



Foodland/IGA Alliance Agreement

Store Name: _____.

Owners name: _____.

Store Address: _____.

Store Phone: _____.

Date Completed: _____.

Metcash Copy / Store Copy (please circle as appropriate)



IGA
Standards
& Operations
Manual

IGANA221



Welcome...

In recent times IGA has developed into one strong and vibrant brand - with a bright and exciting future.

IGA was established to help independent retailers to compete effectively in the market. The stronger the brand becomes, the more equity is built into it, and as a result each retailer's business increases in value.

The IGA brand needs to have safeguards to protect all stakeholders, and we need to formalise the retailer / wholesaler relationship for the mutual benefit of both parties.

This alliance is about a commitment to the independent grocery industry and to the IGA brand, a commitment that goes towards protecting, nurturing and growing a successful IGA brand, and promoting the independent industry as a whole.

To enable us all to secure our future, you are invited to join with IGA Distribution to sign this Alliance Agreement.

The document outlines the rights, roles and responsibilities of both parties. Without each other we have no future, and we will continue to be successful only as long as we work together.

The IGA Distribution Retail Development teams are continually seeking opportunities for new sites and existing store refurbishments. This agreement is one way to provide external parties with greater confidence to work with IGA and the independent industry on opportunities as well as provide them with evidence of a tangible commitment for long term growth.

Together with retailers and wholesalers our industry is made complete by the support of all manner of suppliers and service providers. This agreement further helps the negotiation process with these parties to the benefit of both retailers and IGA Distribution.

The following pages comprise the agreement. Please take the time to become familiar with the document and to talk to those stakeholders in your business including family members and business partners about it.

This agreement is the result of extensive consultation with IGA retailers from around the country. It endeavours to cover all areas and interests that need to be protected. In the future there may be amendments to this document, however, this will only happen after each State IGA Retail Board and the National Board has been fully consulted.

If you have any questions please do not hesitate to contact your business manager.

March, 2007

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The Agreement

THIS AGREEMENT is made on the

day of 200

BETWEEN The Metcash company shown in Item 1 of Schedule 1 ("IGA") &

The Retailer shown in Item 2 of Schedule 1 ("the Retailer").

Introduction

A. IGA and the Retailer have agreed to form a strategic alliance to meet the challenges to the independent supermarket industry by the major supermarket chains. To achieve this objective, the parties will unite under the IGA Brand, and adopt certain systems and procedures ("the IGA System") to improve the way they do business.

B. IGA's role will be to continue to grow and develop the IGA Brand and the IGA System, and to negotiate improved buying arrangements and additional network benefits for the Retailer.

C. The Retailer's role will be to carry on business at the Location under the IGA Brand using the IGA System following the Channel Standards and thereby delivering consistent and improved retail service to its customers and the community it serves.

Agreement

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions in Schedule 3 apply.

2. THE ALLIANCE

2.1 IGA and the Retailer agree to form the Alliance, to unite under the IGA Brand and co-operate to provide to customers a viable retail alternative to the offer of the major supermarket chains.

2.2 This Agreement outlines the principles on which the Alliance will operate and supersedes any Banner Agreement concerning the Location.

2.3 This Agreement is not a partnership, joint venture, employment or agency relationship.

3. PRE-CONDITIONS TO JOINING THE ALLIANCE

3.1 Before joining the Alliance, the Retailer must:

3.1.1 Be nominated to join the Alliance by the relevant State Board;



- 3.1.2 Undertake to complete as soon as practicable the initial induction program for the IGA System and any other training program agreed to be necessary;
 - 3.1.3 Sign this Agreement;
 - 3.1.4 Make sure that the construction, outfitting, layout, equipping, staffing and signage of the Location meets the Channel Standards;
 - 3.1.5 Make sure that the Retailer has in place and complies with a Food Safety Plan prepared and maintained by the Retailer in accordance with the requirements of the relevant Food Act; and
 - 3.1.6 Nominate someone as a Nominated Representative of the Business, with appropriate authority to bind the Retailer. IGA will be entitled to deal with the Nominated Representative to the exclusion of anyone else.
- 4. DURATION OF THE ALLIANCE**
- 4.1 The Alliance will start on the Commencement Date shown in Item 4 of Schedule 1 and continue for the Initial Term subject to any provisions of this Agreement allowing for early termination.
 - 4.2 The Retailer will have the option at the end of the Initial Term to continue the Alliance for the Further Term and thereafter on a rolling basis for the period of the Further Term if the following conditions have been satisfied -
 - 4.2.1 Within 6 to 3 months before the end of the Initial Term, the Retailer has notified IGA in writing of its wish to extend the Term;
 - 4.2.2 Any breach of this Agreement, of which due notice has been given, has been rectified; and
 - 4.2.3 The Retailer complies with any reasonable pre-conditions under the then current Alliance Agreement.
 - 4.3 IGA will remind the Retailer in writing at least one month before the start of the period in clause 4.2.1 of the date upon which this Agreement will expire unless renewed and the final date for renewal. If IGA fails to give this reminder, the period referred to in clause 4.2.1 will be extended until 1 month after the Retailer receives the reminder.
- 5. COMMITMENT TO THE ALLIANCE**
- 5.1 The IGA Brand will apply to the branding and the image of the premises at the Location. The IGA System and the Channel Standards will describe confidential operational procedures, merchandising arrangements and other Business methods.
 - 5.2 During the Term, IGA grants the Retailer the non-exclusive right:
 - 5.2.1 To use the IGA Brand, the Name, the IGA System and the Confidential Information in the Business at the Location; and

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- 5.2.2 To participate in the IGA Network for the Term and on the terms and conditions set out in this Agreement in place of any previous trade mark licence.
- 5.3 To protect the goodwill and reputation of the IGA Brand and the IGA System, and maintain the integrity of the Confidential Information, the Retailer agrees, for the duration of this Agreement, not to directly or indirectly:
- 5.3.1 Participate in or be involved in any other supermarket business other than an IGA business (except as referred to in this Agreement and set out in Item 13 of Schedule 1); or
- 5.3.2 Subject to the agreement of the Network Company, participate in or be a member of any other buying or promotional network competitive with the IGA Network except for an unbannered store supplied by IGA and except as referred to in this Agreement and set out in Item 13 of Schedule 1.
- 5.4 Subject to the agreement of the Network Company, for the purposes of clause 5.3, indirect participation, membership or involvement shall include participation, membership or involvement by any director or shareholder of the Retailer or any entity of which any director or shareholder of the Retailer has any ownership or control. However, nothing in this clause shall prevent the Retailer from holding less than 5% of the shares of a company listed on the Australian Stock Exchange.
- 5.5 The Retailer may only use the IGA Brand, the Name, the IGA System and the Confidential Information at the Location and within the Retailer's Channel. The Retailer must not use the IGA Brand, the Name, the IGA System or the Confidential Information at any other location or within any other Channel unless agreed to in writing by IGA. IGA will maintain an up-to-date schedule of each of the Locations at which the Retailer is authorised to use the IGA Brand, the Name, the IGA System and the Confidential Information and the Retailer agrees that such schedule shall be conclusive evidence of the Locations at which the Retailer is authorised to use the IGA Brand.
- 5.6 IGA may carry on business or grant rights to others to carry on business, under the IGA Brand or the IGA System, subject to any policy on clash sites as determined by each State Board and ratified by the Network Company that may be developed and implemented from time to time by the Network Company.
- 6. USE OF THE IGA BRAND**
- 6.1 The Retailer must not register or seek to register any of the Intellectual Property, nor without first obtaining IGA's written consent to such use (such consent not to be unreasonably withheld) use any unauthorised trade mark, logo, brand, name or sign in the Business.
- 6.2 In operating the Business under the IGA Brand, the Retailer must use the Marks and the Name (and no others) in the manner directed from time to time by IGA, and any variations as agreed to by the Network Company.
- 6.3 To promote and build the IGA Brand, the Retailer will ensure all employees involved in the Business wear the IGA approved uniforms and name tags and adhere to the corporate image requirements specified in the Channel Standards, and any variations to the Channel Standards as agreed to by the Network Company.



7. THE CHANNEL STANDARDS

- 7.1 The Channel Standards will be determined by the Network Company and will set out the methods and standards of operation, merchandising, promotion, marketing, store management and administration that the Network Company believes should be standardised within the IGA Network and met by all members of the IGA Network in the relevant Channel.
- 7.2 The Network Company will develop the Channel Standards for each Channel. Provided the Channel Standards do not breach any law, regulation or code of conduct or be contrary to the IGA Brand or the IGA System, IGA will ratify, implement and publish the Channel Standards in the Operations Manual.
- 7.3 The Channel Standards, and any variation or addition, will take effect on publication in the Operations Manual.
- 7.4 The Retailer must at all times carry on business at the Location in accordance with the Channel Standards.
- 7.5 The Network Company will monitor compliance with the Channel Standards.

8. THE LOCATION

- 8.1 The construction, outfitting, layout, equipping, staffing and signage of the Location must at all times meet the Channel Standards and be consistent with the IGA Brand requirements for the Retailer's Channel.
- 8.2 To assist the Retailer with the fit-out of the Location in accordance with this clause, IGA may provide the Retailer with a Start-Up Package. The Retailer shall be responsible for implementing the Start-Up Package.

9. THE OPERATION OF THE IGA SYSTEM

- 9.1 IGA will continue to develop and promote the IGA Brand for the benefit of the IGA Network, and will generally co-ordinate the operation of the IGA Network.
- 9.2 IGA will at its cost provide the IGA System and field support personnel to assist the Retailer to operate the Business in accordance with the IGA Brand and the Channel Standards. Any special or technical support, training, advice or assistance beyond that normally provided to all Retailers shall be provided at the reasonable cost of the Retailer.
- 9.3 The Retailer must ensure that all staff in the Business are aware of the contents of the Operations Manual and are appropriately trained in the Channel Standards. The Retailer shall be responsible for the actions or omissions of all employees, agents, sub-contractors or representatives of the Retailer.
- 9.4 The monitoring of compliance with the IGA System, and other operational or policy matters, is the responsibility of the Network Company (including any committee of members of the Network Company established by the Network Company for such purpose) working closely with relevant Boards. IGA will assist the Network Company to obtain insurance cover under an appropriate directors and officers policy covering all actions by or on behalf of the Network Company's directors and officers under this Agreement or in relation to the Alliance.

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- 9.5 The Retailer must comply with any reasonable directions of the Network Company or any committee of the Network Company issued on its behalf.
- 10. OPERATIONS MANUAL**
- 10.1 The Channel Standards and the details of the IGA System are to be incorporated in the Operations Manual. IGA will provide the Operations Manual to the Retailer on loan for the duration of this Agreement.
- 10.2 IGA may in consultation with the Network Company make changes to the IGA Brand or the Marks from time to time. Any changes will not in any way invalidate this Agreement.
- 10.3 The Operations Manual will include a menu of services to be provided by IGA, and the cost of such services to the Retailer. Some of the services will be provided free of charge, and others will attract a reasonable charge which will be at or below the usual wholesale price for such services. IGA may add, delete or vary such services and amend the charges in line with any changes in the usual wholesale price for such services by giving to the Retailer 30 days notice in writing. Any substantial changes are subject to the consent of the Network Company.
- 10.4 The Retailer must pay for the services by the date and in the manner reasonably required by IGA.
- 10.5 IGA may with the approval of the Network Company, which approval is not to be unreasonably withheld, amend the provisions of the Operations Manual from time to time. The Network Company may request changes to the manual which IGA must consider.
- 10.6 The Operations Manual and any copy of it remains at all times the property of IGA and must be returned to IGA immediately upon request and at the termination or expiration of this Agreement.
- 10.7 The Retailer agrees to use the standard Food Safety Plan template provided within the Operations Manual and agrees to complete and maintain its own customised version of the Food Safety Plan in accordance with the requirements of the relevant Food Act. The site specific “customised” Food Safety Plan remains the responsibility and property of the Retailer.
- 11. INTELLECTUAL PROPERTY**
- 11.1 IGA warrants that it is the licensee or beneficial owner of the Intellectual Property and is entitled to use the Intellectual Property in accordance with the terms and conditions of this Agreement.
- 11.2 The Retailer acknowledges that all rights in and relating to the Intellectual Property are and remain under the control and/or the property of IGA. The Retailer shall not acquire any right, title or interest in any of the Intellectual Property except as provided in this Agreement.
- 11.3 The Retailer has been permitted to register the Business Name solely on the basis that the Retailer is a member of the IGA Network. Upon termination or expiration of this



- Agreement the Retailer's right to use the Business Name and the IGA Brand shall cease and the Retailer shall immediately provide IGA with all forms, directors' resolutions and fees reasonably necessary to enable IGA to transfer the Business Name to IGA or remove the Business Name from any register.
- 11.4 The Retailer undertakes to use its best endeavours, but at no cost to the Retailer, to preserve and maintain the value and validity of the IGA Brand, including the Marks, the Name, the trade marks and the logo and to protect the reputation of IGA in relation to the IGA Brand.
- 11.5 In the event of any third party infringement of the IGA Brand including the Marks, the Name, the trade marks and the logo or any passing off of the same, IGA shall use its best endeavours to terminate such infringement or passing off at IGA's expense in order to protect the Intellectual Property.
- 11.6 In the event that any third party alleges or claims that the use of any of the features of the IGA Brand by the Retailer constitutes an infringement of that third party's rights or any other rights, or a passing off, or that such use is likely to cause deception or confusion, then IGA will use its reasonable best endeavours to defend such allegation or claim (including by settling the matter if considered appropriate).
- 11.7 In the event that IGA takes any action in accordance with this clause, then the Retailer will provide all necessary assistance to IGA as required by IGA, at the expense of IGA.
- 11.8 Section 26 of the Trade Marks Act 1995 dealing with the powers of an authorised user of a registered trade mark will not apply to this Agreement or to the Retailer as the Retailers powers in relation to the Intellectual Property as agreed by the parties are set out herein.
- 12. PROMOTION AND MARKETING**
- 12.1 Subject to clause 12.2, IGA will from time to time and at its cost design and develop co-ordinated marketing, advertising and promotional campaigns for the IGA Network.
- 12.2 IGA will consult with the Network Company, through its Boards or, as appropriate, its State Boards, and will reach agreement on the terms of any such campaigns.
- 12.3 The Retailer shall participate in all marketing, advertising and promotional campaigns conducted by IGA and applicable to the Retailer's Channel or the IGA Network generally.
- 12.4 The Retailer shall actively promote the Business and use its reasonable best endeavours to maximise the sale of Products in the Business.
- 12.5 The Retailer shall only use advertising or promotional material prepared in accordance with the Channel Standards and using the IGA Brand in the manner prescribed by IGA and the Network Company, in accordance with the style guide specifications.

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13. MEETINGS AND TRAINING

- 13.1 Training programs must be agreed with the Network Company and the Retailer must ensure that all appropriate staff attend all relevant training sessions. The Retailer will be responsible for all reasonable training costs.
- 13.2 Where IGA convenes a meeting or it is an approved meeting of the Network Company, the costs of the content, venue, equipment hire, and the costs of attendance by any IGA staff, will be met by IGA. The Retailer will be responsible for all its own costs of attending any meeting, including the costs of travel, accommodation and meals for all of the Retailer's staff.

14. SUPPLY OF PRODUCTS BY IGA TO THE RETAILER

- 14.1 IGA and the Retailer will comply with the terms and conditions for the wholesale supply of products to the Retailer as agreed from time to time.
- 14.2 The Retailer must ensure that all products to be sold by the Retailer to customers are displayed, presented and delivered to customers in accordance with the Channel Standards.
- 14.3 The Retailer must in accordance with the Channel Standards use its reasonable best endeavours to stock the Location with an appropriate quantity and mix of products so that customer demand can be met.
- 14.4 IGA may at any time require the Retailer to withdraw from supply to customers any product which, in IGA's reasonable opinion, is inconsistent with the IGA Brand, does not conform with the Channel Standards or is or may be a health or safety risk. This may include products that are considered offensive or inappropriate for IGA customers. The Retailer must immediately withdraw a product from sale when so required.
- 14.5 The Retailer is not obliged to comply with any recommendations made by IGA in relation to retail prices. However where IGA conducts a promotional program at an advertised price, the Retailer may offer for sale products at prices which are less than the Recommended Prices but the Retailer must not offer for sale products at prices which are greater than the Recommended Prices.

15. PAYMENT

- 15.1 The Retailer must pay all stamp duty payable in connection with this Agreement.
- 15.2 Except where express provision is made to the contrary, and subject to this clause, any amount that may be payable under the Agreement is exclusive of GST.

16. INSPECTION OF SYSTEM COMPLIANCE

- 16.1 The retailer authorises IGA or its authorised representatives to inspect and observe the Business and the Location at any time and without notice during normal business hours.
- 16.2 IGA may delegate the right of inspection to the Network Company or a committee of retailers appointed by the Network Company.



- 16.3 The Retailer will cooperate with any inspection and provide such general information as IGA shall reasonably require in connection with compliance with the IGA System and the Channel Standards. IGA agrees both for itself and on behalf its delegates to treat such information as Confidential Information.
- 17. SECRECY AND INFORMATION**
- 17.1 All parties to this Agreement must during the Term, and after the termination or expiration of this Agreement, maintain strict secrecy about the IGA Retail Alliance and not disclose any of the Confidential Information or the Retailer's Confidential Information to any person, business, company, firm or other entity without the prior written consent of the other parties.
- 17.2 All parties must ensure that their respective nominees, employees or agents observe the requirements of secrecy and confidentiality specified in this clause and must if required by the other parties cause such nominees, employees or agents to enter into a confidentiality agreement in a form reasonably acceptable to the other parties.
- 18. ASSIGNMENT BY THE RETAILER**
- 18.1 This Agreement, and participation by the Retailer in the Alliance, is personal to the Retailer and may only be assigned with the prior written approval of IGA.
- 18.2 The Retailer must request IGA's written consent to assign this Agreement to a third party. IGA must not unreasonably withhold consent to the assignment.
- 18.3 The circumstances in which it is reasonable for IGA to withhold consent include:
- 18.3.1 the proposed transferee being unlikely to be able to meet the financial obligations that the proposed transferee would have under this Agreement or any Related Agreement;
 - 18.3.2 the proposed transferee not meeting the reasonable selection criteria of IGA as determined from time to time in consultation with the Network Company;
 - 18.3.3 consent to the Transfer having a significantly adverse effect on the IGA System and the IGA Network;
 - 18.3.4 the proposed transferee not agreeing in writing to comply with the Retailer's obligations under this Agreement or any Related Agreement;
 - 18.3.5 the Retailer not paying or making reasonable provision to pay an amount properly owing to IGA after reasonable prior written notice by IGA of particulars of the amount owed; and
 - 18.3.6 the Retailer having breached this Agreement or any Related Agreement and not remedying such breach prior to the Transfer after the Retailer receiving written notice specifying the nature of the breach.

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18.4 The Retailer shall pay to IGA within 14 days of written request the Transfer Administration Fee referred to in Item 11 of Schedule 1 in connection with any transfer of the Retailer's interest in this Agreement. The Transfer Administration Fee will reflect the reasonable administrative costs of IGA in dealing with the Transfer and will be determined after consultation with the Network Company.

19. ASSIGNMENT BY IGA

19.1 IGA will be entitled at any time to assign its rights to payment of all or any of the amounts owing by the Retailer to IGA on account of the purchase price for all of the Products and for all other goods delivered by IGA to the Retailer.

19.2 IGA may transfer all or any part of its rights, interests, obligations or liabilities under this Agreement by assignment or by novation to a properly qualified assignee.

20. TERMINATION DURING A COOLING OFF PERIOD

20.1 The Retailer may terminate this Agreement by written notice served on IGA within seven days from signing this Agreement. The Retailer will however remain bound by any provisions intended to survive termination.

20.2 IGA will refund to the Retailer on such termination any moneys paid to IGA by the Retailer under this Agreement, less the cost of the Start-Up Package and the Transfer Administration Fee as an agreed reasonable assessment of IGA's reasonable expenses.

21. TERMINATION FOR BREACH

21.1 If the Retailer or IGA ("Defaulting Party") breaches any obligation under this Agreement or any Related Agreement, the other party ("Terminating Party") may terminate this Agreement if:

21.1.1 The Terminating Party gives written notice ("Notice of Breach") to the Defaulting Party which:

21.1.1.a specifies the breach;

21.1.1.b states that the Terminating Party intends to terminate this Agreement if the breach is not remedied;

21.1.1.c states what the Terminating Party requires to be done to remedy the breach; and

21.1.1.d allows the Defaulting Party a reasonable time (but not more than thirty (30) days) to remedy the breach; and

21.1.2 the Defaulting Party fails to remedy the breach in accordance with the Notice of Breach.



21.2 Where the Defaulting Party breaches a provision of this Agreement on more than two occasions in any twelve month period and the Defaulting Party has in each case received Notice of Breach, it is agreed that the reasonable period of notice required by this Agreement for any subsequent breach of the same or a similar provision is at least 14 Days.

22. IMMEDIATE TERMINATION

22.1 Clause 21 will not apply, and IGA or the Retailer ("Terminating Party") may immediately terminate this Agreement by notice in writing to the other party ("Defaulting Party"), if the Defaulting Party:

22.1.1 in the case of the Retailer:

22.1.1.a no longer holds a licence necessary to carry on the Business;

22.1.1.b becomes bankrupt, insolvent under administration or an externally-administered body corporate as defined under the Corporations Act;

22.1.1.c voluntarily abandons the Business;

22.1.1.d is convicted of a serious offence under any law of the Commonwealth or State or Territory for which a person would be liable on first conviction to imprisonment for a period not less than five (5) years;

22.1.1.e operates the Business in a way that endangers public health and safety;

22.1.1.f is fraudulent in connection with the operation of the Business; or

22.1.1.g agrees to termination of this Agreement; or

22.1.2 in the case of IGA:

22.1.2.a it no longer holds or is entitled to the use of, or to sub-licence, the IGA Brand, logos and the IGA System;

22.1.2.b becomes bankrupt, insolvent, under administration or an externally administered body corporate as defined under the Corporations Act;

22.1.2.c voluntarily abandons the IGA Brand or IGA

22.1.2.d operates the IGA Brand or IGA System in a way that endangers public health and safety;

22.1.2.e is fraudulent in connection with the operation of the IGA Brand or IGA System; or

22.1.2.f agrees to termination of this Agreement.

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- 22.2 The Terminating Party may terminate this Agreement by written notice effective immediately in the event that:
- 22.2.1 the breach is incapable of being remedied and the Terminating Party has suffered or is likely to suffer substantial loss or damage; or
 - 22.2.2 the Defaulting Party acts in a manner which would permit immediate termination at law.
- 22.3 Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time during the Term by giving the other party 90 days written notice. This Agreement shall terminate automatically at the expiration of the 90 day period, unless both parties agree in writing to the contrary.
- 23. ACTION UPON TERMINATION OR AT EXPIRATION THIS AGREEMENT**
- 23.1 Upon the termination or expiration of this Agreement the Retailer must immediately:
- 23.1.1 cease to use or exploit any of the Intellectual Property including the IGA Brand, the Marks, the Name and the distinctive IGA colour schemes, colour coding and visible indicia that indicate to the public that the Retailer is a member of the IGA Network;
 - 23.1.2 repaint the front and the external walls of the Location to remove all of the Intellectual Property including the IGA Brand, the Marks, the Name and the distinctive IGA colour schemes, colour coding and visible indicia that indicate to the public that the Retailer is a member of the IGA Network;
 - 23.1.3 at the Retailer's own cost, return to IGA the Operations Manual, and all other Confidential Information, Intellectual Property and documents relating to the Business;
 - 23.1.4 pay all moneys properly due by the Retailer to IGA or any of the Related Entities of IGA (offsetting any monies properly due to the Retailer by IGA or any of the Related Entities of IGA); and
 - 23.1.5 execute such documents and do such acts and things as IGA shall reasonably require to remove the Retailer from the register of members of the Network Company.
- 24. COMPLAINT HANDLING PROCEDURE**
- 24.1 If a dispute arises between parties to this Agreement it is to be resolved as follows:
- 24.1.1 the complainant must tell the other party in writing:
 - 24.1.1.a the nature of the dispute;



- 24.1.1.b what outcome the complainant wants; and
 - 24.1.1.c what action the complainant thinks will settle the dispute.
 - 24.1.2 the parties must then:
 - 24.1.2.a clearly communicate the background facts leading to or causing the dispute;
 - 24.1.2.b set out clearly what action is required to settle the dispute;
 - 24.1.2.c select a way of resolving the dispute and explain why that way of resolving the dispute can be said to be a fair resolution of the dispute; and
 - 24.1.2.d identify, if the dispute is resolved, how the resolution of the dispute has or could enhance the business relationship between the parties for the future. In particular, by identifying specific means of avoiding such disputes arising between the parties in the future;
 - 24.1.3 if the dispute is not resolved in accordance with clauses 24.1.1 and 24.1.2 within 3 weeks, either party may refer the matter to a mediator mutually agreed by the parties.
25. **SPECIAL CONDITIONS**
- 25.1 This Agreement is subject to the Special Conditions, if any, in Schedule 2. In the event of any conflict between the body of this Agreement and the Special Conditions, the Special Conditions shall apply.
26. **MISCELLANEOUS**
- 26.1 Law and jurisdiction
The law of the State in which the Location is situated governs this Agreement.
- 26.2 Amending this Agreement
An amendment or change to this Agreement is only effective once it is made in writing and executed by all parties.
- 26.3 This is the entire Agreement
- 26.3.1 This Agreement, and the other documents referred to in this Agreement, are the entire agreement of the parties concerning the subject matter of this Agreement.
 - 26.3.2 There is no other agreement, understanding, warranty or representation, whether oral or written, binding the parties concerning any aspect of this Agreement.

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26.3.3 In the event of any inconsistency between this Agreement and the Continuing Agreements, the Continuing Agreements shall prevail.

26.4 Time is of the essence

Time is of the essence. This means that each party must perform its obligations strictly on time.

26.5 Giving a notice

26.5.1 A notice by a party must be in writing and must be given to each other party.

26.5.2 A notice may be given to a party in any of these ways:

26.5.2.a delivered by hand to the party;

26.5.2.b sent by prepaid mail or document exchange to the address of the party;

26.5.2.c sent by facsimile communication to the facsimile number of the party.

26.5.3 A notice is treated as given to a party when:

26.5.3.a if hand delivered, when delivered;

26.5.3.b if sent by prepaid mail or document exchange, 48 hours after posting;

26.5.3.c if sent by facsimile communication, when the facsimile machine confirms transmission. If sent after 5pm it shall be deemed received the next Business Day after transmission.

26.5.4 A notice given on a day which is not a Business Day is treated as given on the following Business Day.

26.6 Severability

26.6.1 If a provision of this Agreement (or part of it) is held to be unenforceable or invalid, then it must be interpreted as narrowly as necessary to allow it to be enforceable or valid.

26.6.2 If a provision (or part of it) is held to be unenforceable or invalid, then:

26.6.2.a provision (or part of it) must be severed from this Agreement;

26.6.2.b the remaining provisions (and remaining part of the provision) are valid and enforceable.



26.7 No waiver

- 26.7.1 A party may exercise its rights at any time and does not waive those even if that party:
 - 26.7.1.a waived a breach or default of all or part of the same or other provision;
or
 - 26.7.1.b delayed or omitted to exercise its rights.
- 26.7.2 A waiver is only effective:
 - 26.7.2.a if it is signed by the party granting the waiver; and
 - 26.7.2.b to the extent set out in the waiver.

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How to fill in the Agreement

IMPORTANT - PLEASE NOTE

Each IGA Retailer will receive two copies of the IGA Alliance Agreement. Both copies should be signed and returned to the IGA Distribution office in your State.

Both copies will then be signed by IGA Distribution and one copy returned back to each IGA Retailer.

Should you have any questions relating to the signing of this document please feel free to contact the IGA State Marketing Manager in your State.

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Executed as an Agreement

IGA:

SIGNED for and on behalf of
IGA DISTRIBUTION PTY LTD
ABN 67 004 391 422

Witness

Authorised Officer

in the presence of:

Name

Name

SIGNED for and on behalf of
IGA DISTRIBUTION (VIC)
PTY LTD

ABN 85 006 509 280

Witness

Authorised Officer

in the presence of:

Name

Name

SIGNED for and on behalf of
IGA DISTRIBUTION (SA)
PTY LTD

ABN 57 008 193 155

Witness

Authorised Officer

in the presence of:

Name

Name

The Retailer:

(if a company)

By signing this Alliance Agreement, in addition to being bound by the terms of this Agreement, I also hereby apply for membership of IGA Retail Network Limited (“the Network Company”). In doing so, I recognise that the Network Company is a company limited by guarantee. In the event of the Network Company being wound up, I guarantee that an amount of \$10 will be contributed to the property of the Network Company so long as I remain a member or have been a member within one year of the date of winding up.

Duly executed by the
Retailer in accordance
with its constitution in the
presence of:

Director / Company Secretary

Director

Name of Director / Company Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

The Retailer:

(If an Individual(s) or
partnership)

Signature of Witness

Signature of Witness

Name (BLOCK LETTERS)

Name (BLOCK LETTERS)

SIGNED by the Retailer(s)
in the presence of:

Address of Witness

Address of Witness

Schedule 1

Item 1

IGA:

For NSW and QLD: IGA Distribution Pty Ltd (ABN 67 004 391 422)

For VIC: IGA Distribution (VIC) Pty Ltd (ABN 85 006 509 280)

For SA: IGA Distribution (SA) Pty Ltd (ABN 57 008 193 155)

} (Select one - separate agreement
required for each IGA subsidiary) of 4
Newington Road, Silverwater NSW 2128

Item 2

THE RETAILER: _____
of _____

Schedule 1 (continued)

Item 3

THE RETAILER'S CHANNEL OR CHANNELS: FOODLAND IGA

(please circle as appropriate)

IGA

IGA X-Press / Friendly Grocer IGA

Item 4

THE COMMENCEMENT DATE: _____

Item 5

THE INITIAL TERM: 5 years _____

THE FURTHER TERM: 5 years _____

Item 6

THE NOMINATED REPRESENTATIVE: Retailer: _____

IGA: _____

(IGA State General Manager only)

Item 7

THE IGA BRAND: The Name and any Marks relevant to the Retailer's Channel as approved by IGA for use by the Retailer. _____

Item 8

THE LOCATION: _____

Item 9

THE START UP PACKAGE: _____

Item 10

THE BUSINESS NAME: _____

Item 11

THE TRANSFER ADMINISTRATION FEE:

| | |
|-----------------------------------|----------------------------------|
| FOODLAND IGA | \$1,500 (Per Retailer / Company) |
| IGA | \$1,000 |
| IGA X-Press / Friendly Grocer IGA | \$500 |

Or other such amount/s as may be determined pursuant to clause 18.4

Item 12

CONTINUING AGREEMENTS: Any existing Supply Agreement, leasing, sale of business, property and security documents. _____

Item 13

OTHER SUPERMARKET, GROCERY, CONVENIENCE OR TOBACCONIST BUSINESSES:

OTHER BUYING OR PROMOTIONAL NETWORKS:

Item 14

EXCLUDED AGREEMENTS: Banner Agreement: _____

Schedule 2

SPECIAL CONDITIONS: _____



Schedule 3

Definitions...

- (1) “Agreement” means the terms of this Agreement and any schedules or annexures as amended from time to time in accordance with the provisions of this Agreement;
- (2) “the Alliance” means the strategic alliance between IGA and the Retailer described in this Agreement;
- (3) “the Alliance Agreement” means this Agreement between IGA and the Retailer;
- (4) “the then current Alliance Agreement” means the Alliance Agreement that Retailers seeking to join the Alliance are required by IGA to sign at the particular point in time;
- (5) “Banner Agreement” means any written, oral or implied agreement between the Retailer and IGA granting the Retailer the right to use any trade mark or logo owned by IGA or to participate in any buying or promotional network operated by IGA;
- (6) “the Boards” means the boards established by IGA or under the constitution of the Network Company for each Channel within each State;
- (7) “the Business” means the business to be conducted by the Retailer pursuant to this Agreement;
- (8) “Business Day” means a day which is not a Saturday, Sunday or Public Holiday in the State in which the Business is located.
- (9) “the Business Name” means the name set out in Item 10 of Schedule 1 to this Agreement which the Retailer is authorised for the term of this Agreement to register under the relevant business names legislation for the State in which the Location is situated in the manner described in clause 11.3 of this Agreement;
- (10) “Change in Beneficial Ownership” means where the Retailer is a trustee of a trust:
 - (a) the Retailer retires as trustee; or
 - (b) the provisions of the trust deed are amended in any way; or
 - (c) an additional beneficiary or class of beneficiaries is appointed; or
 - (d) any unitholding is transferred; or
 - (e) the trust is vested;
- (11) “Change in Control” means, where the Retailer is a corporation, a change in:
 - (a) control of composition of the Retailer’s board of directors; or

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Schedule 3 (continued)

- (b) the ability to cast, or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the Retailer; or
- (c) the holding of more than one half of the issued share capital of the Retailer;
- (12) “Channel” means a distinctive retail method or type of retail activity. FOODLAND IGA, IGA and IGA X-Press / Friendly Grocer IGA are all examples of separate channels for the purposes of this Agreement;
- (13) “the Channel Standards” means the standards of conduct, image and performance relevant to the Retailer’s Channel as described in this Agreement or as set by IGA in accordance with the procedure in clause 7 of this Agreement;
- (14) “the Commencement Date” means the date specified in Item 4 of Schedule 1 to this Agreement;
- (15) “Confidential Information” means:
 - (a) the Channel Standards and the Operations Manual;
 - (b) all business and financial information relating to either IGA or any Related Entity of IGA;
 - (c) all retailer confidential information, processes, procedures, marketing strategies, information concerning Customers, know how, systems, computer programs, models, data bases, any modifications to such things and all other information which, by its nature places or potentially places IGA and any Related Entity of IGA at an advantage over its present or future business competitors;
 - (d) any information which is marked “confidential”; and
 - (e) any information that would at law be considered secret or confidential information of IGA and/or any Related Entity of IGA;
but does not include:
 - (f) information which at the time of first disclosure by IGA to the Retailer is already in the public domain;
 - (g) information which after disclosure by IGA to the Retailer becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement;
 - (h) is required to be disclosed by law; or
 - (i) in respect of Intellectual Property to which IGA claims any rights under this Agreement, any software not developed by or on behalf of IGA;



Schedule 3 (continued)

- (16) “Continuing Agreements” means the agreements specified in Item 12 of Schedule 1 to this Agreement;
- (17) “Corporations Act” means the Corporations Act in force throughout Australia;
- (18) “Defaulting Party” means the party described as such under either clause 21 or 22 to this Agreement;
- (19) “the Food Act” means -
- (a) the Food Act 1992 (ACT) and any regulation prescribed under that Act;
 - (b) the Food Act 1989 (NSW) and any regulation prescribed under that Act;
 - (c) the Food Act 1981 (QLD) and any regulation prescribed under that Act;
 - (d) the Food Act 1985 (SA) and any regulation prescribed under that Act;
 - (e) the Food Act 1984 (VIC) and any regulation prescribed under that Act;
 - (f) the Food Act 1998 (TAS) and any regulation prescribed under that Act;
 - (g) any other food safety Act or regulation applicable to IGA or the Retailer; and
 - (h) any other industry code or guideline with which IGA elects to comply from time to time;
- (20) “Food Safety Plan” means the plan prepared and maintained by the Retailer in accordance with the requirements of the relevant Food Act;
- (21) “the Further Term” means the period set out in Item 5 of Schedule 1 to this Agreement;
- (22) “GST” means tax that is payable or imposed as goods and services tax under the A New Tax System (Goods and Services Tax) Act 2000 (as amended from time to time);
- (23) “the IGA Brand” means the IGA Brand relevant to the Retailer’s Channel as specified at Item 7 of Schedule 1 to this Agreement, as amended from time to time. The IGA Brand includes the Marks and the Name, but for the purposes of this Agreement specifically excludes other IGA trade marks and brand names which relate to other Channels or retail activities;
- (24) “FOODLAND IGA” means a business conducted under the IGA System within the relevant Channel;
- (25) “IGA” means a business conducted under the IGA System within the relevant Channel;

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Schedule 3 (continued)

- (26) “IGA X-Press / Friendly Grocer IGA” means a business conducted under the IGA System within the relevant Channel;
- (27) “the IGA System” means the Confidential Information, business systems, operating procedures, services and support provided by IGA to the Retailer as described in this Agreement and the Operations Manual as amended from time to time;
- (28) “the IGA Network” or “Network” means IGA, all Related Entities of IGA and all retailers operating an IGA Business using the IGA Brand and the IGA System;
- (29) “Initial Term” means the period set out in Item 5 of Schedule 1 to this Agreement;
- (30) “Intellectual Property” means the following, as amended from time to time:-
- (a) all copyright, trademark rights, patent rights or any other intellectual property subsisting in the Marks, IGA System, IGA Brand, Operations Manual and/or created during the development of the Channel Standards, and Operations Manual including software, source and object codes, scripts, records, documents, specifications, plans, program listings, calculations, or drawings;
 - (b) the distinctive IGA colour schemes, colour coding and visible indicia that indicate to the public that the Retailer is a member of the IGA Network;
 - (c) any advertising and promotional materials provided to the Retailer; and
 - (d) any Confidential Information and/or know how necessary for the administration, operation and marketing of the Business;
- but excludes, in respect of Intellectual Property to which IGA claims any rights under this Agreement, any software not developed by or on behalf of IGA;
- (31) “the Location” means the location or locations described in Schedule 1 to this Agreement, or such other locations from time to time, at which the Retailer is authorised to carry on the Business using the IGA Brand;
- (32) “Marks” means the registered and unregistered names, logos, trade marks and domain names included in or used in connection with the IGA Brand together with the distinctive IGA colour schemes, colour coding and visible indicia that indicate to the public that the Retailer is a member of the IGA Network, as supplemented or amended from time to time. The Marks will be more particularly described in the Operations Manual;



Schedule 3 (continued)

- (33) “Metcash” means Metcash Trading Limited (ABN 61 000 031 569) of which the companies referred to in Item 1 of Schedule 1 are wholly-owned subsidiaries;
- (34) “the Name” means Independent Grocers of Australia;
- (35) “the Network Company” means IGA Retail Network Limited (ABN 34 095 630 970) a company jointly owned and managed by IGA Distribution Pty Limited and the Retailers and established to develop the Channel Standards and provide guidance to IGA on a broad range of issues pertaining to the operation of the IGA Network;
- (36) “the Nominated Representative” means the individual specified at Item 6 of Schedule 1 to this Agreement or nominated by the Retailer pursuant to clause 3.1(6) of this Agreement;
- (37) “Operations Manual” means the operations manual issued by IGA relating to the operation of an IGA Business or describing aspects of the IGA System or the IGA Brand, as amended by from time to time;
- (38) “the Products” means the goods or services to be supplied by IGA to the Retailer for re-sale at the Location by the Retailer to customers;
- (39) “Recommended Prices” means the prices for sale of Products as recommended from time to time by IGA in writing to the Retailer;
- (40) “Related Agreement” means any agreement between the Retailer and IGA or any agreement between the Retailer and a Related Entity of IGA;
- (41) “Related Entity” means a related entity as defined by the Corporations Act;
- (42) “the Retailer” means the person described as the Retailer in Item 2 of Schedule 1 to this Agreement. If more than one party is listed, it means all parties listed jointly and severally;
- (43) “the Retailer’s Channel” is the type of retail activity permitted to be carried on at the Location as described at Item 3 of Schedule 1 to this Agreement;
- (44) “the Retailer’s Confidential Information” means all business and financial information relating to the Retailer, Related Entity, director, shareholder or beneficiary of the Retailer including, but not limited to:
- (a) all customer information;
 - (b) all processes, procedures, marketing strategies, information concerning customers, know how, systems, computer programs, models, data bases, any modifications to such things and all other information in respect of or in relation to the Business;
 - (c) any information which is marked “confidential”;

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Schedule 3 (continued)

but does not include information which:

- (d) at the time of first disclosure by the Retailer to IGA is already in the public domain; or
 - (e) after disclosure by the Retailer to IGA becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement;
- (45) “**Special Conditions**” means the Special Conditions (if any) specified in Schedule 2;
- (46) “**the Start Up Package**” means the materials and services set out in Item 9 of Schedule 1 to this Agreement, if any;
- (47) “**State**” means Victoria, New South Wales, South Australia, or Queensland or such other State or Territory within which the IGA System operates;
- (48) “**State Board**” means a State Board of the Network Company which may in a given State perform the role of a Channel Board;
- (49) “**the Supply Agreement**” means the agreed terms under which IGA has agreed to supply products to the Retailer as agreed between IGA and the Retailer from time to time. The Supply Agreement will include payment terms, trading terms, credit and security arrangements, transport arrangements and marketing structure. Unless and until a written Supply Agreement is signed by IGA and the Retailer, the terms of the Supply Agreement will be those set out for the Retailers Channel in the Operations Manual.
- (50) “**Term**” means the period during which the Alliance between the Retailer and IGA shall continue and means the Initial Term together with any further Terms agreed by IGA in accordance with the provisions of this Agreement;
- (51) “**Terminating Party**” means the party described as such under either clause 21 or 22 of this Agreement;
- (52) “**Transfer**” includes an arrangement in which the Business is transferred or sold, or:-
- (a) if the Retailer is a corporation, there is a Change in Control;
 - (b) if the Retailer is a trust, there is a Change in Beneficial Ownership;
 - (c) if the Retailer is a partnership, there is a dissolution of the partnership;
- (53) “**the Transfer Administration Fee**” means the amount specified in Item 11 of Schedule 1 to this Agreement.

- Ends -



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