



PROCESSING SERVICES AGREEMENT

THIS SERVICE AGREEMENT (“Agreement”), effective as of the date of the latest signature below, is by and between Vermont Packinghouse, a Vermont Limited Liability Company (“VPH”) and _____ (“Customer”).

WHEREAS VPH is engaged in the business of meat processing, including but not limited to slaughter, fabrication, further processing and packaging and wishes to provide services to Customer upon the terms and conditions set forth below, and

WHEREAS Customer is engaged in the business of selling meat or meat products and wishes to purchase services from VPH upon the terms and conditions below,

NOW, THEREFORE, in consideration of the mutual promises, intending to be legally bound, the parties do agree as follows:

1. Slaughter

- 1.1 Having taken all reasonable and practicable means to ensure the safety of livestock once delivered and prior to stunning, VPH assumes complete responsibility for livestock and its products only from the time of stunning until meat products leave VPH’s possession. However, VPH is not responsible or liable for any actions taken by USDA or other governmental authority, including, but not limited to, actions regarding ante- and post-mortem carcass inspection such as carcass or partial carcass condemnation.
- 1.2 VPH may provide a courtesy live weight. If provided, the live weight is not certified. Hanging weight is a certified weight and the basis of by-weight billing.
- 1.3 VPH assumes no liability or responsibility financially or otherwise for livestock harmed or dead prior to time of stunning. Customer is responsible for any costs or losses to VPH caused prior to stunning by livestock brought by Customer to a VPH facility, such as livestock arriving harmed or dead to a VPH facility or livestock harming self or other livestock while disembarking or while in barns, pens or chutes. These include, but are not limited to, cost of removal or disposal of affected livestock, operational costs due to delays, and employee wages. Customer is not responsible for damage caused by livestock to VPH’s facility and/or employees. Further, once animal is inside a VPH processing plant – as distinct from barns, pens or chutes leading to the plant – and prior to stunning, if the cause of an animal injured while inside the plant is undetermined or undeterminable, it will be decided in favor of Customer. In any event, if livestock is harmed due clearly to VPH’s negligence, VPH will be liable only to the extent of the fair market value, or equivalent, of the raw material.
- 1.4 Customer is responsible for any animal delivered with a zoonotic disease. If Customer delivers an infected animal that affects other animals not owned by Customer, Customer assumes liability for those animals affected. In such an event, Customer agrees to cover reasonable market price, or equivalent, of affected animals and all reasonable associated costs incurred by VPH for disruption of operations including, but not limited to, disposal of livestock, employee wages, facilities overhead costs, any legal fees and loss of packaging or other materials. The length of time of any disruption of operations is understood to mean the period from the identification of the zoonotic disease, to the restarting of normal processing activities. In the event of a disruption, VPH will use their best efforts to resume normal processing activities.
- 1.5 Customer is responsible for validating the accuracy of any animal raising claims, such as grass-fed, organic, etc., that will appear on final product labels. VPH requires either a 3rd party audit certification or a detailed raising protocol which supports any raising claims. Each lot of livestock received by VPH must be accompanied by an approved, signed affidavit recognizing compliance to the claimed raising protocol and any other regulatory requirements and listing the identification of each head of animal in that lot. VPH will not be liable for any damages

due to falsified documents from Customer or Customer's producers or other representatives relating to raising claims.

- 1.6 After livestock slaughter, VPH shall gain ownership of all offal and by-products. At the sole discretion of VPH, VPH may offer Customer a credit for offal on a per-animal basis. Heart, liver and tongue may be retained by Customer if requested by Customer when supplying carcass cutting instructions and VPH reserves the right to assess a fee for such.
- 1.7 When processing hogs or beef, VPH may charge additional fees based on the hanging weight for overweight or underweight animals. Hogs weighing over 300 lbs. and beef weighing over 1,000 lbs. will be assessed twice the slaughter charge. Hogs weighing under 150 lbs. and beef weighing under 400 lbs. will be billed the minimum of 150 lbs. and 400 lbs., respectively.

2. Processing and Packaging

- 2.1 VPH agrees to process and package meat product to Customer's specifications within limitations due to, but not limited to, standard equipment settings, standard packaging materials, timing of other order demands, Governmental Authority action or other unforeseeable events. In any event, VPH will provide best efforts to timely and completely fulfill Customer's order.
- 2.2 If Customer provides meat for processing, as opposed to livestock, Customer will provide meat that meets VPH's food safety and quality specifications according to the type of product to be produced. Food safety and quality specifications are maintained by VPH's Quality Assurance Department. If Customer delivers raw materials to VPH that are discovered to be of an unsuitable safety or quality, Customer is responsible for all processing expenses and meat costs. This may include, but is not limited to, processing costs, handling and disposal by VPH, and fair market value, or equivalent, of any other meat contaminated by the unsuitable meat.
- 2.3 If Customer provides meat for processing, as opposed to livestock, Customer will provide a Certificate of Analysis (COA) or Letter of Guarantee acknowledging their intervention and verification steps for the control of pathogenic *E. coli*, as required.
- 2.4 VPH and Customer are further bound by terms in Sections 4 through 7, regarding services in relation to processing, as they apply.

3. Further Processing and Packaging

- 3.1 For the production of fresh or cooked sausage and cured whole-muscle products, if Customer does not provide meat, VPH will ensure meat is appropriate for the type and quality of product ordered by Customer. VPH agrees to provide Customer with reasonable documentation as to the source and fitness of meat upon request.
- 3.2 Customer will be fully liable for any and all meat product brought to the VPH facility by Customer that will not be fully unwrapped and processed, such as the re-boxing of products that were vacuum packaged at a non-VPH facility. Further, Customer will be liable for any animal, meat, meat product, other raw ingredients or packaging at a VPH facility negatively affected by such product brought by Customer.
- 3.3 For any trim slaughtered at a non-VPH facility, delivered by or at Customer's request, for grind, further processing and/or packaging only, VPH will not assume responsibility for any positive *E. coli* results. Customer will be charged for packaging, removal from packaging and any further processing determined by Customer and VPH to be appropriate for mitigating loss. For any other positive testing results, VPH will assume responsibility for the product as defined in Section 6.1.
- 3.4 Recipes
 - 3.4.1 Recipes provided by Customer will remain under Customer's ownership.
 - 3.4.2 Recipes developed by VPH for which Customer has paid for the research and development and approved a final sample will be owned by Customer. The final recipe will be provided by VPH to Customer.
 - 3.4.3 Recipes developed by VPH for which Customer has not paid for the research and development will be owned by VPH. The recipe will not be provided to Customer.
 - 3.4.4 Regardless of ownership, all recipes are subject to Section 11 of this agreement.
- 3.5 VPH owns all processes involved with production unless otherwise agreed to in writing by both parties.
- 3.6 VPH and Customer are further bound by terms in Sections 4 through 7, regarding services in relation to further processing, as they apply.

4. Shipping and Receiving

- 4.1 Generally, shipping and receiving costs are figured into the processing fees. Depending on Customer's needs or specifications, VPH may alter the processing fee or add a fee to cover special handling requests outside of normal operating procedures.
- 4.2 Finished product must be picked up within the timeframe agreed. Delays in shipping finished product not caused by VPH may constitute storage and require a reasonable fee, including any applicable taxes, to be paid by Customer. Also, VPH may charge a penalty for work in progress, such as trim from animals slaughtered at VPH waiting for a further processing order, which has been delayed in processing by Customer for an extended time.
- 4.3 Once the product leaves the control of VPH, VPH is not responsible or liable for any actions that could compromise the safety or quality of the product, including but not limited to improper storage, handling or display.

5. Labeling and Packaging

- 5.1 Labels must be USDA approved and approval package must be in VPH's possession before labels can be accepted by VPH. Labels must be accepted on-site before production can be scheduled.
- 5.2 Customer will incur all expenses associated with the development and printing of all labels, including USDA label approval, and any special packaging, including case boxes. Further, Customer warrants labels will not infringe intellectual property rights of any third party.
- 5.3 VPH may charge additional fees if requested to assist with label development and/or approval, with reasonable notice of such charges.
- 5.4 VPH will provide space on site for reasonable packaging and label inventory, but reserves the right to charge for storage of excessive inventory, including any applicable taxes. Also, VPH may charge for management costs associated with labels and packaging, including, but not limited to: organization of customer-specific boxes, set up and maintenance of special printing, oversight of complex packaging requests, etc. VPH reserves the right to determine reasonable packaging inventory and requests and will make best efforts to provide prior notice of additional charges to Customer.
- 5.5 VPH reserves the right to dispose of Customer's labels and/or special packaging after six months from the last date of production of that product for Customer. VPH will make a good faith effort to offer return of such packaging, at Customer's expense, prior to disposal, only if the VPH USDA establishment number is not printed on the packaging.
- 5.6 Customer is liable for any legal action, recall or damages from such due to labeling errors including, but not limited to, misprinted labels, falsely printed labels, or unapproved labels, except to the extent that VPH misprinted labels or mislabeled product, unless such misprinting or mislabeling was directed by Customer. Customer is responsible for any operational costs incurred by VPH in correcting mislabeled product unless mislabeling was the fault of VPH.

6. Food Safety and Quality

- 6.1 VPH is not responsible or liable for any safety and quality defects in meat products other than those related to chemical, physical or biological hazards as controlled by Hazard Analysis and Critical Control Points (HACCP), or those related to cutting, trimming, grinding, stuffing, curing, cooking or packaging while meat is under the control of VPH. In such event, VPH is only liable to the extent of the fair market value of the raw materials.
- 6.2 VPH will not assume responsibility for any foreign objects originating in raw materials delivered by or at Customer's request. Foreign objects include, but are not limited to, bone, hair, plastic, metal and any other matter either inedible or not in final product ingredient list.
- 6.3 For raw materials with incoming approved label claims, including, but not limited to, livestock, meat or trim slaughtered at a non-VPH facility, spices or other ingredients, VPH is responsible for ensuring incoming product label claims support finished goods label claims. VPH is not responsible for costs or other damages associated with recalls, withdrawals, etc. due to misbranding, or other misinformation, associated with false or misleading claims made in the upstream supply chain, outside of VPH's control.
- 6.4 Release of Product:
 - 6.4.1 If Customer gains possession of product prior to return of microbiological testing results to VPH (a Rolling Release) or if instructed to hold product for any other reason by VPH, Customer agrees to hold product

until notified by VPH of a passing test or further instruction. If Customer breaches this term, VPH will be released from liability for any and all damages related to the release and Customer will be responsible for all costs, losses and damages incurred by VPH including, but not limited to, costs associated with any legal actions, loss of business and any associated fees or fines.

6.4.2 VPH is not responsible or liable for the use, distribution, sale or any other disbursement, legal or otherwise, of samples provided by VPH to Customer. However, VPH will be liable for harm caused by a defect directly associated with a failure in VPH's food safety program while producing requested samples only to the extent that disbursement of sample by Customer was legal.

6.5 VPH tests each combo of meat intended for grind produced from carcasses slaughtered at a VPH facility for pathogen. Certificates of Analysis are available upon reasonable request. If further testing is required by Customer or by law, VPH may charge accordingly.

7. **Miscellaneous Processing Terms**

7.1 If either party changes or has reason to change the product recipe, formulation, labels, etc. in any way, the other party will be informed and both parties will come to an agreement in writing. No changes will be implemented that may pose a threat to food safety or may create an unreasonable burden on either party.

7.2 VPH reserves the right to assess fees for product, packaging and label development. Any development fees assessed will be discussed and agreed to by Customer prior to service.

7.3 Business development and/or consulting services are not covered under this agreement and shall be negotiated separately, if desired.

8. **Indemnities:** Each Party shall defend, indemnify and hold harmless the other Party from and against all claims of third parties, and all associated losses, to the extent arising out of (a) a Party's gross negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a breach by a Party of any of its representations, warranties, covenants or agreements under this Agreement. The obligations under this paragraph shall survive the expiration or termination of this Agreement.

9. **Insurance:** Depending on the nature of the service, Customer may be required to provide proof of liability insurance, either by supplying a certificate or a copy of their policy, and will notify VPH in writing of any changes in liability insurance coverage within 10 business days of change effective date. VPH will also provide proof of liability insurance upon reasonable request.

10. **Force majeure**

10.1 If a Force Majeure Event occurs, the party that is prevented by that Event from performing any one or more obligations under this agreement (the "Nonperforming Party") will be excused from performing those obligations, on condition that it complies with its obligations under section 10.3.

10.2 For purposes of this Agreement, "Force Majeure Event" means any event or circumstance that was not caused by that party and that prevents a party from complying with any of its obligations under this Agreement (other than an obligation to pay money), on condition that that party uses reasonable efforts to do so.

10.3 Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of such occurrence, its effect on performance, and how long that party expects it to last. Thereafter the Nonperforming Party shall update that information as reasonably necessary. During a Force majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the Performing Party and to resume its performance under this Agreement.

11. **Confidentiality:** During the course of their business relationship, each party may disclose to the other party information which the disclosing party considers proprietary and confidential, including but not limited to the terms of this Agreement, manufacturing or processing methods, recipes, business and technology plans, distribution strategies, sales, costs, pricing, marketing, customers, suppliers and research and development (collectively "Confidential Information"). The parties agree that all Confidential Information shall be used by the receiving party

solely for the purposes contemplated by this Agreement and shall be kept strictly confidential, unless prior written consent is provided or if required to comply with applicable laws, regulations, orders, or other legal processes. If a separate Nondisclosure Agreement or other confidentiality agreement exists between the parties in relation to this relationship, that agreement will be considered incorporated into this Service Agreement, subject to the governing law of this Agreement.

12. Termination

- 12.1 *Due to Breach:* Without prejudice, each party shall have the right to terminate this Agreement upon written notice to the other party if such other party materially breaches any of its representations, warranties, covenants or obligations set forth in this Agreement, and such failure has not been cured within 10 days of receiving written notice from the non-defaulting party reasonably describing such breach.
- 12.2 *Due to Insolvency:* Either Party may terminate this Agreement by written notice to the other with immediate effect if the other Party becomes insolvent, is compelled to file bankruptcy or is determined otherwise imminently subject to control by a bankruptcy trustee or its equivalent pursuant to the laws of the jurisdiction in which such Party is doing business.
- 12.3 *By Mutual Written Consent:* Without prejudice, the parties may terminate this Agreement at any time for any reason by mutual written consent.

13. **Independent Contractors:** Each party acknowledges and agrees that (a) it is an independent contractor and not an employee, agent or representative of the other party, and (b) it is not authorized to assume or create any obligation or responsibility on behalf of the other party, including but not limited to obligations based on representations, warranties or guarantees. Neither party, nor any of its employees, agents or representatives, shall misrepresent such status or authority.

14. **Assignment:** This Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other party; provided, however, that such consent shall not be unreasonably withheld. This Agreement shall be binding on and inure to the benefit of the parties, their successors, legal representatives and permitted assigns.

15. **LIMITATION OF LIABILITY:** EXCEPT AS PROVIDED IN THIS AGREEMENT AND UNDER ANY APPLICABLE LAW, NEITHER PARTY SHALL HAVE ANY LIABILITY UNDER THIS AGREEMENT FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA, LOSS OF USE, LOST REVENUES, DAMAGE TO GOODWILL OR REPUTATION, LOSS OF BUSINESS OPPORTUNITY, OR OTHER SPECULATIVE DAMAGES, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

16. MISCELLANEOUS

- 16.1 **Governing Law and Venue:** This Agreement will be governed by and construed in accordance with the laws of the State of Vermont. VPH and Customer submit to the jurisdiction and venue of the state or federal courts in the State of Vermont for any legal action arising from or connected with this Agreement.
- 16.2 **Complete and Continuing Agreement:** Customer and VPH agree this Agreement is complete, continuing and controlling as long as service is requested and until obligations are performed by the parties. This Agreement supersedes any other agreement previously entered between the parties.
- 16.3 **No Waiver/Remedies Cumulative:** The failure to require performance of any provision shall not affect a party's right to require performance at any time thereafter; nor shall waiver of a breach of any provision constitute a waiver of the provision itself. Unless otherwise provided in this Agreement, all remedies will be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.
- 16.4 **Amendments:** This Agreement may not be amended, supplemented or modified in any respect without further written agreement of both parties referencing this Agreement, signed by their respective authorized representatives. If any operating standards, procedures or manuals or any other documents of either party (or if form language in either party's forms such as purchase orders, bills of lading, etc.), regardless of whether signed by a representative of the other party, contain any provisions that purport to impose obligations on the other party not imposed by this Agreement, such provisions shall be null and void and have no force or effect.
- 16.5 **Severability:** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms or provisions shall nevertheless remain in full force and effect so long as the

economic or legal substance of the transactions contemplated are not affected in a manner materially adverse to either party. Upon such determination, the parties shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible.

- 16.6 **Counterparts/Sign:** This Agreement may be executed in one or more counterparts for the convenience of the parties. A signature transmitted electronically (facsimile or other means) shall have the same force and effect as an original signature.
- 16.7 **Compliance with Laws:** Each party shall comply with all federal, state and local laws, rules and regulations that apply to its performance under this Agreement, including without limitation, possessing and maintaining all necessary permits and licenses.
- 16.8 **Attorney's Fees:** In the event of any controversy, claim or dispute between the parties arising out of or related to this Agreement, including performance or nonperformance, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' and experts' fees and expenses and other costs reasonably incurred by the prevailing party.
- 16.9 **No Release/Survival:** Termination of this Agreement for any reason shall not relieve either party of any obligation accruing or arising prior to such termination.
- 16.10 **Notice:** Any notice required by law or otherwise will be sent to the address of the parties as listed in the signature lines.
- 16.11 **WAIVER OF JURY TRIAL: EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR EITHER PARTY'S PERFORMANCE UNDER THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED ADVICE OF COMPETENT COUNSEL WITH RESPECT TO THIS WAIVER.**

IN WITNESS TO THEIR AGREEMENT to the terms herein, including any exhibits or attachments, VPH and Customer sign and date below, making this agreement effective as of the latest date signed.

VPH
25 Fairbanks Rd.
North Springfield, VT

Customer: _____
Address: _____

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date



EXHIBITS

Additional exhibits may be added and incorporated as developed or as needed.