1. DEFINITIONS

In this Agreement, the following definitions apply:

**Agreement** means this Agreement comprising these terms of business and the Details of Service.

**Client** means the person or company requesting the Services identified in the Details of Service.

**Confidential Information** means all information disclosed by the disclosing party that (a) is public knowledge otherwise than as a result of breach of confidentiality by the other party; or (b) is independently created by the party to whom it is disclosed.

**DJPR** means the State of Victoria as represented by its Department of Jobs, Precincts and Regions (ABN 63 295 965 458) or its nominees. If the Dispute applies to the State of Victoria, it is limited to the activities and obligations of DJPR.

**Details of Service** means the terms and conditions of the Agreement, unless terminated earlier pursuant to clause 11.

**Plant diagnostic services** means the report detailing the results and outcomes of the Services to be provided by DJPR in accordance with the ‘Veterinary Laboratory Services Schedule of Tests and Charges’ issued by DJPR from time to time (Client’s Request).

**Results** means the results and outcomes of the Services to be provided by DJPR in accordance with the Details of Service.

**Services** means the testing or diagnostic services to be performed by DJPR on the samples provided by Client as set out in the Details of Service.

**Services Fee** means the fees and other costs payable for the Services as set out in the Details of Service.

**Third Party Claim** means any claim, notice, demand, action, proceeding, litigation, by, or judgement or award in favour of, a third party which arises directly or indirectly as a result of (1) DJPR’s performance of the services of the material and information provided by Client, or (2) Client’s exploitation of the Results.

2. COMMENCEMENT OF SERVICES, TERMS AND TIMELINES

2.1. Plant diagnostic services: This Agreement and the Services will commence upon DJPR’s receipt of the Submission Form and necessary supporting information from Client, and will continue until the Services have been delivered to Client in accordance with the Details of Service, unless (1) Client advises DJPR in writing that it does not wish to receive the Services to be provided by 5pm of the next business day following receipt of the Submission Request Confirmation, or (2) termination earlier pursuant to clause 11.

2.2. Tobacco testing: This Agreement and the Services will commence upon DJPR’s receipt of the signed TT Schedule from Client within 14 days of its date and payment of the initial Services Fee detailed in the TT Schedule, and will continue until the Results have been delivered to Client in accordance with the Details of Service, unless terminated earlier pursuant to clause 11.

2.3. Veterinary laboratory services: This Agreement and the Services will commence (1) for testing of 50 samples or more, upon Client’s confirmation to DJPR of acceptance of the Quotation within 30 days of its date, or (2) for testing of less than 50 samples, upon DJPR’s acceptance of Client Request and in each case will continue until the Results have been delivered to Client in accordance with the Details of Service, unless terminated earlier pursuant to clause 11.

3. TIMELINES

3.1. Client acknowledges that DJPR’s primary role is to undertake analytical work for the State of Victoria that DJPR has to give priority to such work, and that DJPR may delay the provision of the Services and the receipt of the Results to Client if required to do so by regulatory or contractual obligations, or if such delay is necessary to prevent loss or damage to Client’s property or personal injury to persons or animals. DJPR will notify Client as soon as it becomes aware of anything which may affect the performance of the Services.

3.2. Veterinary laboratory services: A minimum of 7 days after receipt of the last sample from Client is required for completion of the Services. Client must provide 10 business days’ notice prior to submitting 50 or more samples to DJPR, and which will require a Quotation.

4. FEES AND PAYMENT

4.1. Client must pay the Services Fee in the amounts and at the times specified in the Details of Service, or if not specified, within 30 days of the date of DJPR’s invoice accompanying the Results. The Services Fee includes GST and DJPR will provide Client with an invoice which separately shows the GST.

4.2. DJPR will be entitled to charge interest on the Services Fee from the date the fee falls due until paid, at the relevant rate charged by the Westpac Banking Corporation on overdrafts in the amount of over $1,000,000.00 and that interest will accrue from the date the payment falls due to the date payment is made.

4.3. Client will pay all applicable additional charges that may hereafter result from or be incident to the provision of the Services, including (1) courier services for transfer of samples to other laboratories for tests not conducted at DJPR’s premises, (2) any changes in DJPR’s costs which are beyond its control, (3) quarantine; (4) testing conducted outside of normal business hours to meet Client’s specific requirements; (5) destruction of carcasses, infectious waste of animal origin, or Norris samples, and (6) storage of samples after completion of testing where requested by Client. DJPR will notify Client of any additional charges that may apply prior to commencement of testing.

4.4. Examinations for plant diagnostic services: If Client advises DJPR that it does not wish to receive the Services to be provided by 5pm of the next business day following receipt of the Submission Request Confirmation, Client must pay the examination fee specified in the Submission Form to DJPR within 14 days of receipt of DJPR’s invoice.

4.5. Veterinary laboratory services: for testing of less than 50 samples: A minimum charge of $27.50 (GST inclusive) applies to each submission of samples for testing. DJPR reserves the right to increase the charges listed in the ‘Veterinary Laboratory Services Schedule of Tests and Charges’ at any time.

4.6. **CLIENT’S ROLE**

4.6.1. Client must at its own cost provide DJPR with all material, information, and samples necessary for DJPR to provide the Services. Client will notify DJPR in writing of all safety or health hazards relating to the samples, and any special procedures for their handling, testing, storage, transport, and disposal (which will be undertaken at the cost of Client).

4.6.2. Tobacco testing: Client is responsible for (1) ensuring that samples supplied for testing are representative of the product or material to be analysed, (2) any preservation of sample integrity necessary, and (3) retaining any duplicate or control samples. DJPR will have the right to refuse to conduct any test and return samples to Client (at Client’s cost) where it determines at its absolute discretion that such testing may pose a safety or health hazard.

4.7. Veterinary laboratory services: If applicable, Client must (1) provide DJPR with a quarantine schedule with anticipated bleed dates, dates of supply of samples and the date the Results will be required, (2) notify DJPR in writing of any testing requirements and is responsible for ensuring that these will meet any requirements set down by DAWR or the destination country for export.

5. SERVICES

5.1. Following receipt of the samples and the necessary material and information from Client, DJPR agrees to provide the Services in accordance with the Details of Service and the terms of this Agreement (including clauses 2.4 and 2.5). Client acknowledges and agrees that none of the possession of the DJPR the samples and any cultures and DNA isolated from the samples become the property of DJPR and that through provision of the Services the samples may be altered, damaged, lost or destroyed, and DJPR will have no liability to Client or any third party as a result.

5.2. Any variations to the Services of the Material and Information provided by Client will be subject to DJPR’s agreement and may incur additional fees.

5.3. On conclusion of the Services, unless specified otherwise in the Details of Service, DJPR is not obliged to retain any samples, whether in original form or otherwise, to Client unless otherwise agreed by DJPR and at the cost of Client. DJPR may in its absolute discretion store, experiment upon, destroy or otherwise deal with the samples and any cultures and DNA isolated from the samples as it sees fit, provided that DJPR will comply with the requirements of any relevant Acts, regulations or guidelines.

5.4. DJPR, its officers, employees and agents will not be under any obligation to provide evidence or appear as expert witnesses in court proceedings as a consequence of the performance of the Services, and any request for them to do so will not be granted without the express written consent of the Head, DJPR or approved director.

6. RESULTS AND OTHER INTELLECTUAL PROPERTY

6.1. Subject to payment of the Services Fee, the Results will belong to Client. The Results may be used by DJPR for any purpose including use for statistical, surveillance, extension, certification and any regulation or other purposes of this Agreement. The Results will be treated as Client’s Confidential Information.

6.2. Client will not disclose the Results, or any information obtained by it, to any person or entity other than its employees, contractors and/or representatives or any other third party.

6.3. Client will not use the Results for any purpose other than those permitted by this Agreement.

6.4. The Results will be treated as Client’s Confidential Information. Each party will keep the other party’s Confidential Information and records as required by law.

7. WARRANTIES AND LIABILITY

7.1. DJPR will perform the Services according to professional standards. Subject to the foregoing to the full extent permitted by law, all other express or implied terms or warranties in relation to the Agreement, the Services and the Results are excluded (including with respect to the accuracy of any information contained in the Results).

7.2. Each party warrants that it has the right to supply the Services to the Client.

8. DISPUTE RESOLUTION

8.1. If a dispute arises between the parties (Dispute), the parties agree to negotiate in good faith to resolve the Dispute and will refer resolution of the Dispute to their chief executive officers, or their nominees. If the Dispute has not been resolved by negotiation within a reasonable time then either party may refer the Dispute to mediation and we will do so before initiating proceedings in a court to resolve the Dispute. A Dispute which is referred to mediation will be referred to the Australian Dispute Centre Limited (ADC) and be conducted in accordance with the ADC Guidelines for Commercial Mediation. If the Dispute is not resolved by mediation, each party to the Agreement, the Services and the Results, except that a party may retain any Confidential Information and records as required by law and as consistent with its obligations under this Agreement.

9. USE OF NAMES AND LOGO

9.1. Client must not use the name or logo of DJPR or the State of Victoria or the names of staff of other organisation without the prior written consent of DJPR.

10. TERMINATION

10.1. Either party may terminate this Agreement on 7 days’ written notice to the other party. DJPR may terminate this Agreement immediately if Client fails to make any payment when due. Upon termination, Client will pay to DJPR all unpaid Services Fees for Services completed at the date of termination. Clauses 2.4, 3.2, 3.3, 3.4, 5.1 (in relation to samples), 5.3, 5.4, 6 to 10, 12, 13 and the headings and subheadings of Part C Section 11 survive the expiration or termination of this Agreement.

11. DEPARTAMENT LIMITATION

11.1. To the extent that this Agreement applies to the State of Victoria, it is limited to the activities and resources of the Department of Jobs, Precincts & Regions.

12. AUDIT

12.1. This Agreement is governed by the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning this Agreement.