

## Holbrook Breeders Terms & Conditions

### 1 Agreement for Services

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- 1.1 Holbrook agrees to provide the Services to the Client in accordance with due care and skill in accordance with the terms and conditions of this Agreement.
- 1.2 The Client agrees to the terms and conditions of this Agreement in obtaining Holbrook's Services.
- 1.3 The methodology used in the provision of the Services shall be determined by Holbrook in its sole and absolute discretion.

### 2 Price and Payment

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- 2.1 At Holbrook's sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by Holbrook to the Client; or
  - (b) Any Price quoted to the Client in writing which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days, which quotation is subject to change due to any variation in instructions by the Client or any material change in the cost of materials or labour.
- 2.2 Holbrook may, in their sole discretion, require payment of a non-refundable deposit to secure provision of the Services.
- 2.3 The Price will be payable by the Client on the date/s determined by Holbrook, which may be:
  - (a) on delivery of the Services whether in full or in instalments;
  - (b) before delivery of the Services;
  - (c) fourteen (14) days following the end of the month in which a statement is posted or emailed to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is twenty-eight (28) days following the date of any invoice given to the Client by Holbrook.
- 2.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Holbrook nor to withhold payment of any invoice because part of that invoice is in dispute.
- 2.5 Unless otherwise stated, the Price does not include GST. In addition to the Price, the Client must pay to Holbrook any amount payable as GST for any supply by Holbrook under this Agreement and shall pay such GST without deduction or set off.
- 2.6 In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where expressly included in the Price.

### 3 Delivery of Services

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- 3.1 Delivery of the Services shall take place when the Services are supplied to the Client at the Premises or the Client's Premises (as the case may be) and may be done in instalments.

- 3.2 Times specified by Holbrook for delivery of the Services is an estimate only. Holbrook will not be liable for any loss or damage incurred by the Client as a result of any late delivery.

### 4 Agistment

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- 4.1 If the Client seeks to arrange for agistment of the Cattle as part of the Services, then the Client acknowledges that:
  - (a) the Client remains solely responsible for the Cattle;
  - (b) the Client shall be liable to pay all costs of transporting the Cattle to and from the relevant Premises;
  - (c) the Cattle are free from disease or infection and that all vaccinations are up-to-date;
  - (d) all treatments, procedures, and medicine administered to the Cattle are paid for by the Client; and
  - (e) any care deemed necessary or advisable to attend to the Cattle shall be paid for by the Client.

### 5 Storage

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- 5.1 The Client consents to Holbrook acting as an agent for the Client in the collection and storage of any Cattle or Produce.
- 5.2 Holbrook is authorised to facilitate the release of any Produce from third-party storage providers, and pursuant to clause 12, take possession from third-party storage providers, pending payment of the Client's invoices to Holbrook.
- 5.3 The Client acknowledges and agrees that all charges, expenses, or fees associated with such third-party storage and with any release of the Produce shall be the sole responsibility of the Client.

### 6 Equipment Hire

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- 6.1 As part of the Services, Holbrook may make the Equipment available to the Client for hire from time to time.
- 6.2 Equipment hired in accordance with this Agreement shall remain the property of Holbrook and is returnable to Holbrook on demand.
- 6.3 If Equipment is not returned to Holbrook in the condition in which it was delivered, or is not returned, Holbrook retains the right to charge the Client the full cost of repair or replacement for the Equipment.
- 6.4 The Client shall:
  - (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
  - (b) not alter or make any additions to the Equipment including the altering, defacing or erasing any identifying mark, plate, or number on or in the

Equipment or in any other manner interfere with the Equipment;

- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Holbrook to the Client.

6.5 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, Holbrook's interest in the Equipment and agrees to indemnify Holbrook against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further, the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

6.6 Unless otherwise agreed in writing, the hire period is 7 days. Holbrook, in their sole discretion, may charge an additional daily fee of \$10.00AUD if the Equipment is not returned before close of business on the seventh day of hire.

## 7 Risk

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7.1 Holbrook shall use its best endeavours to take reasonable precautions for the care, safety, and storage of all Produce, but in all other respects the storage of the Produce shall be at the sole risk of the Client.

7.2 The use and the resulting quality of the Produce is at the sole risk of the Client and Holbrook shall not be liable for any damages, losses, or expenses arising from such use. The Client bears such risk having regard to the potential fertility or infertility, reproductive issues, health, or breeding complications which may be borne by any of the Cattle.

## 8 Warranty & Covenant

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8.1 Holbrook denies, to the fullest extent permitted by law, all warranties, whether express or implied in respect of the chances of successful pregnancy or birth of progeny which may result from use of the Produce.

8.2 Any representation or statement made by Holbrook regarding the fertility of the Cattle is for informational purposes only and shall not be construed as a warranty or guarantee of any kind, nor shall it be construed to be defamatory, and the client accepts that Holbrook is entitled to form their opinion as to the fertility of any Cattle.

8.3 The Client covenants and agrees:

- (a) that Holbrook shall always have clear and free access to the Client's Premises to enable them to provide the Services; and
- (b) they are compliant with any obligations arising under the Biosecurity Act; and
- (c) to maintain a complete and current, up-to-date record of each animal forming part of the Cattle in accordance with the NLIS as set out in the Biosecurity Act or any other identification system approved in its place for the purpose of identifying individual Cattle; and

(d) neither they or any third party claiming under or through them shall have any claim against Holbrook for in respect of any Loss or damage which the Client may suffer by reason of damage to or loss of any Produce stored with/by/or on the account of Holbrook; and

(e) except as otherwise set out in this Agreement, all Produce is supplied or sold "AS IS" and Holbrook gives no warranty of merchantability, health, or fitness for a particular purpose except as those specifically stated in these terms and to the extent allowable by law, all other warranties are disclaimed.

## 9 Release & Indemnity

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9.1 Holbrook shall not be liable to the Client for any Claims arising out of or in connection with the provision of the Services, irrespective of whether such loss or damage was foreseeable or known, and including any Claims which arise from:

- (a) injury, sickness, disease or death caused to or sustained by the Cattle and/or any Produce; or
- (b) damage to the Client's Premises (including, without limitation, damage to pathways, driveways and concreted, paved, or grassed areas).

9.2 The Client:

- (a) releases Holbrook from any Claims; and
- (b) agrees to indemnify, keep indemnified, and hold harmless Holbrook against any and all Claims, liabilities, Loss, damages, costs, and expenses (including but not limited to, solicitor/client legal costs and expenses on a full indemnity basis) arising out of or in connection with the Client's use of the Services, including without limitation any Loss suffered by any third party.

9.3 Holbrook may dispose of Cattle if required to do so under the Biosecurity Act, provided that Holbrook notifies the Client in writing within 24 hours of the disposal. If Holbrook disposes of Cattle because they are required to do so under the Biosecurity Act, the Client agrees to indemnify Holbrook for any Loss suffered because of such disposal.

9.4 Except to the extent permitted by law, Holbrook's total aggregate liability to the Client for any damages, Loss, Claims, and causes of action whatsoever (including negligence) arising from the use of Holbrook Services shall be limited to the Price of the Services.

9.5 The Client acknowledges and agrees that the limitations and exclusions of liability set forth in this clause are reasonable and reflect the allocation of risk between the parties. The Client further acknowledges and agrees that without these limitations and exclusions, Holbrook would not be able to offer the Services on the terms set forth herein.

## 10 Liquid Nitrogen

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10.1 Holbrook shall not be responsible for any loss and incidental or consequential damages arising out contract, tort, or fiduciary duty by providing liquid nitrogen to the Client as part of the Services.

10.2 To the extent allowable by law, all liability for the supply, maintenance, or servicing of liquid nitrogen storage tanks is expressly disclaimed by Holbrook.

## **11 Intellectual Property**

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- 11.1 The parties agree that other than as provided in this clause 11.1, nothing in this Agreement transfers ownership in, or otherwise grants any IP Rights to another party.
- 11.2 If Holbrook provides any material to the Client that contains any Intellectual Property, then Holbrook grants to the Client a non-transferable, non-exclusive, royalty-free licence to use the Intellectual Property solely for the purpose of the Client meeting its obligations to Holbrook under this Agreement.
- 11.3 The Client is granted no rights to use, and will not use any IP Rights which are vested in Holbrook.
- 11.4 Title to the IP Rights in all Created Material vests immediately upon creation with Holbrook. The Client:
- (a) Absolutely, unconditionally, and irrevocably assigns to Holbrook in perpetuity all the IP Rights throughout the world in the Created Material;
  - (b) Will obtain any Moral Rights consents necessary to allow Holbrook to freely use, modify, and exploit that Created Material;
  - (c) Will do all things necessary or desirable to effect the assignment of all IP Rights in the Created Material to Holbrook, including executing and delivering all documents necessary to transfer or assign those IP Rights to Holbrook; and
  - (d) Must provide Holbrook with all information relating to the Created Material as is reasonably necessary to enable Holbrook to freely use, modify, and exploit that Created Material.

## **12 Security Agreement – Subject to the Personal Premises Security Act 2009 (PPSA)**

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- 12.1 This Agreement constitutes a Security Agreement for the purposes of the PPSA and where the context requires words used in this Agreement are given the same meaning as in the PPSA.
- 12.2 As security for any money owing, the Client (as Grantor):
- (a) grants to Holbrook (as Secured Party) a Security Interest, being a charge over the Collateral and any proceeds realised from either the sale thereof or any insurance policy relating thereto;
  - (b) grants Holbrook a Security Interest in all present and after acquired PPSA personal property;
  - (c) consents to the registration of the Security Interest created by this Agreement on the Register; and
  - (d) consents to Holbrook registering a Financing Statement and/or Financing Change statement with the Register.
- 12.3 The Client consents to Holbrook obtaining any further information required to complete and register any financing statement or any financing change statement with the Register.

12.4 The Client will:

- (a) Indemnify and, upon demand, reimburse Holbrook for all Register expenses incurred and any reasonable enforcement fees and expenses; and
- (b) Not grant any encumbrance in the Cattle without obtaining the written consent of Holbrook. Holbrook will have sole discretion, to deny consent without providing a reason.

12.5 The Client acknowledges and agrees that sections 95, 120, 121(4), 129(2)(a), 130, 132(3)(d), 132(4), 135, 137(2), 142, 143 and 157 of the Act do not apply.

12.6 Holbrook will discharge the registration of the Security Interests on the Register when all the secured obligations of the Client under this Agreement are satisfied.

12.7 The Client acknowledges that at the time the Security Interest created by this Agreement is made:

- (a) it is granted for value;
- (b) it is granted to enable, amongst other things, the Collateral to be developed; and
- (c) the Cattle were held by the Client;

and, as a result, the Security Interest is a "priority interest" in Cattle pursuant to section 86 of the Act.

12.8 The Client warrants that the Collateral is not subject to any existing encumbrance.

12.9 For the purposes of the Security Agreement the Client agrees that the Collateral is Commercial Property.

12.10 The Client undertakes to take all necessary actions to effect the registration of the Security Interest as Commercial Property, including but not limited to acquiring an Australian Business Number (if so required).

### ***Rights to Dispose of the Collateral if Fees Unpaid***

12.11 In the event that:

- (a) Holbrook retains possession of the Collateral; and
- (b) any fee or monetary obligation is due, but unpaid to Holbrook; and
- (c) Holbrook has made demand in writing to the Client for payment of the fee or other monetary obligation; and
- (d) Holbrook has not received the fee or other monetary obligation in accordance with the timeframe specified in the demand;

then, the Client agrees that Holbrook may exercise any of the following at its discretion:

- (e) retain possession of the Collateral and have the ownership transferred to Holbrook;
- (f) dispose of or destroy the Collateral and may retain all or part of the proceeds of the disposal in payment of the fee or other monetary obligation; or
- (g) on sell the Collateral.

### ***Rights to Seize the Collateral if Fees Unpaid***

12.12 If:

- (a) the Client or third-party has possession of the Collateral; and
- (b) a fee or other monetary obligation is owing by the Client to Holbrook; and
- (c) Holbrook has made demand in writing to the Client for payment of the fee or other monetary obligation; and
- (d) Holbrook has not received the fee or other monetary obligation in accordance with the time specified in the demand;

then, the Client acknowledges and agrees that Holbrook shall be entitled to seize the Collateral pursuant to section 138C of the Act and, once the Collateral is in Holbrook possession, Holbrook may either:

- (e) Retain possession of the Collateral and have ownership transferred to Holbrook;
- (f) dispose of or destroy the Collateral and retain all or part of the proceeds of the disposal in payment for the fee or other monetary obligation; and
- (g) on sell the Collateral to Holbrook.

12.13 The Client consents to agents of Holbrook entering onto the Client's Premises for the purpose of seizing the Collateral and consents to indemnify Holbrook with respect to any trespass Claims should the Secured Parties need to seize the Collateral from a third-party premises.

12.14 The Client consents to indemnify Holbrook for all costs incurred in the recovery of the Collateral should Holbrook be required to seize the Collateral pursuant to this Agreement.

### **13 Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**

13.1 The Client must inspect Holbrook' Services on completion or delivery and must within forty-eight (48) hours:

- (a) notify Holbrook in writing of any evident defect in the Services; and/or
- (b) of any other failure by Holbrook to comply with the description of, or quote for, the Services which Holbrook was to supply.

13.2 The Client must notify any other alleged defect in Holbrook' Services as soon as any such defect becomes evident. Upon such notification, the Client must allow Holbrook to review the Services provided.

13.3 If the Client informs Holbrook of any defective Services, to the fullest extent permitted by law, Holbrook reserves the right to reject any request to replace, resupply, repair, refund, cover the cost of or fix the Services.

13.4 If Holbrook is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so for any reason, then, in lieu of re-supply of the Services, Holbrook may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account

the value of Services which have been provided to the Client which were not defective.

13.5 Except as expressly set out in this Agreement or as applicable by Law, Holbrook makes no warranties or other representations under this Agreement including, but not limited to, the quality or suitability of the Services. Holbrook' liability in respect of these warranties is limited to the fullest extent permitted by law.

13.6 If the Client is a consumer within the meaning of the CCA, Holbrook' liability is limited to the extent permitted by section 64A of Schedule 2.

13.7 If the Client is not a consumer within the meaning of the CCA, Holbrook' liability for any defective Services is:

- (a) limited to the value of any express warranty provided to the Client by Holbrook at Holbrook's sole discretion; and
- (b) otherwise negated absolutely.

13.8 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, Holbrook shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Client failing to properly maintain or store any Produce or Equipment;
- (b) the Client using the Produce or Equipment for any purpose other than that for which they were designed;
- (c) the Client continuing to use any Produce or Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Services by the Client or any third party without Holbrook's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by Holbrook;
- (f) fair wear and tear, any accident, or act of God.

### **14 Default and Consequences of Default**

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of one and a half percent (1.5%) per calendar month.

14.2 Further to any other rights or remedies Holbrook may have under this contract, if a Client has made payment to Holbrook, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Holbrook under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

### **15 Termination**

15.1 Without prejudice to any other remedies Holbrook may have, if at any time the Client is in breach of any obligation (including those relating to payment) under this Agreement, Holbrook may suspend or terminate the supply of its Services to the Client.

- 15.2 Holbrook may cancel any contract to which this Agreement applies or cancel delivery of Services at any time before the Services are commenced by written notice to the Client.
- 15.3 If the Client cancels delivery of the Services, they shall be liable for all Losses suffered by Holbrook as a result of the cancellation.
- 15.4 Without prejudice, Holbrook shall be entitled to suspend all or any part of any Services requested by the Client which remains unfulfilled and all amounts owing to Holbrook shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Holbrook becomes overdue, or in Holbrook's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by Holbrook;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15.5 Holbrook will not be liable to the Client for any Loss or damage the Client suffers because Holbrook has exercised its rights under this clause 15.

## 16 Privacy Act 1988 (Cth)

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- 16.1 Holbrook will use and store any Client's Personal Information (as that term is defined in the *Privacy Act 1988*) in accordance with the requirements of the Privacy Act and with the terms of Holbrook's Privacy Policy, a copy of which is available on request.
- 16.2 The Client acknowledges and agrees that Holbrook may obtain from a credit reporting body a credit report containing Personal Information about the Client.
- 16.3 The Client agrees that Holbrook may exchange information about the Client with those credit providers and with related body corporates, for the purpose of assessing the Client's credit or creditworthiness.

## 17 Notices

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- 17.1 Any notice or other document given pursuant to this Agreement shall be deemed properly given if it is in writing and sent by email to the relevant party's email address or to such other address as notified by the relevant party to the other from time to time.

## 18 Acceptance

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- 18.1 The Client is taken to have exclusively accepted and is immediately bound, by this Agreement if the Client engages Holbrook for the provision of its Services.

## 19 General

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- 19.1 This Agreement is assignable by Holbrook for purposes of enforcement.
- 19.2 If any provision of this Agreement is invalid, void, illegal or unenforceable, the validity, existence, legality, and

enforceability of the remaining provisions will not be affected, prejudiced, or impaired.

- 19.3 The failure by Holbrook to enforce any provision of this Agreement will not be treated as a waiver of that provision, nor will it affect Holbrook Breeder's right to subsequently enforce that provision.
- 19.4 This Agreement is governed by the laws of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of that State.
- 19.5 This Agreement contains the entire understanding between the parties in relation to its subject, unless otherwise agreed in writing.
- 19.6 Holbrook may in their sole discretion elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing.
- 19.7 Holbrook reserves the right to review and amend this Agreement at any time. If there is to be any change, Holbrook shall notify the Client, and that change shall take effect from the date of Notice.
- 19.8 The Client represents and warrants that they have been given the opportunity to seek legal advice in relation to the terms and effect of this Agreement.
- 19.9 This Agreement may be signed in counterparts and all counterparts taken together constituted one document.
- 19.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, or other event beyond the reasonable control of either party.
- 19.11 The Client warrants that they have the power and authority to enter into this Agreement, they are not insolvent, and that this Agreement creates binding and valid legal obligations upon them.

## 20 Definitions

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"**Agreement**" means this Agreement, as amended by Holbrook from time to time.

"**Biosecurity Act**" means the *Biosecurity Act 2015* (NSW), and any applicable regulations.

"**Claims**" means all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.

"**Client**" means the person/s or any person acting on behalf of and with the authority of the Client requesting Holbrook to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:

- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client's executors, administrators, successors and permitted assigns.

"**Client's Premises**" means any of the Client's nominated address for receipt or provision of the Services including the address of a third party nominated by the Client.



**“Created Material”** means any property created by or on behalf of Holbrook, including but not limited to DNA sequencing, insemination procedures and sexing technology.

**“Cattle”** means all of the Client’s cattle for which Services are rendered by Holbrook and includes any progeny.

**“Collateral”** means the Cattle together with any Produce.

**“Equipment”** means all equipment including any accessories supplied on hire by Holbrook to the Client. The equipment shall be as described on the invoice, quotation, authority to hire, or any other work authorisation form provided by Holbrook to the Client.

**“Grantor”** has the meaning given to it under section 10 of the PPSA. The Grantor for the purposes of this Agreement is the Client.

**“GST”** means Goods and Services Tax, as defined within *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**“Holbrook”** means Geard Investments Pty Ltd (ACN 614 042 376) trading as Holbrook Breeders and, where relevant, includes a reference to its employees, officers, directors, servants, agents, third-party contractors, or affiliates.

**“IP Rights”** means all industrial and intellectual property rights whether in Australia or overseas subsisting or capable of subsisting or being obtained under intellectual property legislation, including copyright, registered or unregistered rights, trade secrets, know how, inventions, trademarks, trade or businesses or company name, indication or source of origin or other proprietary right, or the right of registration of such rights.

**“Loss”** means any losses, consequential loss, loss of profits, or loss of potential (including, without limitation, any loss of income, revenue, profits, anticipated savings, goodwill, business or contracts)

**“NLIS”** has the meaning given under the Biosecurity Act.

**“PPSA”** means the *Personal Property Securities Act 2009*.

**“Price”** means the price payable for the Services and is exclusive of GST and delivery costs and expenses.

**“Premises”** means Holbrook’s premises, including 109 Albury St, Holbrook NSW 2644, and any other premises as utilised by Holbrook to provide the Services from time to time.

**“Produce”** means any embryo, semen, progeny, or product resulting from the engagement of Holbrook’s Services in respect of any of the Client’s Cattle.

**“Security Interest”** has the same meaning as set out in the PPSA.

**“Services”** means all services supplied by Holbrook from time to time and includes but is not limited to:

- (a) veterinary services including treatment, surgery, diagnostic aid, laboratory tests, advice, or any other veterinary involvement in the treatment of Cattle;
- (b) Cattle agistment services;
- (c) Semen and Embryo Collection, freezing, and transfer;
- (d) Artificial insemination;
- (e) Import and export of semen and embryos (whether fertilised or unfertilised);
- (f) Storage and distribution of semen and embryos (whether fertilised or unfertilised); and
- (g) Hire of Equipment for the storage of semen or embryos.