

Terms

Background

- A The Client wishes for ProClass to provide the Services.
- B The parties have agreed that ProClass will provide the Services to the Client on the terms of this document.

Agreed terms

1 Supply of the Services

Supply

- 1.1 The Client may from time to time place a request with ProClass for Services.
- 1.2 Subject to the Client paying the Fees as required by clause 3, if ProClass notifies the Client that it accepts a Request then ProClass must use its best endeavours to provide the Services to the Client.
- 1.3 For clarity, ProClass may elect not to accept a Request.

Client requirements

- 1.4 The Client must:
- in accordance with all ProClass' directions and at ProClass' cost, transfer the Samples to ProClass to enable ProClass to provide the Services;
 - give ProClass the information and assistance necessary to enable ProClass to provide the Services, including providing ProClass with standard industry bale date in respect of the Samples including bale numbers, module numbers, gin identity, ginned date, bale removal date, variety and production method (irrigated or rain grown); and
 - cooperate with ProClass and act reasonably in connection with this document and receipt of the Services.
- 1.5 The Client acknowledges and agrees that if the Client does not comply with clause 1.4 then ProClass is only obliged to try to supply the Services to the Client.

ProClass requirements

- 1.6 Subject to clauses 1.5 and 7.5, ProClass will perform the Services with due professional skill and care, but no other warranty is expressed or implied.
- 1.7 The Client may request access to view the ProClass classing room at a time convenient to ProClass. ProClass may refuse any unreasonable request.
- 1.8 ProClass' shareholders include cotton merchants, cotton growers, an international cotton controller and other entities involved in cotton classing. ProClass will notify the Client of any matter which may give rise to a conflict of interest between ProClass and the Client during the Term. If a conflict of interest arises, the Client may elect to:
- waive the conflict of interest and proceed with ProClass' performance of the Services; or
 - terminate this agreement on 30 days' notice.

Sample retention

- 1.9 ProClass will retain the Samples as follows:
- 100% of any cotton discounted on any parameter to be kept for 30 days and discarded thereafter in accordance with Client's instruction; and

- 100% of all Samples that achieve Base Grade on all parameters will be discarded shortly after classing (in accordance with Client's instruction) .

- 1.10 All Samples not otherwise discarded under clause 1.9 will be returned to the Client after 30 days. If the Client requests ProClass store the Samples for more than 30 days, additional Fees will be payable.

Reports

- 1.11 ProClass will use its reasonable endeavours to provide the Client with the Reports within 48 hours of receipt of the Samples and relevant bale data.
- 1.12 ProClass will prepare Reports in electronic format (.PDF, .CSV or .XML format) and distribute them by email or electronic fax to the Client and other nominated third parties.
- 1.13 The Client must not amend, alter or misrepresent information in the Reports (including by partially reproducing the Reports).

2 Warranties

Client warranty

- 2.1 The Client represents and warrants that use of the Client Material by ProClass as specified in this document will not infringe the Intellectual Property Rights of any third party.

Accuracy and reliance warranties

- 2.2 The Client represents and warrants, and it is a condition of this document, that:
- all information provided by the Client or on the Client's behalf to ProClass is accurate and is not, whether by omission of information or otherwise, misleading;
 - the Client has not withheld from ProClass any document, information or other fact material to the decision of ProClass to enter into this document; and
 - the Client does not rely on any representation made to the Client by ProClass or any Related Body Corporate of ProClass (if any) before entry into this document.

Acknowledgment

- 2.3 The Client acknowledges that ProClass is relying on the representations and warranties of the Client under clause 2 in entering into this document.

Repeating warranties

- 2.4 The representations made and warranties given in clause 2 are regarded as repeated each day during the Term with respect to the facts and circumstances then subsisting.

3 Fees

Fees

- 3.1 The Client must pay the Fees to ProClass.
- 3.2 If there is a dispute about whether a Fee or other amount contemplated by this document is payable or available, the Client must not withhold the amount in dispute.
- 3.3 The Fees may change during the Term in the manner contemplated by the Schedule.

Invoices

- 3.4 ProClass must invoice the Client from time to time for the Fees.
- 3.5 The Client must pay an invoice issued under clause 3.4 within 14 days after the date of issue of the invoice.

Deferral of performance

- 3.6 If the Client fails to pay the Fees as specified in this document, then without limiting any other remedies available to ProClass, ProClass may defer performance of all Services until the outstanding Fees are paid.

4 Term and termination

Term

- 4.1 This document commences on the Commencement Date and continues for the Initial Period. This document will continue to operate after the Initial Period for Successive Seasons unless terminated under clause 4.

Termination for breach

- 4.2 A party may terminate this document by written notice to the other party if:
- (a) the other party commits a material breach of this document and fails to remedy that breach within 30 days of receiving notice from the party requiring it to do so; or
 - (b) an Insolvency Event occurs in relation to the other party,
- in which case this document terminates immediately on giving the notice of termination.

After termination

- 4.3 On termination of this document:
- (a) accrued rights or remedies of a party are not affected; and
 - (b) the Client must give to ProClass any of ProClass' Confidential Information or other property in the Client's care, custody or control.

Survival

- 4.4 Termination of this document will not affect clauses 2, 4.3, 6, 7, 8, 12 or 16.2 or any provision of this document which is expressly or by implication intended to come into force or continue on or after the termination.

5 Intellectual property

Licence of ProClass Material

- 5.1 ProClass grants the Client a non-exclusive, irrevocable, global licence to use the ProClass Material in connection with the receipt of the Services for internal business purposes and only to the extent necessary to use the Reports to sell the cotton to a third party.
- 5.2 The licence granted under clause 5.1 does include the right to sublicense to third parties.

Licence of Client Material

- 5.3 The Client grants to ProClass a non-exclusive, irrevocable, global licence to exercise the Intellectual Property Rights in any Client Material in connection with ProClass providing Services to the Client.
- 5.4 The licence granted under clause 5.3 includes the right to sublicense to third parties.

No assignment

- 5.5 The ProClass Material and Client Material remain the respective property of ProClass and the Client, and nothing in this document grants the Client or ProClass any Intellectual Property Rights in the respective ProClass Material or the Client Material, or other

Intellectual Property Rights of ProClass or the Client (as the case may be).

No use of ProClass' marks

- 5.6 Except as expressly set out in this document, the Client must not, and must ensure that its officers, employees, agents and subcontractors do not, use the trade marks or logos of ProClass without the prior written consent of ProClass.

6 Confidential Information

Obligations of confidence

- 6.1 Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this document, any Confidential Information of the other party provided to or obtained by that party before or after entry into this document.

Exclusions

- 6.2 The obligations of confidence in clause 6.1 do not apply to Confidential Information:
- (a) that is Statistical Information which ProClass will publically disclose on an aggregate and anonymous basis for statistical and research purposes for the cotton industry, unless the Client requests ProClass not use the Statistical Information for this purpose before entering into this document;
 - (b) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
 - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (ii) before disclosing any information, gives a reasonable amount of written notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain that Confidential Information in confidence;
 - (c) that is in the public domain except as a result of a breach of this document or other obligation of confidence; or
 - (d) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

Restriction on disclosure

- 6.3 Each party may use and disclose Confidential Information of the other party only:
- (a) with the prior written consent of the other party; or
 - (b) to that party's directors, agents, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under this document.
- 6.4 If either party discloses Confidential Information under clause 6.3, that party must ensure that the information is kept confidential by the person to whom it is disclosed and is only used for the purposes of performing the Services under this document.

Injunctive relief

- 6.5 Each party acknowledges that:
- (a) the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of the other party, and that monetary damages would be an insufficient remedy; and
 - (b) in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of clause 6.

7 Limitation of liability

Limitation

7.1 Subject to clauses 7.3 and 7.5, any liability of ProClass for any loss or damage, however caused (including by the negligence of ProClass), suffered by the Client in connection with this document is limited, at the election of ProClass to:

- (a) the Fees paid by the Client to ProClass for the Services that gave rise to the loss or damage suffered in connection with this document; or
- (b) re-performance of the Services which gave rise to the loss or damage.

7.2 The limitation set out in clause 7.1 is an aggregate limit for all claims, whenever made.

Consequential loss

7.3 Subject to clause 7.5, ProClass is not liable for any Consequential Loss however caused (including by the negligence of ProClass), suffered or incurred by the Client in connection with this document.

Seriousness or nature

7.4 For clarity, and without limiting clauses 7.1 and 7.3, the parties agree that clauses 7.1 and 7.3 are to apply in connection with a breach of this document, anticipated breach of this document and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.

Liability for consumer guarantees

7.5 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by ProClass in connection with this document, and ProClass' liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 7.1, 7.3 and 8.1 do not apply to that liability. Instead, ProClass' liability for that failure is limited to (at the election of ProClass), in the case of a supply of goods, ProClass replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, ProClass supplying the services again or paying the cost of having the services supplied again.

Application to indemnities

7.6 For clarity and without limiting clause 7, the limitations and exclusions of liability in clause 7 apply to liability of ProClass under any indemnity given by ProClass under this document.

8 Indemnity

Client indemnity

8.1 The Client is liable for, and indemnifies ProClass from and against, all loss or damage (including legal costs) incurred or suffered by ProClass however caused in connection with any alleged or actual infringement of a third party's Intellectual Property Rights or other right in connection with the Client Material.

Continuing obligation

8.2 Each indemnity in this document is a continuing obligation notwithstanding:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and it is not necessary for ProClass to incur expense or make payment before enforcing or making a claim under an indemnity.

Proportionality

8.3 The indemnity in clause 8.1:

- (a) applies to the extent that such loss or damage is attributable to the Client; and
- (b) does not apply to the extent that such loss or damage is attributable to any act or omission of ProClass.

9 Service changes

Amendments to the Services

9.1 The Client may, from time to time, propose amendments to the Services by giving written notice to ProClass.

9.2 ProClass may accept or reject an amendment proposed under clause 9.1.

Increased Fees

9.3 If ProClass accepts a change proposed under clause 9.1, ProClass must give the Client written notice of the increased Fees due to the proposed change to the Services.

9.4 The Client may elect to accept or reject the increased Fees notified under clause 9.3 by written notice to ProClass.

9.5 If the Client accepts the increased Fees proposed under clause 9.1 those Fees and the proposed amendments will apply to this document from the date of that written notice.

10 Representatives

10.1 The Client Representative will represent the Client for the day to day purposes of this document.

10.2 ProClass Representative will represent ProClass for the day to day purposes of this document.

11 Force majeure

11.1 ProClass will not be:

- (a) in breach of this document because of; or
- (b) liable for,

any failure or delay in the performance of ProClass' obligations under this document to the extent that the failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Client.

12 Non-solicitation

The Client must not during the Term or for a period of 24 months after the Term:

- (a) entice away or attempt to entice away any:
 - (i) senior employee;
 - (ii) other employee; or
 - (iii) contractor,
 of ProClass; or
- (b) engage or employ any person for a period of 24 months after the person ceases to be engaged or employed:
 - (i) in a senior capacity; or
 - (ii) otherwise,
 by ProClass,

without the prior written consent of ProClass.

13 Costs and taxes

Costs payable by each party

- 13.1 Each party bears its own costs of the preparation and signing of this document.

Costs payable by the Client

- 13.2 The Client must pay:
- (a) all stamp duty (including penalties and interest) assessed or payable in connection with this document; and
 - (b) subject to clause 13, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this document.

GST

- 13.3 Any words capitalised in clause 13 and not already defined in clause 16.1 have the meaning given to those words in the GST Act.
- 13.4 Except under clause 13, the consideration for a Supply made under or in connection with this document does not include GST.
- 13.5 If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- (a) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply, in addition to, and in the same manner as the consideration otherwise payable under this document for that Supply); and
 - (b) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- 13.6 For clarity, the GST payable under clause 13.5 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.
- 13.7 If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 13.8 Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- 13.9 Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 13.5 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

14 Dispute

Dispute

- 14.1 Clause 14 applies to any dispute or difference whatsoever arising out of or in connection with this agreement, including any question regarding its existence, validity, interpretation, breach or termination, which arises between the Client and ProClass in connection with this agreement.

Dispute Notice

- 14.2 If either the Client or ProClass considers that a dispute has arisen, it may issue a notice to the other party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- 14.3 Subject to clause 14.11, the Client and ProClass must not commence or maintain any action or proceeding in any court,

tribunal or otherwise regarding a dispute without first giving a Dispute Notice and complying with clause 14.

First Level Discussions

- 14.4 The Client and ProClass must promptly hold discussions between representatives of each party after the issue of a Dispute Notice to attempt to resolve the dispute.
- 14.5 If the Dispute is in connection with a Report issued by ProClass, ProClass will, on request, reclass the Samples in accordance with the Retesting Policy and the best management practice for classing cotton (version 19) produced by the Cotton Classer's Association of Australia Incorporated.
- 14.6 ProClass is not required to reclass the Samples more than once and any unresolved dispute after a reclass by ProClass or any other service provider, must be resolved in accordance with clauses 14.10 to 14.12. Notwithstanding the results of the Report or the retest, the Client will be responsible for payment of the Fees.
- 14.7 A request under clause 14.5 must be made in writing within three days of the Report being issued to the Client under clause 1.11.
- 14.8 ProClass will use its best endeavours to action a request under clause 14.5 within a time frame reasonable to all parties.

Second Level Discussions

- 14.9 If the dispute has not been resolved within 14 days after commencement of First Level Discussions, the Client and ProClass must attempt to resolve the dispute by holding discussions between a senior executive of the Client and a senior executive of ProClass.

Arbitration

- 14.10 If the dispute has not been resolved within 14 days after commencement of Second Level Discussions, either party may submit the dispute to binding arbitration in accordance with:
- (a) in the case of classing dispute, the bylaws and rules of the International Cotton Association; or
 - (b) in the case of any other dispute arising under this document, the Resolution Institute Arbitration Rules,
- which rules are deemed to be incorporated by reference into this clause.
- 14.11 The following procedural requirements apply to any arbitration arising out of or in connection with this agreement, unless otherwise agreed between the parties:
- (a) the parties will not instruct any barrister to act at any stage in the arbitration;
 - (b) there will be no disclosure or discovery applications or orders made;
 - (c) the arbitrator will make a decision based on written submissions only and there will be no oral argument;
 - (d) the arbitrator will decide the matters in dispute within the shortest practicable time, but in any event within one month of the arbitrator's appointment;
 - (e) each party must pay its own costs incurred in the arbitration; and
 - (f) the cost of the arbitrator under this clause must be borne equally by the parties unless otherwise determined by the arbitrator.
- 14.12 Notwithstanding anything in clause 14, nothing in this agreement prevents the parties from applying to a court of competent jurisdiction for injunctive or other urgent interlocutory relief.

15 General

- 15.1 The laws of Queensland govern this document.

- 15.2 The Client must not assign, in whole or in part, or novate the Client's rights and obligations under this document without the prior express written consent of ProClass. The Client agrees that any purported assignment or novation by the Client without ProClass' express written consent will be void and the Client will remain liable for all of its obligations to ProClass (including payment obligations) under this document.
- 15.3 ProClass may assign its interest under this document.
- 15.4 Time is not of the essence in the performance of obligations under this document except for performance of payment obligations.
- 15.5 Unless expressly stated otherwise, this document does not create a relationship of employment, trust, agency or partnership between the parties.
- 15.6 A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.
- 15.7 This document supersedes all previous agreements about its subject matter. This document embodies the entire agreement between the parties.
- 15.8 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this document.
- 15.9 Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.
- 15.10 ProClass may subcontract the performance of all or any part of ProClass' obligations under this document.
- 15.11 The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- 15.12 A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 15.13 A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- 15.14 Without limiting any other remedies available to ProClass, if the Client fails to pay any amount payable under this document, the Client must pay Interest on that amount.

16 Definitions and interpretations

Definitions

- 16.1 In this document:

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Base Grade means a colour of 11, 21 or 31 grade, leaf of 1, 2 or 3 grade, length 1.11 inches or better, micronare between 3.5 and 4.9 inclusive, and strength of 28 grams per tex or better.

Commencement Date means the commencement date specified in the Schedule.

Confidential Information of a party means the terms of this document and any information:

- (a) about the business and affairs of that party;
- (b) about the customers, clients, employees, sub contractors or other persons doing business with that party;
- (c) which is by its nature confidential;
- (d) which is designated as confidential by that party; or

- (e) which the other party knows or ought to know, is confidential, and all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of ProClass, includes ProClass Material.

Consequential Loss includes:

- (a) loss of bargain;
- (b) loss of revenues;
- (c) loss of reputation;
- (d) indirect loss;
- (e) loss of profits;
- (f) consequential loss;
- (g) loss of actual or anticipated savings;
- (h) lost opportunities, including opportunities to enter into arrangements with third parties;
- (i) loss or damage in connection with claims against the Client by third parties; and
- (j) loss or corruption of data.

Corporations Act means *Corporations Act 2001* (Cth).

Client means the customer specified in the Schedule.

Client Material means any material (including the Samples) provided by or to which access is given by the Client to ProClass for the purposes of this document including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, trade marks, logos, schedules and data stored by any means.

Client Representative means the customer representative specified in the Schedule.

Dispute Notice means a notice referred to in clause 14.2.

Fees means the fees specified in the Schedule.

First Level Discussions means discussions referred to in clause 14.4.

Force Majeure Event means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this document (other than a payment obligation), and includes:

- (a) a physical natural disaster including fire, flood, lightning or earthquake;
- (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (c) epidemic or quarantine restriction;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (f) law taking effect after the date of this document; and
- (g) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Act Supplier means the entity making the Supply.

Initial Period means the initial period specified in the Schedule.

Insolvency Event means any of the following events:

- (a) a controller (as defined in the Corporations Act) is appointed to the party, or over any of the property of the party;
- (b) the party becomes bankrupt;
- (c) a controlling trustee is appointed to the party, or over any of the property of the party;
- (d) the party or the party's property becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;
- (e) the party is unable to pay its debts when they become due and payable;
- (f) the party ceases to carry on business; or
- (g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms is excluded from this definition.

Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of those rights.

Interest means interest on any payment owing under this document calculated:

- (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
- (b) daily from the date on which the payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.

ProClass means ProClass specified in the Schedule.

ProClass Material means any material provided by or to which access is given by ProClass to the Client for the purposes of this document including documents, equipment, Reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.

ProClass Representative means ProClass representative specified in the Schedule.

Progressive or Periodic Supply means a Taxable Supply that satisfies the requirements of section 156–5 GST Act.

Related Body Corporate has the meaning given to that term by section 9 Corporations Act.

Reports has the meaning given to that term in the Schedule.

Request means a request contemplated by clause 1.1.

Retesting Policy means ProClass' retest or reclass policy terms and conditions in force from time to time.

Samples means a cotton gin sample provided to ProClass for testing in accordance with this agreement.

Second Level Discussions means discussions referred to in clause 14.9.

Services means the services specified in the Schedule.

Statistical Information means information and data which is obtained, created or otherwise derived from ProClass' analysis of the Samples in the course of providing the Services.

Successive Seasons means the cotton growing seasons following the Initial Period.

Term means the term contemplated by clause 4.1.

Interpretation

16.2 In this document:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) a reference to this document includes the agreement recorded by this document;
- (c) this document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself; and
- (d) a reference to a party is a reference to ProClass or the Client, and a reference to the parties is a reference to both ProClass and the Client.