation or arbitration."<sup>66</sup> By its terms, the statute is not limited to contracts for the production of an agricultural commodity, although that qualifier probably should be implied, given the overall tenor and purpose of the statute.

To illustrate the difficulties inherent in the statute's arguable application to seed sale/purchase contract, assume the following: A and B enter into a pro-

62. MINN. STAT. § 572.31:40 (1994). Even if the Commissioner is not designated, the arbitration or mediation must be conducted under the Minnesota Uniform Arbitration Act or the Minnesota Civil Mediation Act, respectively. See MINN. STAT. § 17.91 (1994), MINN. R. 1572.0020 (1993). This seems to be the inference of the following limitation on the Commissioner's authority to accept a matter for arbitration or mediation:

The commissioner may not accept a request . . . if the contract governing the dispute between the parties contains an arbitration or mediation clause, and if

.....

whether or not mediation or arbitration has started, the arbitration or mediation clause or terms adopted under it contains a mechanism for designating a mediator or arbitrator the parties are legally obligated to use under the Uniform Arbitration Act or the Minnesota Civil Mediation Act, whichever is appropriate.

MINN. R. 1572.0020(2)(B) (1993).

63. MINN. R. 1572.0030(1) (1993).

64. MINN. STAT. § 17.92(1) (1994).

65. MINN. STAT. § 17.92(3) (1994).

66. MINN. STAT. § 17.91 (1994).

duction contract for an "agricultural commodity" subject to the statute. Hence, A is a "producer" and B is a "contractor" under the statute. Subsequently or simultaneously, A and B enter into a seed purchase contract whereby A, the producer, agrees to buy seed from B, the contractor. At that time, they arguably are in a producer/contractor relationship under the statute, that is, the seed sale/purchase contract is "between a contractor and a producer."<sup>67</sup> The question is whether the seed (as well as the crop to be produced from the seed) is an "agricultural commodity" within the meaning of the statute. Under the statute, "agricultural commodity" includes "material *produced* for . . . seed. . . ."<sup>68</sup> The question thus becomes does "produced" mean produced at any time, including prior to the parties' production contract agreement, or does "produced" mean produced under the production contract? If it means the former, then an arbitration or mediation clause is required in both the production contract and the seed contract. If the latter meaning is intended, then only the production contract must have an arbitration or mediation clause.

The Commissioner's rules provide that "[c]ontract mediation or arbitration clauses are required in contracts signed by Minnesota producers."<sup>69</sup> On its face, this rule is beyond the scope of the statute because the rules define "contract" simply as "a legally enforceable agreement between two or more parties."<sup>70</sup> Unlike the "triggering" language of the statute, the definition is not limited to contracts for agricultural commodities, although it expressly "includes a written commodity contract. . . ."<sup>71</sup>

To confuse matters further, another of the Commissioner's rules requires the use of a specified arbitration clause in "a contract for seed" if arbitration is required.<sup>72</sup> Under that clause, arbitration is a prerequisite to an action for damages for the seed's deficiencies. Although the rule does not expressly refer to seed *production* contracts, given the overall purpose of the rules and the statute, one might assume the rule is directed to such contracts and not to seed sale/purchase contracts. Such an assumption, however, must be reconciled with the notice the rule requires in the contract. The rule states, "Arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed for damages for the failure of seed for planting to produce or perform as represented by a seed tag or label."<sup>73</sup>

It is probably not a common practice for the producer to label seed grown under a production contract before delivery to the contractor nor is it common for the producer to know how, or to have a role in determining how, the contractor will label the seed for resale. Therefore, the rule does not appear to be directed at seed production contracts. Instead, it appears to be directed at seed

67. The counter argument would be that A and B were acting in a different capacities in the seed sale/purchase transaction, i.e., they were merely a buyer and a seller, respectively. The strength of this argument, however, is arguably reduced to the extent that the seed/sale purchase transaction is referenced or incorporated in the production contract.

68. MINN. STAT. § 17.90(2) (1994) (emphasis added).

69. MINN. R. 1572.0020(6) (1993)

70. MINN. R. 1572.0010(4) (1993)

71. *Id.*

72. MINN. R. 1572.0020(5) (1993)

73. *Id.*

sale/purchase contracts where the seed is sold under a tag or label. If so, how the rule is to be applied in the production contracts context is unclear.

The Commissioner's Agricultural Contracts rules require the submission to the Commissioner of a sample copy of each written contract.<sup>74</sup> "Schedules of prices and charges need not be included," but "[c]ontract samples must be submitted to the commissioner and made available to producers at least 30 days before contract crops are planted or the contract livestock is placed in the producer's facility."<sup>75</sup>

## ***B. A Generic Checklist of Common Production Contract Provisions***

Given the potential variety of contract purposes, creating a checklist suitable for all commodities produced under contract is virtually impossible.<sup>76</sup> Nonetheless, the following checklist illustrates the matters commonly addressed in production contracts:

### **1. Preliminary Matters**

*Title of the contract*, often including the crop year when a field crop is being produced.

*Date and place of contract formation and identification of the parties*. The parties' identification will usually include the producer's name, address, and telephone number. In some contracts, it may be appropriate to state the producer's federal tax or Social Security number, percentages of crop shares when multiple producers are involved, and the landowner's name and address when the land subject to the contract is leased.

*Legal description of the land on which production will occur*, often coupled with a clause requiring the producer to notify the processor if crop is planted on different land.

### **2. Statement of the Contract's Purpose**

*Statement of the contract's purpose*, stating in general terms the funda-

74. MINN. R. 1572.0020(7) (1993).

75. *Id.*

76. For example, the checklist that follows in the text does not list a "passed acres" clause, a clause unique to vegetable contracts wherein provision is made for payment of acres suitable for processing but not harvested because the processor elected not to use that production. See *Myron Soik & Sons v. Stokely USA, Inc.*, 498 N.W.2d 897 (Wis. Ct. App. 1993). For a discussion of contract clauses unique to the poultry and hog industry, see Clay Fulcher, *Vertical Integration in the Poultry Industry: The Contractual Relationship*, AGRIC. L. UPDATE, Jan. 1992, at 4; IOWA PORK PRODUCERS ASS'N, JPPA SWINE CONTRACT APPROACHES (1990). Poultry contracts subject to the Packers and Stockyards Act must comply with 9 C.F.R. § 201.100 (1994), providing that:

{e}ach live poultry dealer who enters into a growout (feeding) contract with a poultry grower shall furnish the grower a true written copy of the contract, which shall clearly specify:

(1) The duration of the contract and conditions for the termination of the contract by each of the parties; and

(2) All terms relating to the payment to be made to the poultry grower, including among others, where applicable, the following:

(i) The party liable for condemnations, including those resulting from plant errors;

(ii) The method for figuring feed conversion ratios;

(iii) The formula or method used to convert condemnations to live weight;

(iv) The per unit charges for feed and other inputs furnished by each party; and

(v) The factors to be used when grouping or ranking poultry growers.

9 C.F.R. § 201.100(a) (1994).

mental purpose of the contract, for example, "the producer will grow for, and sell to, the processor all of the sunflower crop grown on the contract acres."

·*Description of the crop or other agricultural product*, including, for example, a designation of the approved type or variety of the contracted crop.

·*Production deadlines and other husbandry specifications*. Often, most of the more detailed husbandry specifications, such as planting dates and pesticide use, fall under the "general terms" set forth later in the contract.

·*Duration of the contract*. The contract's term is typically expressed in terms of crop year(s) or other production cycle.

### 3. Sale and/or Payment Terms

Under some contracts, no sale occurs; the producer is paid only for labor.

·*Quantity* is usually expressed per-unit; in some contracts, all production is purchased by processor or the processor is given the option to purchase all production above a fixed minimum quantity.

·*Quality* is commonly defined by government or other third-party grading standards. If so, the contract should address the possibility of changes in standards after contract formation.

·*Price*. For field crops, price is usually expressed per unit, such as per-bushel. For animals, feed-to-weight ratios are often used. If a pricing formula is used, it should be clearly stated.

·*Payment timing and method*. The contract should specify when and how the producer will be compensated.

### 4. Delivery

·*Date and location of delivery* should be specified if the producer must deliver the product to the processor.

·*Risk of loss and responsibility for delivery costs*. If not covered in a general risk of loss clause, the party bearing the risk of loss before the processor's acceptance of the product should be set forth, together with the responsibility for delivery costs.

### 5. Acceptance

If the contract contemplates the production and sale of crops of a specified quality, the contract should address when and how the processor's acceptance will occur, who will pay for grading and testing, whether the producer has a right to inspect the grading and test results, who owns the rejected product, and when and how the rejected product must be removed from the processor's facility if the rejected product is owned by the producer and has been delivered to the processor.

### 6. General Terms

·*Relationship of the parties*. The contract should specify the nature of the

parties' relationship. Typically, the relationship will be either a bailment relationship with the crop being the subject of the bailment or an independent contractor relationship with title to the crop to be assigned to one of the parties. All inapplicable relationships are usually disclaimed, particularly agency and employment relationships. To reinforce the disclaimer of an agency and employment relationship, the contract may require the producer to hold harmless and indemnify the processor for any losses or damages arising out of the producer's performance of the contract.

*Title to the crop.* The contract should specify who holds title to the crop and bears the risk of its loss, including when title and risk of loss passes from one party to another, if it does. Occasionally, a contract will give the processor title to the crop but will impose risk of loss on the producer.

*Encumbrances.* Producers who hold title to the crop may need to give a security interest in it to obtain operating funds. The processor, therefore, will want to know who the secured party is and will want to include provisions in the contract intended to ensure that it receives clear title after payment to the secured party and the producer. In some cases, the processor will want to preclude the producer from encumbering the crop, voluntarily or otherwise.

*Husbandry practices, including pesticide use and other inputs.* Depending on the contract's purpose, the contract may include detailed provisions on how the crops or animals are to be grown, including assigning responsibility for input applications, costs, failures, and misapplications. The contract may also specify the level of acceptable pesticide or antibiotic residues and other matter relating to production practices.

*Crop failure and other nonperformance.* The contract should address crop failure, animal losses, or other impediments to either party's performance caused by circumstances beyond either party's control. Such *force majeure* clauses usually require the producer to give the processor notice of a loss or the occurrence of an event impeding or preventing performance within a short period of time after its happening. They also typically require the affected party to take reasonable steps to minimize losses or delays in performance.

*Field or facility inspections.* The processor will usually want the right to inspect the producer's fields or facilities to assess production progress. Because casual advice may be offered by the processor's representatives during such inspections, some contracts disclaim liability or other responsibility for any advice or direction gratuitously offered during an inspection or on other occasions.

*Required notices.* The contract should specify to whom the parties should give any notices required under the contract.

*Termination.* The contract should specify the circumstances under which it will be terminated or not renewed.

*Assignment and binding effect on successors in interest.* Often the processor's consent will be required before the producer may assign the contract. Sometimes the contract will recite that it is one for personal services to bolster

its nonassignability. Otherwise, the contract will usually provide that it is binding on both parties successors in interest.

*Arbitration or mediation, choice of law, attorney's fees, etc.* In states such as Minnesota, the contract must provide for either arbitration or mediation. One production contract in use in Minnesota specifies that neither party has to pursue mediation before resorting to a legal remedy of the dispute. On its face, Minnesota's Agricultural Contracts statute does not preclude such a clause but its inclusion and invocation presents the potential risk of incurring bad faith liability under the statute.

*Integration, modification, severability, waivers, etc.* Recognizing that the processor's field representatives may have made representations concerning the producer's profits and other aspects of the contractual relationship, the contract should have a carefully drafted integration clause stating that the only agreements between the parties are those contained in the contract and in any subsequent written modifications.

## 7. Signatures

The parties should sign the contract.

## VI. AVOIDING CONTRACT DISPUTES

Contract disputes should not be considered inevitable by-products of the contractual relationship. There are, nonetheless, inherent tensions in many production contract relationships because of the undeniable inequities in the parties' respective bargaining power. Two suggestions may help relieve that tension. First, processors should use clear, complete, and reasonable contracts. Some contracts in current use reflect the unequal bargaining power between processors and producers and the producers' incomplete knowledge of potential risks. Second, processors should train field representatives and other processor personnel in proper contract management.<sup>77</sup> A processor "contract procedures compliance manual," prepared with attorney assistance, might prevent some of the processor misdeeds that have produced litigation and legislative reform. While a properly drafted contract can help to reduce the potential for disputes, in the final analysis all aspects of the production contract relationship require careful attention.

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77. In an attempt to improve communication between it and its producers, a large poultry integrator recently started a telephone "hot line" and assigned field representatives to each of its producers. Robert H. Brown, *Poultry Companies Try Improving Relations With Growers*, FEEDSTUFFS, Jan. 17, 1994, at 1.