

DEED OF STANDING OFFER

BETWEEN

FOOD STANDARDS AUSTRALIA NEW ZEALAND

AND

^SERVICE PROVIDER'S NAME AND ACN/ABN^

in relation to

**THE PROVISION OF FOOD ANALYSIS SERVICES THROUGH A FOOD
STANDARDS AUSTRALIA NEW ZEALAND LABORATORY PANEL**

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PARTIES

FOOD STANDARDS AUSTRALIA NEW ZEALAND ABN 20 537 066 246, a statutory authority established under section 12 of the *Food Standards Australia New Zealand Act 1991* (Cth) (**the Authority**)

AND

^INSERT SERVICE PROVIDER'S NAME^ ABN ^Insert Service Provider's ABN and ACN/ARBN if applicable^ ^Insert Service Provider's street address^ (the Service Provider)

PURPOSE

- A. The Authority has established a panel of suppliers to provide specialist food analysis services (**Panel**). The Service Provider is one of the suppliers on the Panel and has agreed to make a standing offer to the Authority for the provision of the Services upon the terms and conditions of this Deed.
- B. The Authority may require the provision of Services by the Service Provider.
- C. The Service Provider offers to provide the Services specified in that Work Order on the terms and conditions set out in this Deed and that Work Order.
- D. The Service Provider acknowledges that there is no guarantee that the Authority will place any Work Order for the Services.
- E. The Service Provider is aware that, while the Authority is responsible for the establishment and ongoing administration of the Panel, another Agency may engage the Service Provider to supply the Services on the terms and conditions of this Deed.

OPERATIVE PART

The parties to this Deed agree as follows:

1. Interpretation

1.1. Definitions

1.1.1. In this Deed, unless the contrary intention appears:

Agency	means: a. any Commonwealth entity subject to the provisions of the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth) (excluding the Authority); b. all entities and bodies governed by a State Governor or by a Minister of a State or Territory or over which a State or Territory exercises control (including departments in State or Territory Governments); or c. local government bodies.
Auditor-General	means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may, from time to time, perform the functions of that office.
Authority	means Food Standards Australia New Zealand (FSANZ) established under section 12 of the FSANZ Act but does not include any Minister or Parliamentary Secretary responsible for the health or agriculture portfolio.
Authority Material	means any Material: a. provided by the Authority to the Service Provider for the purposes of this Deed and specified in a Work Order; or b. derived at any time from the Material referred to in paragraph a.
Business Day	means a weekday other than a public holiday in the Australian Capital Territory.
Commencement Date	means the date on which this Deed is signed by the last party to do so.
Confidential Information (of	means information that is by its nature confidential and is described in the Work Order.

the Service Provider)	
Contract Material	means any Material: <ul style="list-style-type: none"> a. created for the purposes of this Deed; b. provided or specified in a Work Order as being required to be provided to the Authority as part of the Services; or c. derived at any time from the Material referred to in paragraphs a. or b.
Copies	has the meaning given in clause 5.3.
Deed	means this Deed, the schedules to this Deed and any attachments.
Deed Period	means the initial term plus any option period exercised by the Authority.
Existing Material	means any Material: <ul style="list-style-type: none"> a. in existence at the Work Order Commencement Date or subsequently brought into existence other than as a result of the performance of this Deed or any Work Order; b. is embodied in, provided with or attached to the Services or is otherwise necessarily related to the functioning or operation of the Services; or c. owned by a party other than the Authority, the Service Provider or a subcontractor and is embodied in, supplied with, or attached to, the Services or otherwise necessarily related to the functioning or operation of the Services, <p>but excludes Authority Material and Contract Material.</p>
Fixed Price Fee	means a fee that that is unalterable for the period of any Work Order.
FSANZ Act	means the <i>Food Standards Australia New Zealand Act 1991</i> (Cth).
Information Commissioner	means either or all of (as the context permits): <ul style="list-style-type: none"> a. Information Commissioner; b. Freedom of Information Commissioner; or

	<p>c. Privacy Commissioner, as defined in the <i>Australian Information Commissioner Act 2010</i> (Cth).</p>
Intellectual Property	<p>includes:</p> <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, <p>but does not include:</p> <ul style="list-style-type: none"> d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to Confidential Information.
Loss	<p>means any loss, damage, liability, compensation, fine, penalty, charge, cost or expense, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.</p>
Material	<p>includes information and the subject matter of any category of Intellectual Property rights.</p>
Moral Rights	<p>means the following non-proprietary rights of authors of copyright Material:</p> <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed.
Notice of Inclusion	<p>means the notice set out in Schedule 4.</p>
Official Information	<p>means any information developed, received or collected by or on behalf of the Authority to which the Service Provider gains access under or in connection with this Deed, and includes the Contract Material, Authority Material and the terms of any Work Order.</p>

Official Resources	includes: <ul style="list-style-type: none"> a. Official Information; b. people who work for or with the Authority; and c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Authority.
Ombudsman	means the independent statutory officer established under the <i>Ombudsman Act 1976</i> (Cth).
Open Access Licence	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material, subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences).
Panel	has the meaning given in Recital A.
Personal Information	has the meaning given in the <i>Privacy Act 1988</i> (Cth).
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Service Provider - any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors. To avoid doubt, Personnel includes Specified Personnel; and b. in relation to the Authority - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Authority.
Project Manager	means the person specified by name or position in Schedule 2, or any substitute notified in writing to the Service Provider.
Security Classified Resources	means Official Resources that, if compromised, could have adverse consequences for the Authority.

Security Incident	<p>means:</p> <ul style="list-style-type: none"> a. any actual or suspected breach of security (whether relating to information, personnel, data, logical, physical or system security or otherwise); b. any contact, request or approach from any person seeking unauthorised access to Official Resources; or c. any circumstance that highlights any actual or potential security vulnerability or which identifies a potential threat to security.
Service Provider	includes officers, employees, volunteers, bailees, agents and subcontractors of the Service Provider.
Service Site	means the laboratories, and any other facilities or sites, used by the Service Provider or subcontractor to perform the Services.
Services	means the services described in Schedule 1 and particularised in a Work Order and includes any incidental services or functions required for the proper performance of the Services.
Similar Services	means services which are similar in nature and provided in a substantially similar manner to the Services provided under this Deed, having regard to the scale, scope, volume and risk profile of services provided to such other persons (whether a Commonwealth, State, Territory, or local government body, or private customer).
Specified Personnel	means the personnel specified in a Work Order as personnel required to perform all or part of the work constituting the Services.
WHS Law	<p>means:</p> <ul style="list-style-type: none"> a. the <i>Work Health and Safety Act 2011</i> (Cth) and any regulations made under that Act; b. any 'corresponding WHS law' within the meaning of section 4 of the <i>Work Health and Safety Act 2011</i> (Cth) and Regulation 6A of the <i>Work Health and Safety Regulations 2011</i> (Cth); and c. any law, regulation, code of practice, binding standard or regulatory requirement that imposes duties comparable to those imposed under the laws specified in paragraphs a and b above, including laws relating to the health,

	safety and welfare of workers or other persons at work, hazard identification, risk management, and safety systems.
Work Order	means an order placed by the Authority requiring the Service Provider provide some or all of the Services in accordance with this Deed.

1.2. Interpretation

1.2.1. In this Deed, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a natural person, association, governmental or local authority or agency, other entity, a partnership or a body whether corporate or otherwise;
- e. all references to 'dollars', 'AUD' or '\$' are to Australian dollars;
- f. a reference to writing is a reference to any representation of words, figures or symbols whether or not in visible form;
- g. a reference to any legislation or legislative provision includes any statutory modification substitution or re-enactment of such legislation or legislative provision;
- h. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- i. reference to an item is to an item in a schedule;
- j. the schedules and any attachments form part of this Deed;
- k. reference to a schedule (or an attachment) is a reference to a schedule (or an attachment) to this Deed, including as amended or replaced from time to time by agreement in writing between the parties;
- l. a reference to writing means any representation of words, figures or symbols, whether or not in a visible form; and
- m. "includes" means "includes without limitation".

1.3. Guidance on construction of Deed and Work Orders

- 1.3.1. This Deed and each Work Order records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. No variation of this Deed or any Work Order is binding unless it is agreed in writing between the parties.
- 1.3.3. The Authority will not be liable for any additional work undertaken or any expenditure incurred by the Service Provider pursuant to a variation to this Deed or any Work Order unless such a variation has been approved by the Authority in accordance with clause 1.3.2.
- 1.3.4. As far as possible all provisions of this Deed and each Work Order will be construed so as not to be void or otherwise unenforceable.
- 1.3.5. Any reading down or severance of a particular provision does not affect the other provisions of this Deed or a Work Order.
- 1.3.6. A provision of this Deed or a Work Order will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.
- 1.3.7. The Service Provider cannot assign its obligations, and must not to assign its rights, under this Deed or any Work Order without, in either case, prior approval in writing from the Authority.
- 1.3.8. If there is any inconsistency between the terms of this Deed, a descending order of precedence will be accorded to:
- a. the terms and conditions specified in this Deed;
 - b. the schedules to this Deed in their order of appearance;
 - c. any attachments to the schedules in their order of appearance; and
 - d. documents incorporated by reference in this Deed,
- so that the term in the higher ranked document will, to the extent of the inconsistency, prevail.

1.4. Commencement and term

- 1.4.1. The terms of this Deed apply on and from the Commencement Date and will be in force for an initial term specified in Item 1 of Schedule 2.
- 1.4.2. The Authority may, at its sole discretion extend this Deed for a further period specified in Item 1 of Schedule 2 by providing no less than 30 days' notice to the Service Provider before the end of the initial term. Any extension will be on the same terms and conditions, and cover the same Services, as set out in this Deed.

2. Formation of contract

2.1. Offer to provide Services

- 2.1.1. The Service Provider irrevocably offers to provide Services as and when directed by the Authority by the issue to the Service Provider of a Work Order pursuant to this Deed.
- 2.1.2. The Service Provider's standing offer in clause 2.1.1 will remain open for acceptance by the Authority for the term of this Deed and in accordance with this Deed.

2.2. Quotations and placing Work Orders

- 2.2.1. The Authority may, at its absolute discretion and on a case by case basis, invite quotations for particular Services from one or more Service Providers.
- 2.2.2. Quotations received will be evaluated based on the Service Provider's ability to meet the requirements of the particular Services and the costs to determine which quotation provides the Authority with best value for money.
- 2.2.3. Before placing a Work Order, the Authority may discuss with the Service Provider the following details to be specified in the Work Order:
- a. the nature of the Services to be performed and any Contract Material to be provided;
 - b. the timeframe within which the Services will be performed;
 - c. Specified Personnel;
 - d. the manner in which the Services are to be performed; and
 - e. the fees to be paid for the performance of the Services, including all expenses of the Service Provider agreed by the Authority to be payable for the provision of the Services.
- 2.2.4. When the details specified in clause 2.2.3 have been agreed, the Authority will complete and send a Work Order to the Service Provider and the Service Provider will provide the Services. Each Work Order will be endorsed to the following effect:
- This Work Order is placed in accordance with, and pursuant to the terms and conditions of the Deed between the Authority and **^Insert Service Provider^ ^Date of Deed^**.
- 2.2.5. Quotations must remain open for acceptance by the Authority for a minimum of 30 days, or for such time as specified by the Authority in its request for quotation.

2.3. Work Orders

- 2.3.1. Work Orders agreed between the parties must be substantially in the format set out in Schedule 3 or as otherwise advised by the Authority from time to time. The parties will agree in the Work Order the precise Services to be performed and the other matters listed in Schedule 3.
- 2.3.2. A separate contract will be formed between the Service Provider and the Authority when the Authority issues a Work Order to the Service Provider and the Work Order is signed by both parties.
- 2.3.3. The parties agree that the terms and conditions of each contract created by the placement of a Work Order will be those set out in this Deed and any additional terms and conditions specified in the Work Order.
- 2.3.4. The parties must not add to or amend the terms of this Deed in a Work Order with terms that:
- a. are inconsistent with or in conflict with the terms of the Deed;
 - b. seek to reduce the legal obligations of a Service Provider;
 - c. impose additional obligations on the Authority; or
 - d. limit the rights or remedies of the Authority,
- unless:
- e. the Authority has agreed to the amendment; and
 - f. the amendment is expressly permitted under the Deed.
- 2.3.5. If a term of this Deed is amended in accordance with clause 2.3.4, this Deed is deemed to be amended solely for that Work Order only, without the need to separately amend this Head Agreement. Any other Work Orders are unaffected.
- 2.3.6. Unless otherwise expressly agreed in the Work Order, the terms of each Work Order will be those set out in the following documents in a descending order of precedence:
- a. the terms and conditions of this Deed as applicable to the relevant Work Order;
 - b. the schedules to this Deed in their order of appearance;
 - c. any attachments to the schedules in their order of appearance;
 - d. the Work Order;
 - e. the schedules or attachments to the Work Order in their order of appearance; and

- f. any documents incorporated by express reference as part of the relevant Work Order,

so that the term in the higher ranked document will prevail to the extent of any inconsistency between the terms of these documents arises.

2.3.7. The expiry of this Deed will not affect any Work Order that is on foot at the time this Deed expires. The Service Provider must provide all Services under a Work Order on the conditions entered into during the Deed Period, regardless of whether completion of the Services may occur after the date on which this Deed expires.

2.3.8. The term of any Work Order may extend beyond the term of this Deed (provided that the terms of this Deed will continue to apply to that Work Order).

2.4. Provision of Services

2.4.1. The Service Provider must:

- a. perform the Services in accordance with relevant best practice, including any Commonwealth, Australian, New Zealand, international and industry standards and guidelines specified in Schedule 1 and in Item 2 of each Work Order;
- b. perform the Services in a manner specified in Schedule 1 and in accordance with each Work Order;
- c. comply with the time frame for the performance of the Services specified in each Work Order;
- d. submit invoices, and any required supporting documents, in the manner specified in Item 2 of Schedule 2;
- e. liaise with the Project Manager, provide any information the Project Manager may reasonably require and comply with any reasonable request made by the Project Manager; and
- f. obtain all approvals and licenses necessary to perform the Services specified in each Work Order.

2.5. Additional suppliers

2.5.1. The Service Provider acknowledges that it is one of a number of suppliers on the Panel which may be requested by the Authority to provide Services.

2.5.2. The Authority:

- a. is not obliged place a Work Order with the Service Provider and is not committed to request any specific volume of Services from the Service Provider;
- b. may add additional suppliers to the Panel from time to time;

- c. may, but is not obliged to, seek competitive quotes from the Service Provider and/or one or more other suppliers on the Panel; and
- d. may at any time purchase or acquire services the same or similar to the Services in any other way, from any other person on such terms and conditions as may be agreed between the Authority and that other person.

2.5.3. If the Authority seeks competitive quotes in the circumstance envisaged by clause 2.5.2.c, the Authority may:

- a. seek quotes on a Fixed Price Fee or other basis; or
- b. give suppliers (including the Service Provider) the opportunity to quote on the basis of the Personnel rates agreed between the Authority and the Service Provider.

2.6. Additional Agencies

2.6.1. Without limiting clause 2.6.6, except to the extent specifically specified to the contrary by the Authority, information relating to this Deed or any related matter may be made available by the Authority to additional Agencies.

2.6.2. Where an Agency wishes to acquire any part of the Services, it will first:

- a. liaise with the Authority; then
- b. issue a Notice of Inclusion to the Service Provider,

and accordingly, the Service Provider must:

- c. not provide this Deed to any Agency without the prior written authorisation of the Authority; and
- d. notify the Authority of any request made to the Service Provider by an Agency for the supply of Services under this Deed.

2.6.3. Subject to clause 2.6.5, upon the Service Provider's receipt of a Notice of Inclusion, a separate deed of standing offer will be created between the Service Provider and the relevant Agency (**Agency Deed of Standing Offer**) which will be on terms identical to the terms of this Deed, with the exception that:

- a. references to 'Food Standards Australia New Zealand' as the contracting party and the 'Authority' will be references to the relevant Agency as detailed in the Notice of Inclusion;
- b. Recital E will not apply;
- c. this clause 2.6 and the definitions of 'Additional Agency' and 'Notice of Inclusion' in this Deed will not apply; and
- d. the amendments set out in Attachment A of the Notice of Inclusion will apply to the Agency Deed of Standing Offer.

- 2.6.4. For the avoidance of doubt:
- a. any Work Order issued by the Authority pursuant to this Deed will not form part of the Agency Deed of Standing Offer (or any Work Order formed pursuant to that deed); and
 - b. any other request for proposal and quotation, or any Work Order or other action taken by the relevant Agency will be pursuant to the Agency Deed of Standing Offer and not this Deed.
- 2.6.5. The parties acknowledge and agree that if, in the Inclusion of Notice Form, an Agency:
- a. has only specified that Items 2, 4 and 5 of Schedule 2 are amended in the Original Deed of Standing Offer, then a separate deed of standing offer between the Service Provider and the Agency will automatically be created and entered into by the Service Provider and Agency upon receipt of a Notice of Inclusion; and
 - b. has specified that items or clauses in addition to Items 2, 4 and 5 of Schedule 2 are amended in the Original Deed of Standing Offer, then the Agency and the Service Provider must agree in writing to include those additional provisions in the separate deed of standing offer, before a separate deed of standing offer is created and entered into between the Agency and the Service Provider.
- 2.6.6. Nothing in this Deed obliges the Authority to:
- a. provide, disclose or otherwise make available this Deed (or any part of it) to any Agency; or
 - b. permit any Agency to acquire Services or enter into an Agency Deed of Standing Offer.
- 2.6.7. The Authority may, in its absolute discretion, limit, or refuse the dissemination of this Deed to any Agency or impose conditions as it sees fit in relation to any Agency issuing a Notice of Inclusion or entering into an Agency Deed of Standing Offer.

3. Fees, allowances and costs

3.1. Fees and allowances

- 3.1.1. The Authority agrees to:
- a. pay the fees specified in the Work Order;
 - b. make all payments as and when specified in the Work Order; and
 - c. provide the facilities and assistance specified in the Work Order.

3.1.2. If a Work Order placed under this Deed is on a Fixed Price Fee basis, only the price or prices shown on the Work Order will be payable to the Service Provider. The Work Order may be amended only if the work to be performed is varied by the Authority.

3.1.3. Unless otherwise specified in Item 5 of a Work Order, the Service Provider must not charge the Authority for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the fees specified in the Work Order. The Authority is under no obligation to pay any amount in excess of the fees specified in the Work Order.

3.2. Authority's right to defer payment

3.2.1. The Authority will be entitled, in addition to any other right it may have, to delay payment or any instalment of fees or allowances specified in a Work Order until the Service Provider:

- a. has completed, to the satisfaction of the Authority, that part of the Services to which the payment relates or any instalment; and
- b. has provided a correctly rendered invoice in accordance with clause 3.2.2.

3.2.2. The Service Provider agrees to submit invoices for payment:

- a. in the manner specified in Item 2 of Schedule 2; and
- b. that satisfy the requirements for a tax invoice under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

3.3. Taxes, duties and government charges

3.3.1. Unless expressly stated otherwise:

- a. the Service Provider must pay all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed or any Work Order; and
- b. all amounts payable, consideration provided or monetary limits in this Deed or any Work Order are inclusive of any taxes, duties or other government charges.

3.4. GST

3.4.1. In this clause 3.4:

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). A word or expression defined in the GST Law has the meaning given to it in the GST Law.

- 3.4.2. If a party (**Provider**) makes a supply under or in connection with this Deed or any Work Order in respect of which GST is payable, the recipient of the supply (**Supply Recipient**) must pay to the Provider an additional amount equal to the GST payable on the supply (**GST Amount**).
- 3.4.3. If a party must reimburse or indemnify another party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss and then increased in accordance with clause 3.4.2.
- 3.4.4. If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- 3.4.5. If the GST payable by a Provider on any supply made under or in connection with this Deed or any Contract varies from the GST Amount paid or payable by the Supply Recipient under clause 3.4.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Provider will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Supply Recipient.
- 3.4.6. Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 3.4.2.
- 3.4.7. If an adjustment event occurs in relation to a supply, the Provider must issue an adjustment note to the Supply Recipient in relation to that supply within 10 Business Days after becoming aware of the adjustment.
- 3.4.8. A party need not make a payment for a taxable supply made under or in connection with this Deed or any Work Order:
- a. until it receives a tax invoice for the supply to which the payment relates; and
 - b. in the case of any tax invoice issued by the Provider, unless the tax invoice complies with clause 3.2.2.

3.5. Superannuation

- 3.5.1. This Deed is entered into on the understanding that the Authority is not required to, and the Service Provider is responsible to, make any superannuation contributions in connection with any Work Order, unless stated to the contrary in a Work Order.

3.6. Interest

- 3.6.1. This clause 3.6 only applies where:
- a. an amount payable under a Work Order does not exceed a maximum of \$1 million (GST inclusive); and

b. the amount of the interest payable exceeds \$100.00.

3.6.2. For the purpose of this clause 3.6:

General Interest Charge Rate means the interest charge determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day that payment is due. Details of the General Interest Charge rate are available from the Australian Taxation Office website; and

the day that payment is made is the day that the Authority's system generates a payment request into the banking system for payment to the Service Provider.

3.6.3. The Authority will pay the Service Provider within 20 days after acknowledgement of the satisfactory delivery of the Services and receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.

3.6.4. For payments made by the Authority after the payment is due, the Authority will pay simple interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day after the due date up to and including the day that payment is made in accordance with the formula set out below:

$$SI = UA \times GIC \times D$$

where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

3.7. **Right of the Authority to recover money**

3.7.1. Without limiting the Authority's other rights or remedies under this Deed or any Work Order, if:

- a. the Authority elects in accordance with this Deed or any Work Order to recover an amount from the Service Provider;
- b. the Service Provider otherwise owes any debt to the Authority in relation to this Deed or any Work Order; or
- c. at any time, an overpayment occurs for any reason (including where an invoice is found to have been incorrectly rendered after payment) in relation to this Deed or any Work Order,

the Authority may do one or both of the following:

- d. deduct the amount from any amounts payable by the Authority to the Service Provider under this Deed or any Work Order; or
- e. give the Service Provider a notice of the existence of a debt recoverable which must be paid by the Service Provider within 30 days after receipt of the notice.

3.7.2. If any sum of money owed to the Authority is not received by its due date for payment, the Service Provider must pay to the Authority interest at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Service Provider makes the required payment.

3.8. Competitive pricing

3.8.1. The Service Provider must ensure that the Fees are no higher than the prices it charges to any other person (including to any Agency or private customer) for the provision of Similar Services in Australia.

3.8.2. At the Authority's request, the Service Provider must, within 30 days of such request:

- a. provide written certification in the form of a statutory declaration by a director of the Service Provider, in the form required by the Authority from time to time that it has undertaken all measures necessary to comply with clause 3.8.1; and
- b. provide the information reasonably requested by the Authority to verify that compliance.

3.8.3. The Service Provider acknowledges that the spirit and intent of this clause 3.8 is to afford to the Authority 'best customer' status, and ensure the Authority receives value for money for the Services. Accordingly, the Service Provider must ensure that the spirit and intent of these clauses are implemented and therefore it must ensure that the economic effect of the spirit and intent of this clause is realised by the Authority.

3.8.4. The Service Provider must actively seek to reduce costs for the Authority throughout the Deed Period and the term of any Work Order, including by seeking reductions in the prices it obtains from its subcontractors.

4. Responsibilities of Service Provider and Personnel

4.1. Responsibility of Service Provider

4.1.1. The Service Provider must be fully responsible for the performance of the Services specified in any Work Order and for ensuring compliance with the requirements of this Deed and any Work Order, and will not be relieved of that responsibility because of any:

- a. involvement by the Authority in the performance of the Services;
- b. payment made to the Service Provider on account of the Services;
- c. subcontracting of the Services; or
- d. acceptance by the Authority of Specified Personnel.

4.2. Personnel

4.2.1. The Service Provider must ensure that all Personnel involved in performing the Services:

- a. have the requisite skills, qualifications, and experience necessary to provide the Services:
 - i. in a skilful, diligent, responsive, professional, efficient and controlled manner, and to a high degree of quality; and
 - ii. to a standard that complies with this Deed and any relevant Work Order;
- b. behave with integrity and in an ethical manner;
- c. comply with any directions given by the Authority in accordance with clause 12.4; and
- d. when on the Authority's premises or when accessing the Authority's systems, facilities and information, comply as necessary with the reasonable requirements and directions of the Authority with regard to conduct, behaviour, safety and security (including submitting to any security checks as required by the Authority and complying with any obligation imposed on the Authority by law).

4.2.2. The Service Provider must:

- a. utilise such Personnel as are necessary to meet its obligations under this Deed or any relevant Work Order;
- b. actively manage the availability and performance of Personnel at all times so as to meet its obligations under this Deed or any relevant Work Order;
- c. provide suitable replacement Personnel if any Personnel are unavailable or requested to be removed by the Authority at any time;
- d. ensure Personnel do not do anything which would:
 - i. breach the Service Provider's obligations under this Deed or the relevant Work Order; or
 - ii. breach the law, if done by the Service Provider or the Authority (including by Authority Personnel);

- e. report any unauthorised access to, or disclosure of, Authority Material by Personnel or any third parties;
- f. perform ongoing checks of the Personnel during the period of their employment or engagement to ensure their ongoing suitability to provide the Services;
- g. notify the Authority of any incident in relation to any Personnel that may affect or has affected the Services to enable the Authority to assess and manage any associated impact; and
- h. provide, or procure the provision of, such information as can be lawfully provided and which is reasonably requested by the Authority concerning any Personnel it is using or proposes to use in performing its obligations under this Deed or any Work Order.

4.2.3. The Service Provider is responsible for all wages, salaries and other payments to Personnel and must fully comply with all relevant laws and other legal requirements in relation to Personnel. Upon request, the Service Provider must demonstrate to the Authority that it has complied with these obligations.

4.3. Replacement of Personnel

4.3.1. The Authority may, at any time and in its discretion, by written notice to the Service Provider require the removal of any Personnel from the performance of a Work Order or this Deed. The Service Provider must promptly arrange for the removal of such Personnel and for a suitable replacement acceptable to the Authority at the earliest opportunity.

4.3.2. If the Service Provider replaces any Personnel under this clause 4.3, it must do so at its own cost.

4.3.3. If the Authority gives the Service Provider a notice under clause 4.3.1, the Service Provider must, at its own cost and within the time specified in the notice:

- a. remove the relevant Personnel from work in respect of the Services; and
- b. nominate, at the earliest opportunity, a suitable replacement for the Authority's consideration (unless otherwise specified by the Authority).

4.3.4. The Authority is not obliged to pay fees in relation to any Personnel who:

- a. the Authority has requested be removed after the date the request was made; or
- b. do not have the skill level specified for that person as required by this Deed or any Work Order, for any period.

4.3.5. Any requirement to remove or replace any Personnel under this clause, and the Service Provider's inability to find a suitable replacement Personnel, will not be

taken to be an event beyond the reasonable control of the Service Provider for the purposes of any performance relief under this Deed or any Work Order.

4.4. Specified Personnel

- 4.4.1. The Service Provider agrees that the Specified Personnel must personally undertake the work in respect of the Services in accordance with this Deed and any relevant Work Order.
- 4.4.2. Where the Specified Personnel are unable to perform the work, the Service Provider must notify the Authority immediately.
- 4.4.3. The Authority may, at its absolute discretion, request the Service Provider to remove Personnel (including Specified Personnel) from work in relation to the Services in accordance with clause 4.3.
- 4.4.4. Where clauses 4.4.2 or 4.4.3 apply, the Authority may request the Service Provider to provide replacement personnel acceptable to the Authority at no additional cost and at the earliest opportunity.
- 4.4.5. If the Service Provider does not comply with any request made under clause 4.4.4 the Authority may terminate the relevant Work Order in accordance with the provisions of clause 10.2.

4.5. Subcontracting

- 4.5.1. The Service Provider must not, without the prior written approval of the Authority, subcontract the performance of any part of the Services specified in a Work Order. In giving written approval, the Authority may impose such terms and conditions as it thinks fit, and the Service Provider must (and must ensure its subcontractors) comply with those terms.
- 4.5.2. The Service Provider must, in consultation with the Authority, ensure that subcontracts arranged for work under any Work Order incorporate provisions that sufficiently secure to the Authority all right, title, benefit, interest, claim or demand that accrues to the Authority under the provisions of this Deed or any relevant Work Order.
- 4.5.3. The Service Provider must inform all subcontractors that the Authority may publicly disclose the names of any subcontractors engaged in the performance of the Services.
- 4.5.4. The Service Provider must not subcontract the performance of any part of the Services to a person or entity which is:
 - a. listed on the list of organisations that are specified as a “terrorist organisation” by regulations made under the *Criminal Code Act 1995* (Cth) (currently available at <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>);

- b. listed as a designated entity by the Minister for Foreign Affairs by notice in the Gazette under s 15 of the *Charter of the United Nations Act 1945* (Cth) (this list is currently available at <http://dfat.gov.au/international-relations/security/sanctions/pages/consolidated-list.aspx>);
- c. named as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth); or
- d. who are subject to a judicial decision against them (not including decisions under appeal) relating to employee entitlements, and have not paid the claim.

4.5.5. The Authority may revoke its consent to a subcontractor at any time. If the Authority revokes its consent to a subcontractor, the Service Provider must immediately remove that subcontractor from delivering any aspects of the Services.

4.6. Extension of provisions to subcontractors and Personnel

4.6.1. In this clause 4.6:

Requirement means an obligation, condition, restriction or prohibition binding on the Service Provider under this Deed or any relevant Work Order.

4.6.2. The Service Provider must ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this Deed imposes all relevant Requirements on the other party.

4.6.3. The Service Provider must exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Authority.

5. Intellectual Property

5.1. Authority Material

5.1.1. Except as expressly provided for in a Work Order, the Authority is not required to provide any Authority Material to the Service Provider to assist in the provision of the Services.

5.1.2. Subject to clause 5.1.4, the Authority grants to (or will procure) a limited, royalty-free, non-exclusive, revocable, world-wide licence (with no right of sub-licence, unless otherwise agreed by the Authority) for the Service Provider to use, reproduce and adapt the Authority Material for the purposes of this Deed and a relevant Work Order.

5.1.3. The Service Provider must:

- a. ensure the safekeeping and maintenance of Authority Material; and
 - b. ensure that all Authority Material is used strictly in accordance with any conditions or restrictions set out in a Work Order, and any direction by the Authority.
- 5.1.4. The Service Provider must not, without the prior written approval of the Authority:
- a. modify Authority Material; or
 - b. transfer possession or control of Authority Material to any other person,
- except to the extent reasonably necessary to enable the Service Provider to satisfy an express requirement of a relevant Work Order.
- 5.1.5. The Service Provider acknowledges that Authority Material remains, at all times, the property of the Authority or the relevant third party.

5.2. Rights in Contract Material

- 5.2.1. Intellectual Property in all Contract Material vests or will vest in the Authority immediately upon creation.
- 5.2.2. Clause 5.2 does not affect the ownership of Intellectual Property in any Existing Material which is specified in a Work Order, but the Service Provider grants to (or will procure for and prior to the permission of) the Authority a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, communicate, disclose and exploit any such Existing Material in conjunction with the other Contract Material.
- 5.2.3. The Service Provider agrees that the licence granted in clause 5.2.2 includes a right for the Authority to:
- a. communicate, disclose, share and disseminate Existing Material (including any Existing Material included within Contract Material) with another Agency, and sublicense that Existing Material to another Agency; and
 - b. license the Existing Material in conjunction with the Contract Material to the public under an Open Access Licence.
- 5.2.4. If requested by the Authority, the Service Provider must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 5.2.
- 5.2.5. The Service Provider warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 5.2.
- 5.2.6. The Service Provider acknowledges that it has not been granted any licence in respect of the Contract Material and cannot use the Contract Material for any purpose other than performing the Services.

5.3. Moral Rights

5.3.1. In this clause 5.3:

Permitted Acts means any of the following classes or types of acts or omissions:

- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- b. supplementing the Contract Material with any other Material;
- c. using the Contract Material in a different context to that originally envisaged;
- d. releasing the Contract Material to the public under an Open Access Licence; and
- e. the acts or omissions, specifically set out in any Work Order,

but does not include false attribution of authorship.

5.3.2. If the Service Provider is a natural person and the author of the Contract Material, the Service Provider consents to the performance of the Permitted Acts by the Authority or any person claiming under or through the Authority.

5.3.3. If clause 5.3.2 does not apply, the Service Provider must:

- a. obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Authority or any person claiming under or through the Authority (whether occurring before or after the consent is given); and
- b. on request, provide the executed original of any such consent to the Authority.

5.3.4. This clause 5.3 does not apply to any Authority Material incorporated in the Contract Material.

5.4. Dealings with copies

5.4.1. This clause 5.4 applies to any document, device, article or medium (**copies**) in which Authority Material, Contract Material or Confidential Information is embodied.

5.4.2. Property in all copies vests or will vest in the Authority.

5.4.3. The Service Provider agrees to establish and maintain procedures to secure the copies against loss and unauthorised access, use, modification or disclosure.

5.4.4. Upon the expiration or termination of this Deed the Service Provider must deliver to the Authority or otherwise deal with all copies as directed by the Authority.

5.4.5. This clause 5.4 applies subject to any provision to the contrary in a Work Order.

5.5. Access to documents

5.5.1. In this clause 5.5, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

5.5.2. The Service Provider acknowledges that this Deed may be a Commonwealth contract.

5.5.3. If the Authority has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this Deed or any Work Order, the Authority may at any time by written notice require the Service Provider to provide the document to the Authority and the Service Provider must, at no additional cost to the Authority, promptly comply with the notice.

5.5.4. The Service Provider must include in any subcontract relating to the performance of this Deed or any Work Order provisions that will enable the Service Provider to comply with its obligations under this clause 5.5.

6. Confidentiality of Official Information and other security obligations

6.1. Security Classification

6.1.1. Unless otherwise notified by the Authority, the highest level of Security Classified Resources that the Service Provider will have access to under a Work Order is that specified in that Work Order.

6.2. Confidentiality of Official Information

6.2.1. The Service Provider must not, without prior written authorisation of the Authority, disclose any Official Information to any person (unless required to do so by law or permitted to do so under this Deed or a Work Order).

6.2.2. The Service Provider is authorised, subject to clause 6.3.1.a to 6.3.1.d, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this Deed or any Work Order.

6.2.3. The Service Provider must, on request by the Authority at any time, arrange for Personnel and subcontractors referred to in clause 6.2.2 to give a written undertaking in a form acceptable to the Authority relating to the use and non-disclosure of Official Information.

6.2.4. The Service Provider must secure all Official Information against loss and unauthorised access, use, modification or disclosure.

6.3. Other security obligations of Service Provider

6.3.1. The Service Provider must:

- a. ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
- b. prevent access to Security Classified Resources by Personnel:
 - i. who do not have the required security clearances;
 - ii. whose security clearances are revoked or have lapsed; or
 - iii. who no longer require access for the purposes of the Deed or any Work Order;
- c. make its Personnel available to attend any security training provided by the Authority;
- d. notify the Authority of any change in the personal circumstances of Personnel referred to in 6.3.1.a; and
- e. not perform the Services outside Australia without the Authority's prior written approval.

6.3.2. The Service Provider must comply, and must ensure that its subcontractors and personnel comply, with:

- a. all relevant security and other requirements specified in the Australian Government Protective Security Policy Framework (**PSPF**);
- b. the security requirements detailed in the Information Security Manual (**ISM**) (to the extent applicable to this Deed and the Services provided under any Work Order);
- c. comply with the additional security requirements specified in the Work Order, if any, and any variations or additions to those requirements as notified by the Authority from time to time; and
- d. any other security procedures or requirements notified, in writing, by the Authority to the Service Provider. In the event of such notice, the Service Provider must comply with such a security procedure or requirement, from the date specified in the notice, or if none is specified, within 5 Business Days of receipt of the notice.

6.3.3. The Service Provider must implement security procedures to ensure that it meets its obligations under this clause 6 and will provide details of these procedures to the Authority on request.

6.3.4. The Service Provider must ensure that all Authority Material and Contract Material, in respect of which the Service Provider has care, custody or control for purposes connected with this Deed or any relevant Work Order (including any

Authority Material or Contract Material in or processed by the Service Provider's systems):

- a. is protected at all times from unauthorised access, use, or disclosure, loss, misuse, damage or destruction by any person; and
- b. has appropriate security measures to protect that Authority Material and Contract Material, including as required by this Deed or any relevant Work Order, including administrative, physical, and technical safeguards that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, disclosure, misuse or loss of, the Authority Material and Contract Material, including by ensuring that:
 - i. persons authorised to access the Service Provider's facilities used to provide the Services follow documented procedures to ensure that visitors without such authorisation are monitored and prevented from gaining unauthorised physical access to any facilities used to provide the Services; and
 - ii. Service Provider Personnel who cease being engaged by the Service Provider return all tools and information that enabled them to access systems, and the Service Provider disables any tools, system keys, and accounts they used.

6.4. Removal of Material

6.4.1. The Service Provider must not, and must ensure that its Personnel, subcontractors and any third party do not:

- a. remove Authority Material or Contract Material, or allow Authority Material or Contract Material, to be removed from the Authority's premises or systems; or
- b. take, store or process Authority Material, Contract Material, or Personal Information, or allow Authority Material, Contract Material or Personal Information to be taken, stored or processed outside of Australia,

without the Authority's prior written consent (and such consent may be provided in a Work Order).

6.4.2. If the Authority has provided consent under clause 6.4.1, the Service Provider acknowledges and agrees:

- a. that the Authority may revoke that consent for any reason and at any time; and
- b. to comply with the revocation, and comply with any relevant directions arising from or related to that revocation.

6.5. Consequences of breach

- 6.5.1. The Service Provider acknowledges that any failure to fully comply with any its obligations under this clause 6 may, for the purposes of clause 10.2, be treated by the Authority at its absolute discretion as a failure that is not capable of remedy.

6.6. Security Incident

- 6.6.1. The Service Provider must take all steps consistent with best industry practice to reduce the risk of Security Incidents on the Service Provider's, and any subcontractor's, sites (including Service Sites) and systems.

- 6.6.2. If the Service Provider becomes aware of any actual or suspected Security Incident, or has reasonable grounds to suspect that a Security Incident has occurred or may occur in relation to this Deed or a Work Order, the Service Provider must:

- a. notify the Authority immediately if it becomes aware that a Security Incident has occurred and otherwise implement the Authority's procedures for Security Incident reporting as advised by the Authority from time to time;
- b. at no additional cost to the Authority, take all reasonable steps to mitigate the effects of the Security Incident and to prevent any reoccurrence of the Security Incident;
- c. inform the Authority by telephone (or other nominated contact method approved by the Authority) as soon as possible after it becomes aware of any actual, suspected or threatened Security Incident;
- d. as soon as practicable (and at least within 2 days) provide the details of the actual or suspected Security Incident in writing;
- e. record the actual or suspected Security Incident in a register maintained by the Service Provider; and
- f. comply with all directions of the Authority to assist in mitigating the impact of the actual or suspected Security Incident on the Authority, including:
 - i. taking any actions necessary to verify and contain the Security Incident or to determine any other appropriate course of action;
 - ii. notifying the Australian Cyber Security Centre (ACSC), or any other relevant body, as required by the Authority;
 - iii. obtaining evidence about how, when and by whom the Seller's information system, Contract Material or the Authority Material has or may have been compromised, providing it to the Authority on request, and preserving and protecting that evidence for a period of up to 12 months or as otherwise directed by the Authority;

- iv. providing reasonably required access and assistance to enable the Authority to coordinate the investigation of the Security Incident and to take all necessary action to preserve evidence related to the Security Incident, including:
 - A. system and network event logs;
 - B. change history and transaction and user access logs in accordance with AS/NZS ISO HB 171-2003: Guidelines for the management of IT evidence;
 - C. any CCTV and other evidence relating to the monitoring of access to the Service Sites;
- v. providing all reasonably required assistance to enable the Authority to undertake forensic analysis in accordance with *AS/NZS ISO 18044: Information security incident management - 8.5.5 - forensic analysis*, to identify a specific cause for the Security Incident and implement more efficient techniques in preventing and responding to that incident; and
- vi. preserving and protecting Authority Material (including as necessary reverting to any backup or alternative site or taking other action to recover Authority Material).

6.7. Physical Security

- 6.7.1. Except to the extent permitted by the Authority in writing, the Service Provider must implement and maintain physical security measures for the Service Sites that:
- a. are no less stringent than industry best practice for comparable sites and facilities; and
 - b. comply with all applicable laws, standards, licences, permits or regulatory requirements relevant to the Services,
- including:
- c. perimeter controls for Service Sites, including ensuring:
 - i. secure fencing and building envelope; and
 - ii. controlled entry into its sites and facilities;
 - d. access controls into the Service Sites that ensure Authority Material, Contract Material and any other Material relevant to the Services are only able to be accessed by appropriate Personnel;
 - e. monitoring processes and technologies within Service Sites, including:
 - i. CCTV covering entries, corridors, critical areas, and storage areas; tamper detection;

- ii. continuous recording with minimum one year retention;
 - iii. clock synchronisation; and
 - iv. access event logging;
- f. asset protection for the food samples and other such Materials relevant to the Services, including:
- i. lockable storage and sealed containers;
 - ii. sealed containers;
 - iii. chain of custody records;
 - iv. temperature/humidity monitoring; and
 - v. appropriate controls (e.g. keypad/biometric controls) for high-risk storage;
- g. environmental controls for the food samples and other such Materials relevant to the Services, for example contamination control, segregation per risk category and appropriate biohazard disposal practices (as applicable); and
- h. business continuity procedures, including:
- i. backup power for access systems and CCTV;
 - ii. fail-secure modes; and
 - iii. manual override protocols.

6.7.2. Without limiting the Authority's other rights under this Deed or a Work Order, the Service Provider must, on written request from the Authority, provide documentary evidence demonstrating that the physical security measures required under this Deed or a Work Order are in place and operational.

6.7.3. If, in the Authority's opinion, the Service Provider's physical security measures do not comply with this Agreement, the Authority may at its sole discretion and without prejudice to its other rights:

- a. direct the Service Provider to rectify any deficiencies identified by the Authority within the timeframe specified by the Authority (and the Service Provider must comply with such direction);
- b. suspend all or part of the Services until compliance is restored. The Authority will not be liable for any fees or additional costs in the event of such suspension;
- c. withhold payment of the fees in accordance with clause 3.2;

- d. undertake an audit in accordance with clause 12.7; or
- e. terminate the Work Order or this Deed in accordance with clause 10.2 (having regard to the Service Provider's acknowledgement at clause 6.5).

7. Confidential Information of Service Provider

7.1. Confidential Information not to be disclosed

7.1.1. Subject to clause 7.2, the Authority will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

7.2. Exceptions to obligations

7.2.1. The obligations of the Authority under this clause 7 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by the Authority to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this Deed or any Work Order;
- b. is disclosed by the Authority to its internal management Personnel, solely to enable effective management or auditing of contract-related activities;
- c. is disclosed by the Authority to the responsible Minister;
- d. is disclosed by the Authority in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Authority:
 - i. within the Authority's organisation; or
 - ii. with an Agency;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 7.

7.2.2. Where the Authority discloses Confidential Information to another person pursuant to clauses 7.2.1.a to 7.2.1.e, the Authority will notify the receiving person that the information is confidential.

7.2.3. In the circumstances referred to in clauses 7.2.1.a, 7.2.1.b and 7.2.1.e, the Authority must not provide the information unless the receiving person agrees to keep the information confidential.

7.3. Disclosure of Confidential Information

7.3.1. If a party becomes aware that any Confidential Information of the other party has or may have been lost, stolen, used, disclosed, accessed, or otherwise dealt with in a manner inconsistent with this Deed or any Work Order or becomes aware of

any breach or suspected or possible breach of this Deed or any Work Order in respect of Confidential Information:

- a. such party must immediately notify the other party giving details of the suspected or possible breach; and
- b. the Service Provider must:
 - i. do everything necessary to remedy any breach of, or to prevent the suspected or possible breach;
 - ii. comply with all written directions from the Authority in relation to the actual, suspected or possible breach; and
 - iii. give the Authority all assistance required in connection with proceedings which the Authority may institute against any person for breach of confidence or otherwise.

7.4. Return or destruction of Confidential Information

7.4.1. On termination or expiry of this Deed or the relevant Work Order, the Service Provider must comply with the Authority's directions regarding the return or destruction of Confidential Information.

7.4.2. Return or destruction of Confidential Information does not release the Supplier from its obligations under this clause 7.

7.5. Period of confidentiality

7.5.1. The obligations under this clause 7 in relation to an item of information described in the Work Order continue for the period set out there in respect of that item.

8. Privacy

8.1. Obligations on the Service Provider

8.1.1. In this clause 8, the following terms have the same meaning as in the *Privacy Act 1988* (Cth):

- a. **Australian Privacy Principle;**
- b. **Personal Information;** and
- c. **Eligible Data Breach.**

8.1.2. The Service Provider must, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by the Authority, would be a breach of an Australian Privacy Principle; and

- b. comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in a Work Order to the extent that they are consistent with the Australian Privacy Principles.

8.1.3. The Service Provider must notify the Authority immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.

8.1.4. The provisions of this clause 8 survive termination or expiration of this Deed.

8.2. Eligible Data Breaches

8.2.1. If the Service Provider suspects that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of this Deed or a Work Order, the Service Provider must:

- a. immediately report it to the Authority and provide a written report within 3 Business Days; and
- b. carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).

8.2.2. Where the Service Provider is aware that there has been an Eligible Data Breach in relation to this Deed or a Work Order, the Service Provider must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates;
- b. take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth); and
- c. take any other action as reasonably directed by the Authority.

8.3. Personal Information

8.3.1. The Service Provider must provide the Authority, or its nominee, relevant information (including Personal Information) relating to the Service Provider, its Personnel or subcontractors, for the purposes of preventing, detecting, investigating or dealing with a fraud or security incident relating to this Deed or a Work Order.

8.3.2. When providing Personal Information of a natural person under this clause, the Service Provider warrants it will have obtained the consent of or provided reasonable notification to the person in accordance with the *Privacy Act 1988* (Cth).

8.3.3. Nothing in this clause 8.3 limits or derogates from the Service Provider's obligations under the *Privacy Act 1988* (Cth).

9. Liability

9.1. Proportionate liability regimes excluded

9.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this Deed or any Work Order.

9.2. Indemnity

9.2.1. The Service Provider indemnifies and holds harmless to the Authority from and against any:

- a. Loss incurred by the Authority;
- b. loss of or damage to property of the Authority; or
- c. Loss incurred by the Authority in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Authority,

arising from either or both:

- d. a breach by the Service Provider of this Deed or any Work Order; and
- e. an act or omission involving fault on the part of the Service Provider or its Personnel in connection with this Deed or any Work Order.

9.2.2. The Service Provider's liability to indemnify the Authority under clause 9.2.1 will be reduced proportionately to the extent that any negligent act or omission of the Authority contributed to the relevant liability, loss or damage, or loss or expense.

9.2.3. The right of the Authority to be indemnified under this clause 9 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Authority is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

9.2.4. In this clause 9, 'Authority' includes officers, employees and agents of the Authority.

10. Termination or reduction in scope

10.1. Termination and reduction for convenience

10.1.1. The Authority may by notice, at any time and in its absolute discretion, terminate this Deed or any Work Order or reduce the scope of the Services immediately.

10.1.2. Upon receipt of a notice of termination or reduction the Service Provider agrees to:

- a. stop or reduce work as specified in the notice;

- b. take all available steps to minimise loss resulting from that termination and to protect Authority Material and Contract Material; and
 - c. continue work on any part of the Services not affected by the notice.
- 10.1.3. Subject to clauses 10.1.5 and 10.1.6, if there has been a termination under clause 10.1.1, the Authority will be liable only for:
 - a. payments and assistance due under clause 3 for Services rendered in accordance with this Deed and the applicable Work Order before the effective date of termination;
 - b. reasonable costs incurred by the Service Provider and directly attributable to the termination, and then only to the extent substantiated to the satisfaction of the Authority; and
 - c. providing the facilities and assistance necessarily required to be provided under the Work Order before the effective date of termination.
- 10.1.4. If there has been a reduction in the scope of the Services, the Authority's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 2.2 will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the Services.
- 10.1.5. The Authority will not be liable to pay compensation under clause 10.1.3.b in an amount which would, in addition to any amounts paid or due, or becoming due, to the Service Provider under this Deed, together exceed the fees set out in the applicable Work Order.
- 10.1.6. In the event the Authority terminates a Work Order or this Deed for convenience:
 - a. the Service Provider acknowledges and agrees that its sole entitlement to payment is in accordance with clause 10.1.3;
 - b. the Service Provider will have no claim whatsoever (whether in contract, tort, equity, under statute or otherwise) for:
 - i. loss of prospective profits, anticipated revenue, or business opportunity;
 - ii. loss of goodwill, reputation, or future contracts;
 - iii. loss of data, production, or use;
 - iv. special, indirect, incidental, punitive, exemplary, or consequential loss or damage of any kind;
 - v. economic loss, including loss of bargain or expectation damages;
 - vi. demobilisation costs that are not expressly pre-approved in writing;
 - vii. costs relating to idle resources, staff redeployment, or overhead recovery;

- viii. termination charges imposed by subcontractors or suppliers unless specifically authorised by the Authority in advance; or
- ix. any costs, expenses or liabilities arising from or in connection with the termination or any reduction in scope, other than those expressly permitted under clause 10.1.3.

- c. The exclusions set out in 10.1.6.b apply even if the Service Provider has been advised of the possibility of such losses, and regardless of whether such losses were foreseeable.

10.1.7. A termination of this Deed under this clause 10.1 will not constitute a termination of any Work Order issued under this Deed, and vice versa, unless otherwise specified by the Authority.

10.2. Termination for default

10.2.1. If the Service Provider fails to satisfy any of its obligations under this Deed or any Work Order, the Authority may:

- a. if it considers that the failure is not capable of remedy, by notice, terminate this Deed or the relevant Work Order immediately; or
- b. if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven days) and if the failure is not remedied in accordance with the notice given under this clause 10.2.1.b, terminate this Deed or the relevant Work Order immediately by giving a second notice.

10.2.2. The Authority may also, by notice, terminate this Deed or any Work Order immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:

- a. being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or an order has been made for the purpose of placing the corporation under external administration; or
- b. being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors,

except to the extent that the exercise of a right under this clause 10.2.2 is prevented by law.

10.2.3. A termination of this Deed under this clause 10.2 will not constitute a termination of any Work Order issued under this Deed, and vice versa, unless specified by the Authority.

10.3. Periodic review and termination

- 10.3.1. On the anniversary of the Commencement Date, the Authority may conduct a review of the Services provided and the performance by the Service Provider under this Deed or any Work Order.
- 10.3.2. Following this review, the Authority may by written notice terminate this Deed or any Work Order with effect from the date specified in the notice, such date to be at least 20 Business Days from the date of the notice.

11. Dispute resolution

11.1. Procedure for dispute resolution

- 11.1.1. The parties agree that a dispute arising under this Deed or any Work Order will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
 - c. the representatives will try to settle the dispute by direct negotiation between them;
 - d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 11.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
 - e. the parties will cooperate fully with any process instigated under clause 11.1.1.d in order to achieve a speedy resolution; and
 - f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as agreed by the parties in writing), either party may commence legal proceedings.

11.2. Costs

- 11.2.1. Each party will bear its own costs of complying with this clause 11, and the parties will bear equally the cost of any third person engaged under clause 11.1.1.d.

11.3. Continued performance

11.3.1. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Authority not to do so) continue to perform any Services.

11.3.2. This clause 11 does not apply to:

- a. action by either party under or purportedly under clause 10.2;
- b. action by the Authority under or purportedly under clause 3.2.1 or clause 10;
or
- c. either party commencing legal proceedings for urgent interlocutory relief.

12. General provisions

12.1. Workplace Gender Equality

12.1.1. The Service Provider must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

12.1.2. If the Service Provider becomes non-compliant with the WGE Act during the term of this Deed or any Work Order, the Service Provider must promptly notify the Authority.

12.1.3. If the term of this Deed or any Work Order exceeds 18 months, the Service Provider must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Commencement Date and, following this, annually to the Authority.

12.1.4. Compliance with the WGE Act does not relieve the Service Provider from its responsibility to comply with its other obligations under this Deed or any Work Order.

12.2. Work health and safety

12.2.1. The Service Provider must, in carrying out the Services, comply with:

a. all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and

b. all applicable policies and procedures relating to work health and safety,

including those that apply to the Service Site and the Authority's premises when using those premises.

12.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 12.2.1, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

- 12.2.3. Without limiting the overarching obligations to comply with all relevant WHS Law, at all times in performing the Services the Service Provider must:
- a. provide the Services in a safe manner that is without avoidable risk to the health, safety and welfare of any person and that eliminates health and safety risks so far as reasonably practicable;
 - b. comply with its own obligations under relevant WHS Law concerning the safety of workers and workplaces and assist the Authority to meet its obligations under the WHS Law;
 - c. not do, or omit to do, anything which would put the Authority in breach of any WHS Law;
 - d. consult, cooperate and coordinate with the Authority as required by WHS Law applicable to the provision of the Services and Notify the Authority of any health and safety risk or incidents as soon as they become known to the Service Provider;
 - e. comply with any reasonable directions of the Authority in relation to work health and safety in connection with the Services (provided that those directions are not inconsistent with any WHS Law); and
 - f. if under a relevant WHS Law, there is a requirement for a person who is providing the Services to be licensed, authorised, qualified, trained or skilled, ensure that the person has the appropriate current licence, Authorisation, training or the necessary skills to provide the Services safely.

12.3. **Compliance with law**

12.3.1. In this clause 12.1:

Legislation

means:

- a. a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority; and
- b. a provision of a statute or subordinate legislation in the country the Service Provider operates within in order to deliver the Services.

12.3.2. The Service Provider agrees, in carrying out its obligations under this Deed and any Work Order, to comply with all relevant Legislation.

12.3.3. The Service Provider acknowledges that its attention has been drawn to the fact sheet referred to in Schedule 2 Item 3 which provides details of some Legislation that may be applicable to the performance of this Deed or any Work Order.

12.3.4. The Service Provider warrants that it is aware of, and will comply with the *Lobbying Code of Conduct (the Code)*. If applicable, the Service Provider must

observe the required principles of engagement with Government Representatives, as defined in that Code.

12.4. Directions

12.4.1. The Service Provider must comply with any reasonable directions given by the Authority (or its nominee) in relation to this Deed and any relevant Work Order.

12.4.2. If a direction given by the Authority or its nominee under this clause 12.4 is unclear (e.g. the direction could be implemented in more than one way) or may adversely affect the performance of the Service Provider's obligations to provide the Services, then the Service Provider must:

- a. consult with the Authority or its nominee; and
- b. follow any subsequent direction by the Authority or its nominee as to how the initial direction must be implemented.

12.4.3. To the extent of any inconsistency between any direction given by the Authority or its nominee, the direction of the Authority will prevail.

12.5. Survival

12.5.1. Unless the contrary intention appears, the expiry or earlier termination of this Deed or any Work Order will not affect the continued operation of any provision relating to:

- a. licensing of Intellectual Property;
- b. confidentiality;
- c. privacy;
- d. books and records;
- e. audit and access;
- f. security; or
- g. an indemnity,

or any other provision which expressly or by implication from its nature is intended to continue.

12.6. Insurance

12.6.1. The Service Provider must, for so long as any obligations remain in connection with this Deed or any Work Order:

- a. effect and maintain, at a minimum, the following levels of insurance:
 - i. workers' compensation as required by law;

- ii. public liability insurance to a value of no less than \$10 million; and
- iii. professional negligence insurance to a value of no less than \$5 million,

for all the Service Provider's obligations under this Deed and in a Work Order, including those which survive the expiration or termination of this Deed; and

- b. upon request, provide proof of insurance acceptable to the Authority.

12.6.2. The Service Provider must comply with any obligation to hold additional insurances or hold insurances with increased amounts, as specified in a Work Order.

12.6.3. This clause 12.6 continues in operation for so long as any obligations remain in connection with this Deed or any Work Order.

12.7. Audit and Access

12.7.1. The Supplier must maintain and ensure its Subcontractors maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of this Deed and each Work Order.

12.7.2. The Service Provider must:

- a. give the Authority's representative, or any persons authorised in writing by the Authority's representative, access to:
 - i. premises where Services are being performed or where Official Resources are located (including Service Sites); and
 - ii. Service Provider and Personnel, systems, documents and other records; and
- b. permit those persons to inspect and take copies of any Material relevant to the Services.

12.7.3. The rights referred to in clause 12.7.2 are subject to:

- a. the Authority providing reasonable prior notice;
- b. the Authority, its representative or their nominee complying with reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

12.7.4. The Auditor-General, the Ombudsman and the Information Commissioner (including their delegates) are persons authorised for the purposes of this clause 12.7.

12.7.5. This clause 12.7 does not detract from the statutory powers of the Auditor-General, the Ombudsman or the Information Commissioner (including their delegates).

12.8. Conflict of interest

12.8.1. In this clause 12.8:

Conflict means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Authority diligently and independently.

12.8.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Deed no Conflict with the interests of the Authority exists or is likely to arise in the performance of the Services.

12.8.3. If, during the Deed Period a Conflict arises, or appears likely to arise, the Service Provider agrees to:

- a. notify the Authority immediately in writing;
- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take such steps as the Authority may require to resolve or otherwise deal with the Conflict.

12.8.4. If the Service Provider does not notify the Authority or is unable or unwilling to resolve or deal with the Conflict as required, the Authority may terminate this Deed and any Work Order in accordance with the provisions of clause 10.2.

12.9. Conduct at Authority premises

12.9.1. The Service Provider agrees that when using the Authority's premises or facilities for the purposes of the Services, it will comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities (including the Commonwealth's smoke-free work-place policy) whether specifically drawn to the attention of the Service Provider or as might reasonably be inferred from the circumstances.

12.10. Negation of employment, partnership and agency

12.10.1. The Service Provider is not by virtue of this Deed or any Work Order an officer, employee, partner or agent of the Authority, nor does the Service Provider have any power or authority to bind or represent the Authority.

12.10.2. The Service Provider agrees:

- a. not to misrepresent its relationship with the Authority; and

- b. not to engage in any misleading or deceptive conduct in relation to the Services.

12.11. Waiver

- 12.11.1. A failure or delay by a party to exercise any right or remedy it holds under this Deed or any Work Order or at law does not operate as a waiver of that right.
- 12.11.2. A single or partial exercise by a party of any right or remedy it holds under this Deed or any Work Order or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

12.12. Applicable law

- 12.12.1. The laws in the Australian Capital Territory apply to this Deed and any Work Order.

12.13. Notices

- 12.13.1. Any notice, request or other communication to be given under this Deed or any Work Order is to be in writing and dealt with as follows:
 - a. if given by the Service Provider to the Authority – signed by the Service Provider and forwarded to the Chief Executive Officer of the Authority for the attention of the Project Manager at the address indicated in Item 4 of Schedule 2 or as otherwise notified by the Authority; or
 - b. if given by the Authority to the Service Provider – signed by the Project Manager and marked with the address indicated in Item 6 of Schedule 2 or as otherwise notified by the Service Provider.
- 12.13.2. Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.
- 12.13.3. A notice, request or other communication will be deemed to be received:
 - a. if delivered by hand, upon delivery;
 - b. if sent by pre-paid ordinary post within Australia to the postal address of the recipient, upon the expiration of 2 Business Days after the date on which it was sent; and
 - c. if transmitted by facsimile machine to the facsimile address of the recipient, upon receipt by the sender of an acknowledgement that the communication has been properly transmitted to the recipient; and
 - d. if sent by email to the email address of the recipient, when the email message enters an information system accessible to the recipient.
- 12.13.4. For any purpose under this Deed or any Work Order, unless the contrary intention appears where the signature of a person is required, that requirement is taken to have been met in relation to an email if:

- a. a method is used to identify the person and to indicate the person's approval of the information communicated; and
- b. having regard to all the relevant circumstances at the time the method was used (including any technical standards agreed from time to time by the parties), the method was as reliable as was appropriate for the purposes for which the information was communicated.

SIGNATURES

SIGNED as a Deed:

EXECUTED on behalf of

**FOOD STANDARDS
AUSTRALIA NEW ZEALAND**

by

(print Delegate's name and title)

(signature)

Date:

(date)

IN THE PRESENCE OF:

(print name of witness)

(witness signature)

(FOR INDIVIDUALS)

EXECUTED by

(print Service Provider's name)

(signature)

Date:

(date)

IN THE PRESENCE OF:

(print witness name)

(witness signature)

(FOR COMPANIES)

EXECUTED on behalf of ^Insert
company's full name and
ABN/ACN^ in accordance with
section 127 of the *Corporations
Act 2001* (Cth)

by

(Director's full name)

(signature)

Date:

and

(Director or company secretary's
full name)

(signature)

SCHEDULE 1 SERVICE PROVIDER'S OBLIGATIONS AND WORK TO BE PERFORMED

1. Services

1.1. Service Requirements

The range of Services include, but are not limited to, one or more of the following Service categories:

- Purchase and/or collect food samples.
- Supply and coordinate the provision of food sample storage and transport kits to sampling officers nationally.
- Food sample storage, rapid transport (nationally), chain of custody and logistics management.
- Log and photograph food samples.
- Prepare food samples including subsampling, homogenization, pooling/compositing, and cooking as directed by FSANZ.
- Prepare, store, and transport pure culture isolates in a stable state and environment as directed by FSANZ.
- Analyse food samples for contaminants, agricultural and veterinary chemicals, toxins, pathogens, allergens, nutrients, and other characteristics including but not limited to antimicrobial susceptibility, and whole genome sequencing.
- Develop and validate methods in response to emerging issues and new analytical requirements.
- Advise FSANZ on metrology-related matters.
- Provide crisis response support, including rapid consultation and testing when required urgently.
- Long term storage of retention samples in a stable state and environment for an agreed period, usually 12 – 24 months.
- Coordinate secondary transport of food samples to other laboratories or locations as required.
- Provide reports including but not limited to sample details, preparation details, analytical results, and quality assurance/quality control measures as requested by FSANZ.

1.1.1. The fees, allowances, costs and timeframe for the provision of specific services will vary with each Work Order.

1.2. Business Continuity

The Service Provider is responsible for maintaining a Business Continuity Management Plan to ensure that the Services can be maintained in the event of an emergency or disaster which may otherwise interrupt provision of the Services.

1.3. Standards

The Commonwealth Style Manual, AGPS, Canberra (latest edition)

Policy on the use of non-discriminatory language and images in Government advertising and information material, Ministerial Committee on Government Information and Advertising, Office of Government Information and Advertising, 1996

Privacy Advisory Committee, *Outsourcing and Privacy: Advice for Commonwealth agencies considering contracting out (outsourcing) information technology and other functions*, Privacy Commissioner, (latest edition) (a stand-alone document which can also be found in: Privacy Commissioner, *Federal Privacy Handbook: A Guide to Federal Privacy Law and Practice*, Redfern Legal Centre Publishing, Sydney)

AS ISO 15489.1-2002 Information and Documentation – Records Management

MAB/MIAC: *Ethical Standards and Values in the Australian Public Service*, 1996

The Service Provider must deliver the Services:

- in order to meet the ISO/IEC 17025 – General requirements for the competence of testing and calibration laboratories; and
- in facilities that have received accreditation from the National Association of Testing Authorities,

unless otherwise permitted by the Authority.

Note to Tenderers:

The Authority retains the right to insert further standards based on each Panellist's tender.

SCHEDULE 2 OTHER OBLIGATIONS OF THE PARTIES

1. TERM AND OPTION (see clause 1.4)

1.1. Initial Term

The initial term will begin on the Commencement Date and will end on [Insert date and month] 2031.

1.2. Option Period

The option period will be one period being three years in duration.

2. INVOICES (see clause 3.2.2)

To be correctly rendered, a separate invoice must be submitted by the Service Provider to the Authority for each Work Order. Invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. the Service Provider's name;
- c. the Service Provider's ABN;
- d. the date of issue of the tax invoice;
- e. the Authority's ABN or address;
- f. title of the Services and the Work Order number;
- g. name of the Project Manager;
- h. a description of the Services performed;
- i. details of fees, allowance and costs including the items to which they relate;
- j. the total amount payable (including GST);
- k. the GST amount shown separately;
- l. the date of delivery of the Services to which the invoice relates; and
- m. the Service Provider's bank account details for payment by direct credit (if different to the details notified to the Authority).

All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Service Provider's entitlement to those allowances or costs.

An invoice is not correctly rendered where:

- a. it includes amounts that are not properly payable under a Work Order or are incorrectly calculated; or
- b. it relates to a payment in relation to which the Authority has exercised its rights under clause 3.2.1 of the Deed.

All invoices must be addressed to the Project Manager.

The due date for payment by the Authority is 30 calendar days after the delivery of a correctly rendered invoice, subject to certification of performance of the Services in relation to the relevant Work Order.

3. APPLICABLE LEGISLATION

See AGS Fact Sheet: Commonwealth legislation that may apply to Australian Government contractors, available at:

<http://www.ags.gov.au/publications/fact-sheets/index.html>

4. PROJECT MANAGER

The Project Manager is the person for the time being holding, occupying or performing the duties of Surveillance Team leader, Food Standards Australia New Zealand.

5. AUTHORITY'S ADDRESS FOR NOTICES

Food Standards Australia New Zealand

Level 4, 15 Lancaster Place

Majura Park ACT 2609

OR

PO Box 5423

Kingston ACT 2604

Email: Surveillance.Monitoring@foodstandards.gov.au

6. SERVICE PROVIDER'S ADDRESS FOR NOTICES

Physical address	^Service Providers Address^
Postal address	^Service Providers Postal Address^
Email	^Service Providers Email^
Facsimile	^Service Providers Facsimile^

SCHEDULE 3 WORK ORDER

Work Order Number:

for **^Insert brief description of Services required^**

^Name of Project Manager^

^Name and Address of Service Provider^

1. CONTEXT

This Work Order is placed in accordance with, and pursuant to the terms and conditions of the Deed between the Authority and **^Insert name of Service Provider^** dated **^Insert date^**.

2. SERVICES

^Insert description of Services^

3. STANDARDS

^Insert applicable standards in addition to those set out in Schedule 1^

4. TIME FRAME

Work Order Commencement Date:

The Work Order commences on **^Insert date^**.

However, the Services are not due to commence until **^Insert date^**.

Time frame: **^Insert text^**

5. FEES

Fees:

Note to Drafters:

Specify an appropriate fee basis for the services sought.

Fees are payable at the rate of \$_____ per day within 30 days after receipt of a correctly rendered invoice to Food Standards Australia New Zealand.

The total fee for the Services is \$_____ payable by the following instalments:

\$_____ upon delivery of an interim report (as described in Item 11)

\$_____ upon delivery of a final report (as described in Item 11)

The due date for payment is 30 days after delivery of a correctly rendered invoice to Food Standards Australia New Zealand.

You do not need to state here that the fees are GST inclusive: this has already been done in clause 3 of the Deed.

Allowance and costs: ^Insert text^

6. FACILITIES AND ASSISTANCE

The Authority will provide for the Service Provider:

^Insert facilities and assistance to be provided by FSANZ to the Service Provider, for example:

- a. Accommodation at Food Standards Australia New Zealand premises for up to ___ Personnel of the Service Provider;
- b. Normal office services and facilities that the Service Provider satisfies the Project Manager are reasonable for the performance of the Services; and
- c. Magnetic media and consumables, storage facilities and messenger services that the Service Provider satisfies the Project Manager are reasonable for the performance of the Services.^

7. INSURANCE

^Insert additional insurances or increased insurance amounts^

OR

^Insert "the insurance requirements are in accordance with clause 12.6.1.a of the Deed"^

8. EXISTING MATERIAL

^Insert text^

9. AUTHORITY MATERIAL

^Insert text^

10. USE OF AUTHORITY MATERIAL

^Insert text^

11. CONTRACT MATERIAL

^Insert text^

12. MATERIAL OUTSIDE OF AUSTRALIA

The Service Provider ^must not/may^ take, store or process, or allow the taking, storage or processing of, Authority Material, Contract Material and Personal Information outside of Australia as follows:

[^]Insert text that explains where and what may be taken outside of Australia[^]

13. MORAL RIGHTS

Permitted Acts

In addition to those set out in clause 5.3 the following are 'Permitted Acts' for the purposes of clause 5.3.1.a:

- a. use of the Contract Material for advertising, merchandising or promotional purposes of any kind;
- b. incorporating the Contract Material into a website or as part of a multi-media training programme;
- c. synchronising the proposed sound recording as part of the soundtrack of a film; or
- d. removal and/or relocation of the proposed sculpture to an alternative location, including disassembly as necessary for that purpose.

14. SERVICE PROVIDER'S CONFIDENTIAL INFORMATION

Note to Drafters:

When reviewing the Service Provider's proposed Confidential Information, the Authority should have regard to the Department of Finance policy regarding confidentiality throughout the procurement cycle, which can be found here:

<https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>.

(a) Information contained in Work Order:

Item	Period of Confidentiality
-------------	----------------------------------

[^]Insert relevant items[^]

(b) Information obtained or generated in performing Work Order:

Item	Period of Confidentiality
-------------	----------------------------------

[^]Insert relevant items[^]

15. DEALING WITH COPIES

The Service Provider may retain three copies of the final published report.

16. PROJECT MANAGER**Note to Drafters:**

The Project Manager for the Work Order (who may be a different person to the Project Manager for the Deed) may be specified by name and/or position.

The Project Manager is the person for the time being holding, occupying or performing the duties of **^Insert position^**.

Any queries in relation to this Work Order should be directed to the **Project Manager**.

17. SPECIFIED PERSONNEL

The following are Specified Personnel for the purposes of this Work Order. These Specified Personnel will be charged out by the Service Provider at the following rates:

Name	Position/Classification	Rate

18. PRIVACY

^Insert text^

19. SECURITY REQUIREMENTS

Level of Security Classified Resources

^Insert classification level^

Additional Security Requirements

The Service Provider must comply with the Protective Security Policy Framework (PSPF) and **^Insert relevant Authority policies^**.

The Service Provider is authorised to disclose **^Insert relevant Official Information^** to **^Insert name of person(s) to whom disclosure is authorised^** provided that **^Insert any conditions^**.

20. ADDITIONAL TERMS

^Insert further Additional Terms, noting the limits on additional/amended terms set out in clause 2.3.4^

SIGNATURES

Signed for and on behalf of Food
Standards Australia New Zealand

by

(print Delegate's name and title)

(signature)

Date:

(date)

IN THE PRESENCE OF:

(print name of witness)

(witness signature)

(FOR INDIVIDUALS)

Signed by

(print Service Provider's name)

(signature)

Date:

(date)

IN THE PRESENCE OF:

(print witness name)

(witness signature)

(FOR COMPANIES)

EXECUTED on behalf of ^Insert
company's full name and
ABN/ACN^ in accordance with
section 127 of the *Corporations
Act 2001* (Cth)

by

(Director's full name)

(signature)

Date:

and

(Director or company secretary's
full name)

(signature)

NOTICE OF INCLUSION FORM

**IN RESPECT OF THE DEED OF STANDING OFFER IN RELATION TO THE
PROVISION OF FOOD ANALYSIS SERVICES THROUGH A FOOD
STANDARDS AUSTRALIA NEW ZEALAND LABORATORY PANEL**

Between

^Additional Agency Full Name^

And

^Service Provider^

To:

^Name of Service Provider^

^Insert address for notices as per the Deed of Standing Offer^

Parties

1. **^Insert full name, ABN and address of Additional Agency** (the Agency)
2. **^Insert full name, ABN or equivalent, if applicable, and address of Service Provider^** (the Service Provider)

Context

- A. Food Standards Australia New Zealand entered into Deed of Standing Offer dated **^Insert date^** (**Original Deed of Standing Offer**) for the Service Provider to provide Services to Food Standards Australia New Zealand.
- B. Under the Original Deed of Standing Offer, the Service Provider offers to provide Services to additional Agencies.
- C. The Agency wishes to acquire Services from the Service Provider as it requires from time to time on the same terms as the Original Deed of Standing Offer (as amended under this Notice of Inclusion).

Defined Terms

Terms that are used in this Notice of Inclusion that are defined in the Original Deed of Standing Offer have the meaning given in the Original Deed of Standing Offer.

Notice of Inclusion

The Additional Agency issues this Notice of Inclusion to the Service Provider pursuant to clause 2.6 of the Original Deed of Standing Offer.

Upon receipt of this Notice of Inclusion by the Service Provider (which the Service Provider will confirm in writing), a separate deed of standing offer is created between the Agency and the Service Provider which is on the same terms as the Original Deed of Standing Offer, as amended by:

- a. clause 2.6.3 of the Original Deed of Standing Offer; and
- b. any terms and conditions in Attachment A to this Notice of Inclusion,

(Agency Deed of Standing Offer).

SIGNED for and on behalf of **^Insert**)
full name of Additional Agency^ by:)

Name and position of signatory

Signature

In the presence of:

Name of witness

Signature of witness

Attachment A to Notice of Inclusion

Note to Agency: The Agency should specify here any amendments to the Original Deed of Standing Offer. In most situations, this will include things like invoicing and payment details, contact person and address.

Amendments to Schedule 2 (Deed of Standing Offer Particulars)

Schedule 2 of the Original Deed of Standing Offer is amended, insofar as it is applicable to the Agency Deed of Standing Offer formed by this Notice of Inclusion, as follows:

Item 2 of Schedule 2 is replaced with the following:

2. INVOICES

^Agency to insert requirements in same format as item 2 of Schedule 2 of the Original Deed of Standing Offer. If the Additional Agency wishes to include additional requirements that go further than those set out in item 2 of Schedule 2 of the Original Deed of Standing Offer, it should seek legal advice as to how that will interact with the other provisions Original Deed of Standing Offer.^

Item 4 of Schedule 2 is replaced with the following:

4. PROJECT MANAGER

^Agency to insert Project Manager details, in the same format as Item 4 of Schedule 2^

Item 5 is replaced with the following:

5. AGENCY'S ADDRESS FOR NOTICES

Physical address	<i>^Insert address^</i>
Postal address	<i>^Insert address^</i>
Email	<i>^Insert email^</i>

^Insert further amendments to the Original Deed of Standing Offer^

Note to Agency: The Agency should specify any additional amendments to the Original Deed of Standing Offer in this section.

Please note, if the Agency seeks changes to additional changes to the Deed (other than Items 2, 4 and 5 of Schedule 2), the Agency and the panellist will need to expressly agree to those changes in a separate DoSo.

