

# Conditions and Service Rules

## Livestock Improvement Corporation Limited

### Commencing in 2007/2008 season

#### Part A

All orders for the supply of products and/or services are accepted on the basis that the submission of the order (by whatever means) to LIC constitutes an acknowledgement and acceptance by the client that products and/or services will be provided on the following terms and conditions only, to the exclusion of all other implied terms, representations and warranties.

LIC may vary these service rules at any time by following the Rules Amendment Procedure. The Client agrees to abide by the Rules Amendment Procedure and acknowledges that all products and services supplied after the completion of the Rules Amendment Procedure will be subject to the amended service rules.

#### Meanings given to words and phrases in these conditions and rules:

- **Access Code** means in respect of the relevant information:
  - (a) any decision of the Panel governing access to Information contained in the Core Database; or
  - (b) all other applicable herd testing rules and regulations arising out of the Dairy Industry Restructuring Act 2001 governing access to information contained in the Core Database; and
  - (c) includes all applicable rules and procedures of LIC governing access to information contained in the Non-core Database and/or the Core Database.
- **Client** means the person, persons or corporate that is the legal entity entering into a contract with LIC for the provision of product/s and/or service/s.
- **Core Database** means the New Zealand Dairy Core Database owned by LIC comprising herd testing information under the applicable regulations.
- **Herd** means a group of cows which are being managed as a unit on the same farm and usually being milked through a common farm dairy on a daily basis, with the milk being sent to a milk processor on consignment, irrespective of the ownership of the cows.
- **Information** includes where the context permits:
  - (a) information contained in and/or accessed from the LIC Database;
  - (b) information to be placed, inputted or otherwise submitted into the LIC database;
  - (c) data in electronic form; and
  - (d) source data contained in or derived from samples of animate or inanimate material.
- **LIC** means Livestock Improvement Corporation Limited and its assign(s) and/or successor(s).
- **LIC Database** means the New Zealand Dairy Database owned by LIC which includes the Core Database and the Non-core Database.
- **MINDA™ Service** means LIC's MINDA Herd Recording service and includes but is not limited to LICs traceability services.
- **National Councillor** has the meaning set out in the Livestock Improvement Corporation Limited constitution and the term National Councillors shall have a corresponding meaning.
- **Non-core Database** means that portion of the LIC database which is not the Core Database.
- **Panel** means the New Zealand Dairy Core Database Access Panel as contemplated by the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 as applicable or any appropriate successor body.
- **Person** includes a natural person whether one or more, an incorporated entity, and an unincorporated body of persons.
- **Previous Season** means the season immediately preceding the Season
- **Season** means the then current season that the rules are in force in respect of.
- **Subsequent Season** means the season immediately following the Season.
- **Writing** includes email or other electronic media.
- For the avoidance of doubt, the term **Services Contract** in the constitution of LIC means the provisions of these conditions and service rules.
- The ruling of LIC will be final and binding as to the meaning and application of any definition contained in these conditions and service rules.

## Share Standard

The client acknowledges and understands that by ordering or otherwise signing up for qualifying products and/or services from LIC for the Season having an aggregate value of not less than \$500 (at the same time as otherwise being a User), the client consents to and has made an irrevocable application to become a shareholder of LIC and to hold the Co-operative Control Shareholding Requirement and the Minimum Investment Shareholding Requirement (as such terms are defined in, and upon the terms of, the constitution of LIC (the **Constitution**)). The Board of LIC may in its absolute discretion decide whether or not to accept an application by a User to become a shareholder.

The following is a summary of the relevant provisions of the Constitution and is provided for assistance only. This summary must be read subject to the detailed wording of the Constitution.

- (a) In accordance with the Constitution the client is a User at such time as the following criteria are met in respect of the client:
  - (i) the client derives an income from the farming of dairy cows in New Zealand, (including a sharemilker);
  - (ii) the client's milk is supplied to a milk processor in New Zealand;
  - (iii) the client has a LIC debtor's code; and
  - (iv) the client purchases qualifying products or services of LIC having an aggregate value of not less than the Minimum Purchases Amount which is currently set at \$500 per season.
- (b) The Co-operative Control Shareholding Requirement for each User for the Season is currently Co-operative Control Shares (the **CC Shares**) having a nominal value equal to 4 percent of the total purchase prices paid by the User for qualifying products and/or services of LIC in the Previous Season. At the User's request, the value of the total purchase prices used for this calculation shall include the value of any discounts or other consideration received by the User for participating in the Sire Proving or Contract Mating or similar Schemes.
- (c) Under the Constitution, the CC Shares have a nominal value, currently set at \$1.00, at which CC Shares are acquired and disposed of.
- (d) At the end of the Previous Season LIC will calculate the Co-Operative Control Shareholding Requirement of the User for the Season in accordance with the total purchase prices paid or deemed to have been paid (net of GST and discounts (if any)) by the User for qualifying products and/or services for the Previous Season. If the User holds insufficient CC Shares then the User must acquire more CC Shares, and if the User holds too many CC Shares then the User must surrender the excess to LIC.
- (e) Where a User has to acquire more CC Shares, the User must pay the aggregate nominal value of those shares to LIC. Where a User has to surrender CC Shares, the User shall be paid the nominal value of those shares (less any amounts which remain payable on those shares by the User).
- (f) If the User is required to hold CC Shares for the Season, then the User must also hold Investment Shares.
- (g) The Investment Shares do not have a nominal value. The Investment Shares will be listed on the NZAX and the value at which they are acquired and disposed of will be set by trading on the NZAX.
- (h) The Minimum Investment Shareholding Requirement for each User for the Season is currently that number of Investment Shares which is twice the number of CC Shares which the User is required to hold for the Season. The Minimum Investment Shareholding Requirement will be calculated by LIC at the end of the Previous Season.
- (i) A User who, at the commencement of the Season, has never held the Minimum Investment Shareholding Requirement is dealt with in the Constitution as a "New Entrant". In order to meet the Minimum Investment Shareholding Requirement, a New Entrant authorises LIC to debit the New User's account with LIC each season after the first season of holding CC Shares. The amount debited to the New Entrant's account each season is an amount equal to 4% of the purchase price paid for LIC qualifying products and services in the immediately preceding season and an amount equal to all dividends (net of tax) received by the New Entrant in respect of all shares in LIC held by the New Entrant (and not previously applied to the purchase of Investment Shares) (**Share Funds**). The authority to debit the New Entrant's account and purchase Investment Shares continues each season until the New Entrant holds the Minimum Investment Shareholding Requirement.
- (j) LIC uses an approved holding entity to purchase Investment Shares on behalf of the New Entrant. The approved holding entity may charge its reasonable expenses and a reasonable commission to the New Entrant for its role in the purchase of the Investment Shares.
- (k) Once a User meets the Minimum Investment Shareholding Requirement, the User may still be required to increase the number of Investment Shares which the User holds to reflect the calculation of the Minimum Investment Shareholding Requirement for a particular season. If, by 31 October of the relevant season, the User has not expended the amount specified in the Constitution (being up to 4% of the purchase price paid for LIC qualifying products and services in the

Previous Season and an amount equal to all dividends (net of tax) received by the User in respect of all shares in LIC held by the User in that season) on the purchase of Investment Shares, LIC may debit the User's account with LIC by this amount (or such lesser amount as required) and instruct the approved holding entity to purchase Investment Shares on behalf of the User.

- (l) A User may choose to acquire more Investment Shares than the number required by the Minimum Investment Shareholding Requirement. The maximum number of Investment Shares which a User may hold is 30 times the number of CC Shares which the User must hold. If the User holds too many Investment Shares then the User must sell the excess within two years.
- (m) Where a User has more than one farm and more than one LIC Debtor's Code, the User is treated as a separate User for each farm.

For the purposes of this share standard **User** has the same meaning prescribed to that term in the Constitution.

The Constitution is a public document and is available on request from LIC, from the Companies Office or on the LIC website ([www.lic.co.nz](http://www.lic.co.nz)).

## Part B

### General

1. The term for all LIC products and services is, subject to the following provisos, indefinite and notwithstanding that such products and services may be charged on an annual or job lot basis, shall continue upon the terms and conditions of service, from time to time applying, until the client notifies LIC that the client does not wish a continuation of the relevant product and/or service. Provided however:
  - (a) The term for MINDA™ Herd Records and MINDApro will not be less than 12 months. Any abandonment of those services by the client (whether notified to LIC or not) within 12 months of commencement, will not effect or otherwise reduce the client's obligation to pay for all applicable fees or sums incurred, or otherwise payable, by the client during and in respect of, such 12 month period.
  - (b) LIC, in its sole discretion, may at any time and for any reason upon giving notice cease to supply any product and/or service to the client.
2. (a) Clients are bound by the rules of LIC as printed here and all applicable rules and regulations arising out of the Dairy Industry Re-Structuring Act 2001, and/or all applicable standards determined by, or referred to in any herd testing regulations, and the specified services rules of LIC as they apply to the Herd Testing option, Artificial Breeding, MINDA™ Herd Records and any other product and/or service offered from time to time. (Copies of the relevant rules or procedures governing Herd Testing are available from LIC on request and at the client's cost.) To the extent that a particular product and/or service is not covered by specific rules, then the general terms and conditions of these rules shall apply to such product or service.
  - (b) Without limiting clause 1(b) LIC reserves the right to withdraw supply of any product, refuse to service any Herd, or discontinue the servicing of any Herd, where the client fails to comply, or intimates to LIC the threat of a refusal to comply, with the rules concerned.
  - (c) LIC reserves the right from time to time to add, delete, amend products and/or services, or substitute existing products and/or services with any other products and/or services.
  - (d) LIC reserves the right to introduce any new service or product including for animal health and welfare, or animal traceability for both dairy animals and other species. In the absence of LIC promulgating specific rules for a new service or product, these rules shall apply to such product or service.
  - (e) Without restricting any other provision of these service rules:
    - (i) LIC reserves the right at all times to take any remedial and/or restorative action (including without limitation all necessary enforcement or recovery legal proceedings) in respect of any actual or attempted improper, unauthorised or dishonest act or omission (**Improper Conduct**) on the part of the client and if such Improper Conduct is established to LIC's reasonable satisfaction it shall be entitled to recover the full cost of such remedial and/or restorative action against the client; and
    - (ii) Where LIC determines pursuant to clause 2(e)(i) that there has been Improper Conduct in respect of products and/or services offered by LIC, the client hereby irrevocably authorises LIC to undertake such remedial and/or restorative action as referred to above, and indemnifies LIC in respect of such action.
  - (f) Clients will only use products and/or services for the purpose for which they are supplied by LIC.
  - (g) It is a condition of the supply of products and/or services by LIC that these are personal to the client. The client must not assign such products and/or services to a third party without the prior approval of LIC.
  - (h) To the fullest extent permitted by law, the client agrees that they will not

trade, sell, transfer, or assign any information or data supplied by LIC as part of a product or service, other than as expressly permitted by such product or service.

3. In accepting any product, service or information from LIC, clients acknowledge that farming carries inherent risks and variables which are outside the control of LIC and which may affect the results achieved through the use of LIC products, services or information. LIC does not give, and its employees, servants and agents do not have the authority to give, any representation or warranty of any sort, whether express or implied, as to the results and/or performance to be achieved or expected from products, services or information supplied by LIC, nor to make any admission against the interests of LIC other than as provided in writing under the hand of the Chief Executive Officer of LIC for the time being.
4. (a) LIC shall not be liable for any loss, damage, injury or claim of any kind (including loss of profit, loss of business, loss of opportunity, direct, indirect, consequential or special loss or damage) however caused (whether arising in contract, tort (including negligence), statute or otherwise) suffered by or made against the client or any third party and arising in connection with or flowing from any product, service or information supplied (including a total or partial supply failure or performance impairment), or the use or disclosure (including total or partial non-disclosure) of any information, by LIC.  
(b) Notwithstanding clause 4(a), in the event that LIC is found to be liable for any loss, damage, injury or claim of any kind, then the liability of LIC, whether arising in contract, tort (including negligence), statute or otherwise in any other circumstances whatsoever arising or otherwise in connection with products and/or services supplied, shall not in any event exceed the net purchase price paid by the client in respect of the relevant product and/or service or at the sole discretion of LIC the replacement of such product or service. In no circumstances whatsoever shall LIC be liable to the client for any loss of profit, loss of business, loss of opportunity, consequential, incidental or special loss or damage.
5. It is the responsibility of the client to ensure that all animals receiving MINDA™ Herd Records, Herd Testing, Artificial Breeding or any other service are identified by a system approved by LIC. LIC will not make any rebate whatsoever in the service fees in the event of a Herd being withdrawn from a service because of unsatisfactory identification.
6. In using any services and/or products provided by LIC, the client acknowledges that it is their responsibility to ensure that all data supplied is valid, up to date, accurate and complete, and the client warrants that all information supplied to LIC by the client (or any agent of the client) is valid, up to date, accurate and complete.
7. (a) LIC may in its sole discretion allow and/or require a client to pay fees for products or services through an order permitting a dairy company to pay LIC its fees for services and/or products out of monies due to the client by that dairy company (**Dairy Deduction Authorisation**). LIC may at its discretion decline services and/or products if an appropriate Dairy Deduction Authorisation is not completed, or if the Dairy Deduction Authorisation is not accepted, or is at any time rejected or dishonoured (whether actual or anticipatory) by the relevant dairy company. LIC may in its sole discretion determine whether or not it will accept payment of fees for its services and/or products by way of a Dairy Deduction Authorisation.  
(b) Where the client (in compliance with LIC's requirements) wishes that the fees for products and/or services will be paid through a Dairy Deduction Authorisation the client gives the following acknowledgements and/or authorisations to the relevant dairy company (the **Dairy Company**):
  - I/We have applied to LIC for the supply of services and/or products in the Season and have agreed to pay the fees due as a result of such application by order to your company.
  - I/We authorise the Dairy Company to pay LIC the amount of fees for Herd Testing and/or Artificial Breeding services and/or any other products as advised by LIC out of the monies now or at any time hereinafter due to me/us for milk supplied and/or to be supplied.
  - Should there be insufficient funds available in any of the months of supply I/we authorise you to pay such additional amount and any other residual amounts owing by me/us from the first available monies to LIC.
  - I/We acknowledge that this authority is accepted by the Dairy Company subject to the following conditions:
    - (i) The Dairy Company accepts no responsibility for any non-payment or late payment.
    - (ii) The Dairy Company in its absolute discretion may determine the priority of payment pursuant to this or any other order given by the supplier to the Dairy Company or any right of set-off to which the Company or its subsidiaries are entitled.

- (iii) The Dairy Company may at any time by notice in writing to the supplier terminate future payments under this order.
  - (iv) This authority may not be revoked, cancelled or varied (by the client) without the prior consent in writing of LIC.
8. (a) LIC shall retain ownership in any product supplied to the client until full payment is made. The client acknowledges that pending payment the client is holding unpaid-for product as the fiduciary of LIC and is bound in dealing with such product and its proceeds of sale accordingly. The client grants LIC and its servants or agents an irrevocable and perpetual licence to enter onto any premises under the ownership or control of the client for the purposes of repossessing any such product not paid for in full.
- (b) Notwithstanding clause 8(a) and subject to any other provision of these rules relating to the sale of product (including but not limited to clause 62) and where the client is entitled to on sell product the client may pass good title to such product, but in doing so the client agrees that the payment received for the product is trust money held by the client on trust for both LIC and the client. The client's interest as beneficiary under the trust shall be that portion of the payments which exceeds the client's indebtedness to LIC. The client agrees that the trust monies are to be retained separately by the client until payment to LIC has been effected and that LIC may trace monies for the purpose of this clause.
- (c) The client agrees to protect LIC's retention of title provisions as provided in clause 8(a) and the client agrees that, if requested by LIC, the client will co-operate in good faith with LIC to execute such documentation as may be required to register a security interest in favour of LIC and to fully protect LIC's retention of title.
- (d) The client waives any right to receive a copy of a verification statement pursuant to s148 of the Personal Property Securities Act 1999.
- (e) All property owned by LIC and in the possession of the client in connection with the provision of services will be held at the client's risk. The client shall ensure the correct use and safe storage of the property while it remains in the client's possession. In the event that any such property is lost, stolen or damaged (other than by fair wear and tear) whilst in the client's possession the client shall pay to LIC upon demand the cost determined by LIC to be the cost of repair or replacement of that property.
9. (a) Schedules of charges and fee entitlements are listed in Livestock Improvement's Services Catalogue under Product and Services Fees (**Product and Services Fees Section**). LIC reserves the right to amend such charges and fees from time to time. The client shall make payment in cleared funds of such charges and fees in full by due date without deduction or set-off. In the event of late payment or non payment of fees for service, LIC may:
- (i) Make an account service charge of up to 1.5% per month on the outstanding amounts calculated on a daily basis.
  - (ii) Refuse to supply all non completed or future services and/or products.
  - (iii) Recover on a full indemnity basis the costs of recovering or attempting to recover such overdue monies.
  - (iv) Impose and execute a possessory lien against any property (including in particular stored semen) of the client held by LIC and being the subject of overdue monies.
- (b) LIC reserves the right to charge full fees or such other lesser amount as LIC in its sole discretion considers necessary for a product and/or service ordered when the number of animals for which the product and/or service is ordered is more than the number actually in receipt of the product and/or service.
- (c) LIC may extend credit to the client on such terms and conditions as set out in the Product and Services Fees Section, however the client acknowledges and accepts that LIC may at all times determine the amount of credit extended to the client and may at any time withdraw such credit if:
- (i) the client is in actual or anticipatory breach of any provision of these conditions and service rules or any other agreement with, or policy of, LIC;
  - (ii) the client's credit worthiness is unacceptable to LIC; and/or
  - (iii) LIC in its sole discretion no longer wishes to extend credit to the client.
- Upon LIC withdrawing the provision of credit, all amounts held on credit will become immediately due and payable by the client.
10. With the aim of improving the benefits clients receive, LIC is constantly modifying services and products, the manner in which services are provided, and the methods by which information is calculated and reported. While every effort will be made to inform clients of major changes, LIC cannot guarantee that notice of changes as they may relate to any product or service provided will be given in advance of the change being implemented.
11. (a) These rules contemplate the supply of products and/or services to the client in the course of business and accordingly the applicable statutory guarantees contained in the Consumer Guarantees Act 1993 are excluded to the fullest extent permitted by law.

- (b) Notwithstanding anything in these rules to the contrary, where the client is not acquiring goods or services from LIC for the purpose of business and provided such goods and/or services are subject to the Consumer Guarantees Act 1993 and the client is a consumer, as that term is defined in the Consumer Guarantees Act 1993 the statutory guarantees contained in the Consumer Guarantees Act 1993 will apply and any restriction or limitation imposed or sought to be imposed by LIC under these rules is expressly excluded but only to the extent that same are inconsistent with the provisions of the Consumer Guarantees Act 1993.
12. In contracting LIC to provide the services and/or products ordered, the client accepts:
- (a) (i) that the client becomes the principal to the contract;
  - (ii) that LIC becomes the contractor; and
  - (iii) that any independent contractor to LIC becomes the sub-contractor as defined in the Health & Safety in Employment Act 1992.
  - (b) That the Health & Safety in Employment Act 1992 may apply to the services and/or products ordered, and that the client shall be responsible for meeting all requirements of the Act with respect to both employees of and independent contractors to LIC.
  - (c) For the avoidance of doubt LIC reserves the right to withdraw the provision of any products and/or services to the client if LIC considers in its sole discretion that the client is in actual or anticipatory breach of the client's obligations under the Health & Safety in Employment Act 1992, or any other aspect of the provision of products and/or services to that client presents an unacceptable hazard to both employees of and independent contractors to LIC.
  - (d) That where the client is an entity that comprises more than one person and the client entity dissolves, LIC will only be required to recognise and deal with:
    - (i) the persons formerly comprising the entity acting unanimously; or
    - (ii) a representative unanimously appointed by the persons formerly comprising the entity; or
    - (iii) a representative appointed or regulated by Statute to deal with the property rights of the entity (including but not limited to a receiver or a liquidator),
 and where such recognition and dealing under any of the above is determined by LIC to be not practically available, LIC may deal with any person on behalf of the dissolved entity as it considers in its absolute discretion to be appropriate in the circumstances having regard to the desirability of advancing the interests of the national dairy herd as a whole.
  - (e) If LIC determines that a client has entered into any of the following transactions (**Disposition of Interest**):
    - (i) sold or in any way vested legal ownership;
    - (ii) leased or in any way parted with possession;
    - (iii) charged or encumbered the legal title;
 in respect of an animal that is subject to the provision of products and/or services, or is a source for the collection of information for the LIC database, such Disposition of Interest shall irrevocably authorise LIC to deal (in its discretion) with:
    - (iv) the recipient of any rights created by the Disposition of Interest as if such rights included an assignment of the client's rights and entitlements to information as regulated by these rules relating to the particular animal; and
    - (v) the client at any time, in respect of the period up to and including the date of such Disposition of Interest.
  - (f) The client is deemed to have received notices or correspondence three working days after being posted by LIC to the client at the client's last known address held by LIC.
  - (g) At any time LIC may in its sole discretion determine or otherwise decide, based on information held by it, the identity of a client or a proposed client for the purposes of these rules and the share standard.

### **Information Handling Authorisations**

13. (a) These conditions and service rules apply to information contained in the Core Database and the Non-core Database.
- (b) Access to information contained in the Core Database is in accordance with the Access Code or any successor code and where applicable these conditions and service rules are subject to the provisions of the Access Code or any successor code.
14. Subject to the Dairy Industry Restructuring Act 2001 and any Regulations made under that Act (where applicable), the following client authorisations apply in respect of the collection, use or disclosure of all information, including client personal information, by LIC:
- (a) Any dairy company receiving a client's milk may supply LIC with any requested particulars, including but not limited to the Herd size and/or factory production figures for the client's Herd, and LIC may collect such information from that dairy company.

- (b) LIC may, without further reference to the client, publish any official surveys of sires or evaluation of sires surveyed on behalf of the client.
- (c) LIC may collect any information from, use any information for, or disclose any information to any third party for the purposes of:
- (i) New Zealand Dairy Industry milk quality programmes, EBL, and other disease testing and/or eradication programmes;
  - (ii) collection and processing of bobby calves;
  - (iii) leptospirosis and/or mastitis data collection, research and control programmes;
  - (iv) compliance or co-operation with farming industry sector standards or programmes (including dairy, beef and other species) to improve the quality of animals and animal products;
  - (v) obtaining and determining from any person (including but not limited to Agriquality, the Animal Health Board, Ministry of Agriculture & Forestry, and any veterinary practitioner) the identification, health, productivity, ownership, possession, ancestry, location, treatments or disease status of any animal, Herd, or farm participating in any product or service provided by LIC and recording same in the LIC Database for any of the purposes set out in sub-clauses (i) to (iv) and (vi) to (xiii) of this clause 14(c);
  - (vi) the BioSecurity Act 1993 or any other statutory or regulatory enactment;
  - (vii) the lawful direction of any competent administrative authority;
  - (viii) any new, enhanced, or expanded product or service and/or any new relationship established with any farming industry sector (including dairy and beef) and any person within a particular sector (including Beef Breed Societies) as may be developed or entered into by LIC;
  - (ix) the retention and use for the research & development and business purposes of LIC including but not limited to biotechnology ventures between LIC and third parties;
  - (x) the use by ViaLactia Biosciences (NZ) Limited for the purposes of gene discovery, gene function discovery and commercial application thereof both directly and in conjunction with third parties;
  - (xi) auditing or monitoring of the health or quality of any animal or animal product within a farming sector;
  - (xii) the provision of any of the products and/or services referred to in these conditions and service rules;
  - (xiii) enforcing or attempting to enforce any obligation or liability imposed upon a client by these rules.
  - (xiv) the use by National Councillors for the purpose of carrying out their functions as National Councillors, including but not limited to enabling National Councillors to communicate with their respective constituent shareholders.
- (d) Subject to the Access code or any successor code LIC may collect any information from, use any information for or disclose any information (including owner details) to a third party for the purpose of selecting contract mating cows and bull calves.
- (e) LIC may collect any information, use any information or disclose any information which has been provided by the client or any third party for any purpose contemplated in these conditions and service rules or the Access code or any successor code.
- (f) In respect of any collection of information by LIC the client hereby authorises any person contemplated by clause 14(a),(c) or (e) to provide to LIC this information being, or to be, collected by LIC pursuant to this clause.
- (g) The client agrees in respect of information contained in the LIC database that further notification to the client of the purpose of the collection, the intended recipients and holding agencies for the personal information is unnecessary and non-compliance with the requirements of principle 3 of the Privacy Act 1993 is authorised.
- (h) The client authorisations contained in clauses 14(a) to (g) inclusive extend to and include client personal information that is incidental to or necessarily part of the information authorised to be dealt with under such clauses. The client authorises for the purposes of the Privacy Act 1993 the resultant dealing and use of such client personal information within or arising out of the context of the operation of clauses 14(a) to (g) inclusive.
- (i) Pursuant to, and for the purposes of Regulation 24(1)(c) of the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 (and any subsequent amendment regulations) clients authorise LIC (to the extent necessary for the purpose of this clause) to make data contained in the Core Database in respect of a client's Herd(s) available to LIC or any other entity for any purpose contemplated by these conditions and service rules.
15. The client agrees and acknowledges that:
- (a) All proprietary rights and interests in any information collected by LIC from the client or a third party and entered into the LIC database shall upon such

entry be deemed to be absolutely and unconditionally assigned to LIC. Subject to the right to access and correct personal information under the Privacy Act 1993, the client has no proprietary rights or interests in any such information entered by LIC into its database.

- (b) LIC shall be entitled to delete, amend, manipulate, copy, store, distribute and/or use any information (including as applicable client personal information) gathered pursuant to these rules for the purposes of:
  - (i) improving the national herd in dairy or other species and the functioning of the LIC database;
  - (ii) the provision of products and/or services offered by LIC in furtherance of its commercial operations;
  - (iii) the proper functioning and implementation of these conditions and service rules.
- (c) The assignment pursuant to clause 15(a) shall be absolute and LIC's rights to deal with any information supplied by a client or created during the provision of any product and/or service to the client shall not be affected by the termination or cessation of the client's subscription to the service or the contract as the case may be.
- (d) LIC does not warrant the accuracy of any information provided to the client or any third party, unless agreed otherwise by LIC in writing.
- (e) LIC may release information (including client personal information) to any public sector agency or other regulatory body upon request being made by such agency or body for any of the following purposes:
  - (i) To avoid prejudice to the maintenance of the law by any public sector agency or regulatory body, including the prevention, detection, investigation, prosecution, and punishment of offences; or
  - (ii) For the enforcement of a law imposing a pecuniary penalty; or
  - (iii) For the protection of the public revenue; or
  - (iv) For the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
  - (v) That the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to public health or public safety, or the life or health of the individual concerned or of another individual.
- (f) LIC may at its sole discretion release information (including client personal information) to any person for any purpose related to animal welfare or the maintenance of public health and safety.
- (g) LIC may at any time provide information (including client personal information) to any person who LIC, acting on information held by it, considers is entitled to receive it.

### **MINDA™ - Herd Records**

The rules in this section apply to dairy, beef and any other animal species MINDA™ Service that LIC operates from time to time. References to dairy animals and dairy related aspects will as appropriate be read as substituted with the relevant animal species with such additional contextual modification of the rules set out in this section as required.

- 16. (a) To preserve the integrity of information obtained under the MINDA™ Service:
  - (i) The client must perform and otherwise comply with the obligations attaching to the provision of information under the MINDA™ Service, and shall not be entitled to use such information for any purpose other than that for which it has been supplied by LIC;
  - (ii) The client shall not alter, manipulate, resell, distribute or deal in such information in any way that is not expressly authorised by LIC from time to time and whose determination (subject to the provisions of the Access Code or any successor code) shall be final;
  - (iii) The client shall in the use or handling of such information, at all times comply with New Zealand law.
- (b) Animal evaluation indexes and any other information supplied as part of the MINDA™ Herd Records Service, and the intellectual property and/or copyright embodied in such indexes and reports, remain in the sole ownership of LIC and such status shall not be challenged or prejudiced by the client.
- (c) Animal evaluation indexes may be used by the client only for the purposes of the sale and purchase of dairy, beef or other animals and for the client's farm management decisions. The indexes shall not be used by the client for the sale or other distribution of semen, unless the client has signed and conforms to conditions contained within the Animal Evaluation Customer Service and Licence Agreement.
- (d) The client acknowledges that in the event that a client either directly or indirectly discloses to any third party, that client's participant code, PIN, or any other code or identifier intended to be confidential:
  - (i) LIC will not in any way be liable for any loss caused to the client in respect of any act or omission on the part of such third party,

- including any loss arising out of or flowing from any act or omission on the part of LIC authorised by such third party; and
- (ii) The client shall be liable for all products and/or services ordered by a third party using the client's PIN (or any other code or identifier intended to be confidential) to procure such products and/or services from LIC, and in that instance such third party shall be deemed to be the authorised agent of the client.
17. Without limiting any other rule, the following guidelines and authorisations apply to the release or use of animals' records and information:
- (a) The client (or lessee of the client's Herd) has the right to purchase reports showing all ancestry, identification, production, health records and predictive indexes for all animals and the direct ancestors of all animals in the client's Herd, including information collected when the animal was in another client's Herd.
- (b) Clients and prospective clients, who in the opinion of LIC are entitled to such information (including when the client or authorised agent or charge holder advertises publicly or otherwise markets an animal, its semen or its progeny for sale) may purchase reports showing records relating to that individual animal. In this instance, animal ancestry, identification, production, reproduction, health and predictive indexes, where applicable, may be made available.
18. (a) Subject to the Access Code or any successor code all records of registered pedigree cows or other animals (or cows showing in the LIC database as being registered with a participating Breed Association) tested and/or bred in a client's Herd will be made available to the relevant Breed Association on request, provided the Breed Association is a participating member in the database. Participating members are: New Zealand Holstein-Friesian Association, New Zealand Jersey Cattle Breeders Association, New Zealand Milking Shorthorn Association, New Zealand Ayrshire Association, New Zealand Brown Swiss Cattle Breeders Association, New Zealand Guernsey Cattle Breeders Association.
- (b) The client acknowledges that the bundle of information (**Primary Information**) authorised to be dealt with under clause 18(a) may also include client personal information (**Secondary Information**) that is incidental to or necessarily part of such Primary Information. The client authorises for the purposes of the Privacy Act 1993 the resultant dealing and use of Secondary Information within or arising out of the context of the operation of clause 18(a).
19. During the MINDA™ herd records Season clients are required to keep their herd records up-to-date by reporting on a regular basis full and accurate details of: animal matings, animals sold or otherwise disposed of, animals purchased; and supplying all other details about animal events such as cow numbers assigned to identified heifers entering the Herd, calving dates, calving ease information, calves born, calf identifications and animal fate reasons. The details together with the date on which the event occurred, are to be supplied on data entry forms or an electronic equivalent which has been approved by LIC in advance. In the event that LIC requires more information about a particular animal or animals the client shall take all reasonable steps to comply.
20. Clients are required to supply to LIC:
- (a) Up-to-date details of every animal currently in the Herd before the Herd Testing and Artificial Breeding services for the Herd commence for the Season;
- (b) Birth details and calf lifetime identification by 31 May 2008 or within 6 months of that animal's birth;
- (c) Mating details within 8 months of the mating occurring; and
- (d) Up-to-date details for all animals prior to the updating of production, trait, or test analysis information for their animals.
21. In the event that accurate or up-to-date details are not provided on time, LIC may deal with the situation as follows:
- (a) All information, including results from herd testing for the individual animals with missing or incorrect details will be withheld from the client and will not be entered into the database until the relevant details have been provided. Fees for testing the animal will however be payable.
- (b) When mating details for any animal are not supplied to LIC within 8 months of the mating occurring, the details may be processed later at the discretion of LIC providing all details are supplied in a LIC approved form and completed at the time the mating took place.
- (c) Where the birth details and the identification of an animal are not supplied to LIC by 31 May 2008 or within 6 months of that animal's birth, whichever is the later, the details will be termed "late" and will not be verified nor used in Animal Evaluations.
- (d) The retrospective addition of ancestry information for a currently recorded animal will be done for clients if all of the following criteria are met:
- (i) The animal itself has an official identification recorded;
- (ii) The dam to be added also has an official identification and is already recorded on the LIC database; and

- (iii) The sire to be added also has an official identification and is already recorded on the LIC database.
- The status of the sire will be set to "unofficial" unless a confirming DNA result is supplied or a LIC representative can verify accuracy from the complete mating records for the dam.
22. (a) Clients who did not use the MINDA™ Herd Records service in the Previous Season may establish basic details (that is: breed, age or date of birth, official identification and name, if required) for previously unrecorded animals (including young stock) as part of the service, providing the animals are current in the client's Herd. These details are to be entered before any new data such as calving dates, mating details etc. for the new season occur.
- (b) Records created during the period when the client may have previously used any service will normally be on file and will need checking to bring the Herd information up-to-date.
23. (a) MINDA™ Herd Records service fees may be increased for a Herd when data is not supplied for processing at the appropriate time. When this applies the significant remedial work and extra processing will be carried out as and when time permits.
- (b) Any alteration to animal details or information already recorded in the database about the performance of those animals shall be at the discretion of LIC.
24. Fully recorded animals will have all their records on file transferred from one Herd to another Herd at no charge, providing LIC's transfer procedures are used. Unidentified animals (and previously unrecorded identified animals) will be transferred but a charge will be incurred.
25. Official identification types:
- (a) Birth identifications for all registered and unregistered animals born in New Zealand from 1985 onwards: original owner's participant code, year of birth and sequence number.
- (b) LIC Identifications (for all unregistered animals born before 1985): original owner's region code and herd code, the animal's year of birth and sequence number.
- (c) Herd book number: a Breed Association allocated number for animals born prior to 1985 and registered with a Breed Association that is a participating member in the LIC database.
26. Brass tags will be sold as part of the MINDA™ Service for all dairy animals being reared for dairying purposes. These tags carry the official LIC lifetime numbering system, i.e. participant code of Herd or dam owner at time of the animal's birth, year of birth, serial number, and an identifying symbol of LIC.
- (a) Officially numbered tags showing the participant code of the MINDA™ client or participant code of the owner of any animals in the MINDA™ client's Herd, may be ordered through LIC, only by a current MINDA™ client, and for animals less than 8 months old. A duplicate set of officially numbered tags may be ordered by the client and supplied by LIC on the understanding that they are chargeable to the client and all reasonable care is exercised by the client to ensure duplicate numbered tags are put in same calf.
- (b) Extra brass tags or approved plastic alternatives will be provided at current retail rates.
- (c) Replacement tags for older animals will be supplied only when details of the animal and its identification already exist in the database, and they will only be supplied to the client in whose Herd they are currently recorded in the database.
- (d) Tags supplied for use on animals expected to be born in one specified calendar year may not be used on animals born in a different calendar year.
- (e) LIC may charge clients for all tags supplied when details of the identification carried out using the tags are not provided to LIC within 8 months of the birth of the animals the tags were supplied for use on.

## **Herd Testing**

27. All the cows in milk in a Herd shall be submitted for herd testing, whether milked once or more daily. All cows in the Herd are to be herd tested under the same system of herd testing. Cows returning to the Herd having been used as nurse cows for calf rearing are to be tested.
28. The client shall apply to LIC for herd testing before 1 June 2007 for the Subsequent Season. LIC may in its sole discretion determine dates for each testing visit. If the client applies after 1 June 2007 for any herd testing, LIC may (at its discretion) charge the client an amount in respect of the additional cost to LIC of arranging such herd testing on short notice.
29. The estimated lactation yield for a cow shall be calculated from and including the fourth day after calving. If a cow's calving date is not available, then no calculation shall be made. When a cow aborts prior to the 200th day after the commencement of the record so as to cause no marked variation in her production the lactation estimate shall be regarded as one lactation.
- Lactation estimates will be based on all of the days a cow is in milk subject to the foregoing and the following conditions being met:

- (a) The first test for the lactation is within 63 days of calving.
- (b) The last test for the lactation is no earlier than 15 days before the end of the lactation.
- (c) The interval between tests during the lactation does not exceed 120 days. Production will not be estimated for the period if the interval between tests exceeds 120 days.
- (d) The Herd is enrolled for a minimum of four tests which are taken at regular intervals throughout the season.

It is the responsibility of the client to select a herd testing option and to herd test at times that will ensure lactation yields for the full lactation period can be estimated.

Each test day record for a cow shall be used to estimate that portion of the lactation yield from halfway between the test date and the preceding date to halfway between that test date and the succeeding test date except for the start and finish.

30. A testing visit shall comprise the milkings normally carried out during a 24 hour period; usually a night milking followed by a morning milking. The Herd is to be milked at the same hour at the last milking of the herd testing visit as at the corresponding milking on the previous day since all calculations assume that the test day records are for a 24 hour period. Clients who have milking intervals that do not give a 24 hour day must inform LIC so that appropriate adjustments can be made. Normal milking procedures are to be observed at the time of the herd testing visit. The client or client's agent shall ensure that the milk submitted for measuring and sampling is the milk produced by the cow at that milking and that nothing has been added or taken away. The client shall take all necessary steps to ensure that the information in respect of a milk sample submitted to LIC (including, without limitation, the identity of the cow that produced it) is up to date, accurate and complete. Without limiting the provisions of clause 4 LIC will not be responsible for any failure on the part of the client (or the client's agent) to provide up to date, accurate and complete information in respect of a milk sample. The client or client's agent will also ensure that feeding and/or milking/management practices immediately prior to and on the day of testing are not varied from the normal practices used at other times. In particular, no cow or cows shall be fed or given stimulants or injections or treated in any way which may cause an abnormal production on test day.
31. Where milking is completed later than 6.30 pm or 8.30 am, or if the total hours required for LIC assistance is in excess of eight hours for the two milkings involved for the herd test, LIC may charge for the extra time involved.
32. (a) Full fees will be charged for the herd testing service ordered even if a Herd is tested only once or is sold or withdrawn from herd testing. Where withdrawal is the consequence of exceptional circumstances outside the control of the client and there is no recourse for the client to recover fees from a third party, then on receipt of written application from the client, LIC will investigate and decide on the amount to be charged.
- (b) Without in any way limiting clause 32(a) above, where a client abandons their herd testing on the day of the scheduled visit, LIC may in its sole discretion charge an abandonment fee to the client. The abandonment fee will be twice the relevant visit fee or such lesser amount as determined by LIC in its sole discretion.
33. LIC may not use test day records for the calculation of production estimates and various indexes if in its opinion the test day production records are "abnormal". Where the test day records for a cow are classified as "abnormal" and the cow's test day yield differs by more than 20% from the assessed value for any trait, or any of the yields are missing, the test day records classified as abnormal shall not be used in calculating the estimated accumulating lactation yield. Where an abnormal test day record for a cow is not used in the calculation, test day yields shall be assessed so that the 270-day yields for each trait including that test are the same as those based on all her normal test day records to date for the lactation. No assessment shall be carried out unless the cow has at least one normal test for the lactation in the Herd where the abnormal test took place. A production record will be reassessed based on each subsequent normal test in the Herd for the lactation and may change if some amendment is made to the cow records used to assess the records.
34. If a Herd changes ownership during the season LIC will (subject to clause 17(b)) endeavour to continue the same service for the new owner if required to do so. The previous herd testing records will be carried forward, subject to the following conditions:
- (a) The new owner agrees to be bound by these rules and conditions, and any specific rules and conditions applicable to any particular product or service.
  - (b) LIC is satisfied that no difficulty will be encountered by the new owner with the identification of individual cows.
35. LIC has the right to check at any reasonable time the identification of any cow/s which are on the farm where a Herd is under test. Such tests may require the taking of blood samples.

36. LIC has the right to make a random check test on any cow, cows or Herd at any time, and to substitute such check test figures for the ordinary test day figures for any cow, cows or Herd.  
LIC shall have the right to withhold any test day records if in its opinion the records appear abnormal, and it shall also have the right to cancel any test day records and estimated lactation yields credited to any cow or cows or to any Herd for any period if in its opinion they are an incorrect assessment of production.
37. Where a cow is culled, is sold or dies, etc. during the season, that cow's number may be used for a replacement cow once the details of the original cow have been removed from that number in the LIC database.
38. Adequate and convenient facilities for the management and sampling of milk are to be available to the Herd Testing Field Technician. Where sampling is done in the pit of the farm dairy a satisfactory shield is to be provided which will give a proper protection for the technician and equipment from dung and urine. Clients should provide an adequate bench of reasonable height in the pit.
39. LIC provides sufficient rubberware for most types of farm dairies. To ensure satisfactory connection of milk meters to milking plant in farm dairies where the type or amount of milk tubing required at testing time is different or in excess of the usual requirements, it is the client's responsibility to provide that rubberware.
40. It is the responsibility of the client to put an approved sanitiser rinse through the milking plant once the milk meters are installed, before the milking commences at the herd testing visit, to ensure potential milk grading problems due to changes in plant set-up are minimised.
41. Following the morning milking of the visit self sample meters and equipment are to be cleaned and dismantled from the milking plant, and sample flasks assembled in numerical order in the trays provided, ready for collection by 8.30 am. The client may be required to transport the equipment and samples to LIC's local premises if sorted samples and cleaned meters are not ready by 8.30 am.
42. No undertaking can be given that any particular Herd Testing Field Technician either will or will not be servicing any particular Herd for the whole or any part of the season.
43. Milk volumes shall not be recorded nor samples taken from a cow till the seventh day after the day of calving, unless the client specifically requests otherwise, when they shall not be taken till at least the fourth day after the day of calving. No samples shall be taken or analysed at any time if in the opinion of the client or LIC the milk is not fit for human consumption.
44. All production records quoted by or on behalf of any client, either verbally or in writing, must correspond exactly to those presented by LIC on the Herd Testing Report. The number of tests ordered for the season shall be shown. No conversions between metric and imperial measure are permitted. Where the latest Herd Testing Report does not include the portion of the lactation record based on the most recent test day record, the Test Day production may be quoted as well as the latest Herd Testing Report.
45. The dairy company supplied may be given access to herd testing records if there is a dairy company/herd testing comparison being conducted between the dairy company and LIC.
46. LIC has the right to provide information to the relevant participating Breed Association on dairy company/herd testing comparisons involving any animal in the Herd of a member of that Association.
47. Usually herd testing and dairy company production figures for the season agree to within 12.5%. Where differences exceed this, LIC may, subject to any applicable dairy herd testing standards referred to in any herd testing regulations, investigate and where LIC considers action is warranted, it may adjust the test figures concerned.  
When significant differences between herd testing and dairy company figures cannot be satisfactorily resolved, then in agreement with the client, LIC will arrange for an independent evaluation of the client's milking plant when milk meters are installed. By prior arrangement with the client, the charges related to the evaluation will be payable by the client if the results identify a problem with the plant that could have influenced the accuracy of the test.
48. The client authorises LIC access to any herd testing sample required for any of the purposes in clause 14(c) of these rules and conditions.

### **Artificial Breeding**

49. Artificial Breeding Technicians are to be provided with inseminating facilities that enable them to stand comfortably, directly behind the cow, and on the same level as the cow. If special facilities need to be provided, their design is to be approved by LIC.
50. No undertaking can be given that any particular Technician either will or will not be servicing a particular Herd.
51. All animals to be inseminated are to be clearly identified. Any animal which is not clearly branded or ear tagged with numbers up to four digits or tagged with a valid birth identification will be inseminated only if the client is present to ensure satisfactory identification. Each animal is to be individually and

uniquely numbered.

52. Clients must record all inseminations (even those at very short notice) and other matings by way of the approved forms or methods prescribed by LIC for use by that client. Clients shall provide all information in respect of such inseminations and/or other matings as required by LIC.
53. All animals for insemination should be ready for the Technician in a yard adjacent to the insemination area. Clients should render all reasonable assistance to the Technician to ensure the smooth working of the service.
54. Clients who use the DIY PREMIER SIREs™ service will usually be supplied with LONG-LAST™ Liquid Semen. Supplies estimated to be sufficient for daily needs will be delivered by LIC at regular intervals. These intervals and the time of delivery will be determined by LIC. All semen doses supplied and not returned unopened may be charged for. In the event of supplies not being sufficient the client is to notify the local AB group Technician as soon as the shortage is apparent. The AB Technician will obtain extra supplies or do the inseminations at the DIY charge rate.
55. LIC will endeavour to provide a condensed group service that will operate for at least 42 days in each of the dairying areas it services. If an individual client is not able to obtain a full 42 days of service no reduction in fees will be given. No guarantee can be given that a condensed group service will be available at any set time or in any particular area.
56. Clients using the Technician service are required to advise the AB Technician when service is required.
57. When clients purchase nominated (Alpha Nominated or any other brand) semen from LIC, liability to pay for the semen arises when the semen is transferred from LIC central storage into the semen storage container being used by the AB Technician or for dispatch. No cancellation can be made within 30 days of the client's Artificial Breeding start date.
58. No refund shall be made on any semen and/or liquid nitrogen remaining unused at the end of the mating season.
59. When LIC purchases semen on behalf of a client from another supplier, LIC accepts no responsibility for any losses from any cause whatsoever, including but not limited to breakage of straws and deterioration or loss of straws, while being stored in LIC's bulk store, or while being stored or transported in a LIC field deep freeze bank.
60. To enable LIC to monitor traits which may be of genetic origin, clients should notify Livestock Selection at LIC immediately in writing of any abnormalities in calving dates, condition of calves born or other unusual features.

### **Semen storage maintenance and disposal**

61. (a) When semen, embryos and/or a semen storage bank is being stored by LIC it is accepted at owner's risk only. "Owner's Risk" means the receipt, custody and delivery of the property and any handling thereof is undertaken by LIC on the basis that the client carries the full risk of liability, with no recourse back to LIC.
  - (b) Where LIC has been storing semen for a client and:
    - (i) the storage charge invoiced to the client by LIC remains unpaid for more than 90 days; or
    - (ii) the owner of the semen is either unable to be identified or located by LIC for more than 180 days following endeavours by LIC to identify or locate;LIC reserves the right to dispose of such semen by whatever means it considers to be appropriate, with the net realised value of the product disposed of (if any) to be set-off against any monies owing by the client to LIC. Where the disposal is triggered pursuant to sub-clause (i) above LIC will account to the owner for the net realised value of the product disposed of (if any) within 30 days of the completion of its disposal. In this clause only "disposal" means sale, gift or destruction.
  - (c) The client fully indemnifies LIC against all liability arising out of or flowing from LIC exercising the right of disposal conferred upon it by clause 61(b).
  - (d) Where semen is stored by a client whether to the client's own account or on behalf of other party(s), the supply of liquid nitrogen by LIC is strictly upon the condition that the client is solely responsible for checking:
    - (i) the sufficiency of the supply of liquid nitrogen delivered by LIC;
    - (ii) the proper type and functional status of the semen storage bank or container into which supply by LIC is made;
    - (iii) that adequate levels of liquid nitrogen are at all times maintained in the storage bank or container between deliveries of liquid nitrogen by LIC.
  - (e) LIC may without notice to clients destroy or otherwise dispose of any semen stored on a client's behalf where LIC considers in LIC's absolute discretion:
    - (i) the straw in which the semen is held is damaged;
    - (ii) the semen presents a risk or possible risk of escape or contamination;

and/or;

- (iii) the semen or straw in which it the semen is held, is or may be, in breach of, or is likely to become in breach of any relevant quarantine rule or procedure imposed by LIC or any other competent authority.

## **Intellectual Property**

62. The client may not, except with LIC's prior written permission:

- (a) advertise for sale or supply, or sell or otherwise supply, any semen or other form of germplasm (**Germplasm**) from the first-generation male offspring of matings using Germplasm supplied by LIC (**Offspring**); or
- (b) provide access to or possession of or dispose of (**Transfer**) the Offspring to any person (other than a director or an officer, employee or agent of the client, acting in that capacity) (**Transferee**) in circumstances where the Offspring may be used for mating or the collection of Germplasm for sale or supply, without first entering into a written agreement with the Transferee in the form set out in Schedule 1 to these conditions and service rules. The client must send the original agreement to LIC within 14 days of entering into it.

This restraint is reasonably required to protect the value and viability of the LIC artificial breeding and genetics programme, which represents a substantial and long term investment in capital, research and development, and sire proving, and which is of strategic importance to the New Zealand dairy industry.

- 63. (a) The client acknowledges that LIC is the sole proprietor (or authorised licensee) of all intellectual property rights contained in all semen supplied by LIC to the client.
- (b) When supplying the client with semen LIC grants to the client a non-assignable, non-exclusive one-off licence (such licence otherwise on usual industry terms) for the sole purpose of the artificial insemination of the client's own Herd (or part thereof) and the client will not provide access to or possession of such semen to any other person (other than a director or an officer, employee or agent of the client acting in that capacity).
- (c) The client undertakes that the semen supplied by LIC will not be used for any purpose other than the artificial insemination of the client's Herd (or part thereof) and the client further undertakes that the client will not provide access to or possession of such semen to any other person (other than a director or an officer, employee or agent of the client acting in that capacity).
- (d) The client agrees to indemnify LIC for all losses whatsoever caused to LIC, arising out of or flowing from the client's breach of this provision.

## **Sire Proving Scheme (SPS)**

64. A client may participate each year in the LIC Sire Proving Scheme by applying for membership on the prescribed form and agreeing to the relevant LIC Sire Proving Scheme Rules and Obligations. If LIC accepts the Member's application then the Member shall be contractually bound by the relevant year's Sire Proving Scheme Rules and Obligations.

## **GeneMark® DNA Service**

65. The GeneMark® DNA Service will be provided by LIC upon the terms of the conditions in this section of the conditions and service rules and otherwise upon such further conditions as LIC may issue from time to time, provided that in the event of inconsistency these conditions and service rules shall be paramount. Client request for DNA Analysis on one or more of their animals (including cows, calves, bulls and the equivalent for other species) must be on, and will be subject to, the appropriate GeneMark® DNA Request form.

66. Clients are responsible for ensuring that:

- (a) Within the areas of their involvement and control the procedures as notified by LIC for GeneMark® are followed.
- (b) All animals to be DNA analysed are to be clearly identified by being branded, ear tagged with numbers up to four digits, or tagged with a valid birth identification, and whereby each animal is individually and uniquely numbered.
- (c) Samples for analysis are to be collected in accordance with the GeneMark® DNA Request form issued to clients by LIC or its approved agents.

67. Upon receipt of the animal samples LIC will:

- (a) Log the animal sample into the GeneMark® sample tracking database.
- (b) Submit the animal samples to GeneMark® testing.

68. LIC will notify the results of GeneMark® to the client or whether additional samples are required to complete analysis and/or to otherwise provide the client with GeneMark® results. If the client considers there to be a need for further analysis it will be at the client's cost.

69. If LIC is satisfied at its discretion that the GeneMark® result or the analysis result from a third party genotyping service result is more reliable than the existing LIC database information concerning an animal, it may at its discretion

retrospectively alter and overwrite the existing LIC database information for that animal and make any necessary consequential database change(s).

70. (a) LIC will not be under an obligation to notify any party where a database change may affect any current or previous cow bull or other animal (whether living or dead) as a result or consequence of DNA analysis carried out for another party.
- (b) Where the client has requested GeneMark® comparative analysis (such as parentage testing) LIC will be unable to provide a GeneMark® result if the relevant DNA profile required for comparative analysis is not in the GeneMark® DNA library, and LIC does not warrant that any particular DNA profile is present in the GeneMark® DNA library. Subject to the client providing the relevant samples, submitting a completed a GeneMark® DNA Request form, and paying the relevant GeneMark® fees the client may request as a separate transaction DNA profiling of the intended comparison animal for the purpose of adding the DNA profile of the intended comparison animal to the GeneMark® DNA library.
71. Whilst the client is authorised to use and retain the results of GeneMark® so far as they relate to an animal in the client's Herd:
- (a) GeneMark® information is owned by LIC and not the client.
- (b) All DNA profiles derived from the samples comprising GeneMark® may be incorporated into the LIC database, and may be used for research and/or business purposes.
- (c) LIC will not provide GeneMark® raw data, DNA marker information or DNA profiles to clients.
72. The client makes the following warranties and acknowledgements to LIC each time the client or the client's agent completes a GeneMark® DNA Request form requesting GeneMark® service:
- (a) the client or the party that has signed the order form for or on behalf of the client is authorised to order the GeneMark® service from LIC;
- (b) LIC is irrevocably authorised to retain and use each sample taken for the primary purpose of the GeneMark® service for research and/or other business purposes of LIC (**Secondary Purpose**) if the appropriate box on the GeneMark® Request form is not ticked. However if such box is ticked LIC will (unless otherwise agreed in writing with the client) destroy the sample without further reference to the client.
- (c) LIC will own all the intellectual property arising out of or flowing from the Secondary Purpose, with no residual rights or entitlements held or claimable by the client.
73. (a) LIC will not be responsible where DNA analysis by GeneMark® returns no result or is incorrect due to inadequate or otherwise compromised sample quality or integrity occurring prior to receipt by LIC and notwithstanding that no result was returned or that the result was incorrect, the client will pay all GeneMark® fees associated with any such analysis.
- (b) Where LIC can not, or otherwise will not, for any reason perform any test requested by the client, LIC will notify the client of same and will hold the relevant samples provided by the client for a period of 10 days after such notification. After that 10 day period the samples will be destroyed without further reference to the client. However if prior to the expiry of that period the client requests the return of the samples, LIC will return the samples to the client at the cost of the client.
74. Whilst DNA analysis is more accurate than other conventional methods of data collection and analyses, the client accepts that it is not completely error free. For this reason, where an inconsistency against the LIC database occurs, LIC will endeavour to give the client the opportunity to have a second analysis carried out at the client's cost.

## **Statutory Licensing**

75. From time to time LIC may make available a service to the client where information regarding animal health and animal treatments is provided to the client or any other person. The provision of each such information service is made on the following basis:
- (a) The client acknowledges that LIC as an institution has no professional qualifications, or appropriate registration of any particular occupation, including (without limitation) that of a veterinary practitioner, and LIC does not give veterinary advice of any kind or nature;
- (b) The client undertakes that in using any LIC product and/or service, the client will only use any particular product and/or service (as applicable) in accordance with appropriate professional advice from the relevant particular occupation including (without limitation) that of a veterinary practitioner; and
- (c) By way of addition to and without limiting the provisions of these conditions and service rules, LIC will not be liable to the client in any way in respect of the foregoing information services.

## Assignment

76. (a) These conditions and service rules will be binding on and enure for the benefit of LIC and its respective assigns and/or successors.
- (b) LIC may assign or transfer to any third party (**the Recipient Party**) all or any of its right title and interest in any particular product or service referred to in these conditions and service rules.
- (c) Unless expressly excluded in the contract of assignment or transfer contemplated in clause 76(b), the Recipient Party will receive the benefit of the relevant portion of these conditions and service rules as they apply to any particular product or service assigned or transferred.
- (d) Upon any event of assignment and/or succession, references in these conditions and service rules to LIC will in all instances be deemed to be references to the Recipient Party, but otherwise without prejudice to any pre-assignment and/or pre-succession matters between LIC and the client.

## Governing Law and Jurisdiction

77. These Conditions and Service Rules are governed by and must be interpreted in accordance with New Zealand law (exclusive of the Sale of Goods (United Nations) Convention Act 1994).
78. The Courts of New Zealand shall have exclusive jurisdiction to hear and determine all disputes arising under or in connection with these Conditions and Service Rules.

## Educational Summaries

79. LIC may from time to time elect to provide clients with written educational summaries (whether in the form of articles, information sheets or otherwise) of selected portions of laws and trade practices regulating a particular area of farming. The provision of such summaries are made available on the following conditions:
- (a) They are general in nature and are not intended to be tailored to a particular situation or circumstance.
- (b) The summaries by their very nature may omit, paraphrase, substitute opinion in lieu of fact, or abridge details of an aspect of the law or trade practice.
- (c) LIC is not advising any particular client of that client's legal obligations, assuming any obligation to advise, or accepting any liability arising from selecting or not selecting any particular law or trade practice to summarise and publish.
- (d) They are not to be relied upon as a substitute for appropriate professional advice, which should always be taken.
- (e) When provided in conjunction with a product or service, and to the extent that the client is involved in its use or application, the client has the responsibility to read and understand the educational summary before such use or application. In this context an educational summary may be in the form of instructions.

## Product Returns

80. LIC is under no obligation to accept the return of any ordered and fully or partially unused item product. However on a case by case basis, LIC may in its absolute discretion and conditional upon whatever conditions it may wish to impose, accept the return of any fully unused item of product. The client acknowledges that the above discretion reserved by LIC:
- (a) does not constitute a waiver or other variation of any term or condition of these Conditions and Service Rules;
- (b) is not a representation or other contractual inducement that is capable of being relied upon by a client compelling LIC to accept the return of an item of product other than in its absolute discretion and conditional upon whatever conditions it may wish to impose.

## Software Licence

81. In respect of the provision by LIC of any computer software to the client pursuant to a product or service, LIC grants the client a non-exclusive, non-transferable licence to use that software for the duration of the product or service, but only for the purposes and in the manner expressly authorised by LIC, and on the terms and conditions of these service rules.
82. The client acknowledges and agrees:
- (a) The client has no proprietary right or interest in any software provided by LIC pursuant to a product or service;
- (b) Any software containing LIC logos or other means of identification shall remain the property of LIC;
- (c) The client shall not modify, alter, or make inoperable any feature in, or connect any unauthorised attachments to, the software provided to the client by LIC.
- (d) The client shall not copy, reproduce, translate, adapt, rent, lease, lend,

- resell for profit, or distribute the software and/or associated documentation.
- (e) The client shall not decompile, reverse engineer, disassemble or otherwise reduce the software to a human-perceivable form or remove or alter any copyright notices or trademarks contained in or upon the software and/or associated documentation.
  - (f) The client shall supervise and control the use of the software and associated documentation in accordance with the terms of these service rules. The client will ensure their employees, sub-contractors and other agents who have authorised access to the software and associated documentation are made aware of the terms of these service rules.
  - (g) That the software cannot be guaranteed error free and further acknowledges that the existence of any errors shall not constitute a breach on the part of LIC and LIC will not be liable for any indirect or consequential damages arising out of a breach of the licence contemplated by these provisions or arising out of the supply of defective software.
  - (h) That the software and associated documentation are the subject of copyright. The client shall not at any time permit any act which infringes that copyright.
  - (i) The client shall indemnify LIC fully against all liabilities, costs and expenses which LIC may incur to a third party as a result of the client's breach of these service rules in respect of the software and associated documentation.
  - (j) Upon termination or expiry of the licence contemplated by these provisions, the client or their representative shall destroy any remaining copies of the software and associated documentation or otherwise return or dispose of such material in the manner directed by LIC.

## Electronic Media

- 83. In the use of internet enabled and email transmissions, and websites operated by LIC (**Electronic Media**) the client will comply with, and as appropriate acknowledge, the protocols and rules listed in clause 85.
- 84. The client will be liable to LIC for all loss, liability or damage (physical, economic and consequential) caused to LIC by the client's non-compliance with the protocols and rules in clause 85.
- 85. The protocols and rules applying to Electronic Media are:
  - (a) All Electronic Media will be subject to these Conditions and Service Rules.
  - (b) LIC does not endorse, and accepts no responsibility for, comments or opinions expressed by others in Electronic Media.
  - (c) All Electronic Media must contain true and correct name and electronic address details.
  - (d) Conduct in breach of generally accepted standards for the relevant part of Electronic Media is prohibited.
  - (e) Language or material that is unlawful or in breach of these protocols and rules may be removed by LIC from any system under its control without notice.
  - (f) Clients are responsible for ensuring that material contained in Electronic Media does not breach the intellectual property rights (including but not limited to copyright) of any party.
  - (g) LIC reserves the right to monitor the content of Electronic Media and may refuse to accept or may remove material from any system under its control that in its sole discretion may be:
    - (i) offensive, defamatory, or abusive;
    - (ii) inaccurate, misleading, redundant or irrelevant to matters under current discussion;
    - (iii) an invasion of privacy, or breach of confidence;
 nothing in this clause creates an obligation upon LIC to monitor the content of any Electronic Media.
  - (h) LIC may amend or vary these protocols and rules from time to time. Changes may be notified by posting to the relevant website or by email notification (including attachment to an emailed document). The client's continued use following such notification constitutes acceptance of any amendment or variation to these protocols and rules.
  - (i) LIC websites may contain links to other websites operated by third parties. LIC has no responsibility for the content and functioning of linked websites.
  - (j) The client will not use Electronic Media for any purpose that is unlawful or in breach of these terms and conditions.
  - (k) The client is prohibited from using or attempting to use Electronic Media in such a way as to disable, damage, gain unauthorised access (by hacking, password mining or other means), or otherwise deliberately interfere with its proper functioning, or the use of it by third parties.
  - (l) Electronic Media must not be used for:
    - (i) mass dissemination of duplicative or unsolicited transmissions;
    - (ii) breach of the privacy or intellectual property rights of others;
    - (iii) the handling of tools capable of causing damage to Electronic Media including but not limited to viruses, time bombs, worms, trojan horses,

- cancelbots, corrupted files;
- (iv) false or misleading conduct;
- (v) unauthorised collection of information from LIC or any third party user of Electronic Media;
- (vi) restricting the lawful use and enjoyment of Electronic Media by LIC or any third party user.
- (m) LIC may terminate or indefinitely suspend the access of a client to Electronic Media (whether in whole or in part) at any time with or without notice.
- (n) LIC has no obligation to deal with or otherwise process or forward any information or material to a third party.
- (o) Electronic Media transmissions are not encrypted, and may be intercepted and seized by third parties. It is the responsibility of the client as to whether or not any particular item of content should be transmitted by Electronic Media. LIC makes no representation or warranty that the content of transmissions by Electronic Media are secure.
- (p) LIC may from time to time send both Commercial Electronic Messages and Promotional Electronic Messages to the client. The client consents to LIC sending Commercial Electronic Messages and Promotional Electronic Messages to the client and agrees that LIC is not required to include an unsubscribe facility in its Commercial Electronic Messages and Promotional Electronic Messages. The terms Commercial Electronic Message and Promotional Electronic Message have the meaning given to them in the Unsolicited Electronic Messages Bill or any subsequent Act passed by Parliament based on the Unsolicited Electronic Messages Bill.

### **Farm Automation**

86. The supply of all farm automation products and/or services by LIC is subject at all times to these conditions and service rules to the extent that such farm automation products and/or services are not subject to specific terms of trade. Where farm automation products and/or services are subject to specific terms of trade those terms of trade will apply subject to and within the context (and supremacy) of these conditions and service rules.

### **Miscellaneous**

87. All notices or other communications to be given by LIC under the provisions of these conditions and service rules will be given at the client's last known place of address (or such other New Zealand address as the client may have specified in writing). Notices will be deemed to have been duly given or made:
- (a) in the case of a communication by letter, where correctly addressed and stamped on the second working day after being posted by mail.
  - (b) if given by hand, on personal delivery to the client or to such address.
  - (c) in the case of a communication by facsimile or e-mail when transmitted with no indication of incomplete transmission to the client's last known facsimile number or e-mail address.
88. LIC will not be responsible to the client for any delay or failure in the supply of products and/or services or otherwise in the performance of any of the obligations imposed by the provisions of these conditions and service rules, provided that such failure will be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure of machinery or equipment or supply of materials, discontinuity in the supply of power, court order or governmental interference, civil commotion, riot, war, act of terrorism, strikes, labour disturbances, transportation difficulties, labour shortage, natural genetic variations of any living matter or by any cause of like or unlike nature beyond the reasonable control and without the fault or negligence of LIC.
89. (a) Should any part or provision of these conditions and service rules be held unenforceable or in conflict with any applicable laws or regulations, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to such extent as possible, the original business purpose of the part or provision in a valid and enforceable manner, and the remainder of the provisions of these conditions and service rules will remain binding on the client.
- (b) No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by LIC of that or any other right or remedy available to LIC.
  - (c) Termination of the supply of products and/or services or the provisions of these conditions and service rules for any reason will not affect the rights of LIC nor the obligations of the client as are intended to survive the termination.
  - (d) The client will execute and deliver all documents and do all such acts and things necessary for the proper and complete performance of the client's obligations under the provisions of these conditions and service rules.
  - (e) The client will not circumvent or attempt to circumvent the wording and intent of the provisions of these conditions and service rules.
90. LIC may vary or amend these service rules at any time, if it adheres to the following Rules Amendment Procedure:

- (a) LIC shall notify the client of an amendment to the service rules by one or more of the following ways:
- (i) send notice in writing of a change to the service rules to the client's last known postal address;
  - (ii) provide the client with a full copy of the amended service rules; or
  - (iii) publish the amended service rules in its Services Catalogue or any other publication; or
  - (iv) publish the amended service rules on its website.
- (b) Upon LIC giving the client notice under (a) above, the client will have 30 working days to review the change and determine whether it accepts such change, and wishes to continue receiving products and services from LIC under the proposed new rules.
- (c) If the client does not accept the change to the amended rules, it may cancel its agreement with LIC to purchase goods and/or services in accordance with the amended Rules by giving notice to LIC in writing, and may cancel any services already ordered and not yet received, without penalty.
- (d) If the client does not give notice to LIC of its rejection of the amended rules within 30 working days after notification by LIC, then the client will be deemed to have accepted the amended service rules.

*February 2007*

# Schedule 1

Agreement with Transferee of Offspring

## Parties

[Insert name of Transferee] (**Transferee**)

[Insert name of client] (**Transferor**)

## Agreement

1. The Transferee shall not, except with the prior written consent of Livestock Improvement Corporation Limited (**LIC**):
  - (a) advertise for sale or supply, or sell or otherwise supply, any semen or other form of germplasm (**Germplasm**) from [description of offspring], being the first-generation male offspring of a mating or matings using Germplasm supplied by LIC (**Offspring**); or
  - (b) provide access to or possession of or dispose of (**Grant**) the Offspring to any person (other than a director or an officer, employee or agent of the client acting in that capacity) (**Grantee**) in circumstances where the Offspring may be used for mating or the collection of Germplasm for sale or supply, without first entering into a written contract with the Grantee duplicating all of the terms of this agreement (including this clause 1(b), to the intent that LIC's interests will be protected however many times the Offspring may be Granted) and sending such contract to LIC at Private Bag 3016, Hamilton, New Zealand or fax (07) 8560615 within 14 days of entering into it.

This restraint is reasonably required to protect the value and viability of the LIC artificial breeding and genetics programme, which represents a substantial and long-term investment in capital, research and development, and sire proving, which is of strategic importance to the New Zealand dairy industry.
2. The benefits provided for in this agreement will inure to the benefit of LIC, and LIC may enforce such benefits under the Contracts (Privity) Act 1982.
3. This agreement is governed by and shall be construed in accordance with New Zealand law, exclusive of the Sale of Goods (United Nations) Convention Act 1994.
4. The parties to this agreement irrevocably submit to the exclusive jurisdiction of the courts of New Zealand to hear and determine all disputes arising under or in connection with this agreement.

Date

[To be duly signed by both parties]