

Auditor–Department of Human Services service agreement

This Agreement is made on the _____ day of _____ 200_____

Between

SECRETARY TO THE DEPARTMENT OF HUMAN SERVICES
of 50 Lonsdale Street, Melbourne, Victoria (“Department of Human Services”)

and _____ (Name)

of _____ (Address)

_____ (Tel. number) _____ (mobile)

_____ (“Auditor”)

Introduction

The auditor is an approved food safety auditor when certified by the Secretary to the Department of Human Services (or delegate).

The Food Act 1984 provides that Department of Human Services has functions such as:

- Generally administering the provisions of the Act;
- Ensuring that appropriately qualified people are certified as auditors; and
- Declaring audit frequencies

The Act requires all food premises to implement food safety programs some requiring 3rd Party auditing.

The Department of Human Services is responsible for certifying auditors to carry out 3rd party audit functions under the Act. Auditors are responsible for auditing food safety programs, either from Class 1 food businesses that are required to develop their own food safety program or other businesses that elect to use the 3rd party system.

The auditor wishes to participate in arrangements for auditing relevant food premises which are registered under the Act. Accordingly Department of Human Services and the auditor have agreed as follows:

Operative provisions

1. Interpretation

1.1 In this Agreement the following terms shall have the following meaning unless the context requires otherwise:

Act means the Food Act 1984

Agreement means this document including the description of the Parties, the Introduction and the Schedules

Approved means certified by the Secretary of Department of Human Services or delegate

Approved food safety auditor means a person certified by the Secretary of the Department of Human Services or delegate as an approved food safety auditor

Audit means food safety program audit which is defined in the Act

Auditor means an approved food safety auditor which is defined in the Act

Business means food business which is defined in the Act

Corrective action is taken when monitoring indicates that there is a deviation from an established critical limit. Corrective action noted via the corrective action request

Council has the same meaning as in the *Local Government Act* and means the council of the municipal district to which the provision in which the term is used applies

DHS means the Department of Human Services Victoria

Food safety auditor means a person approved by the Secretary of Department of Human Services as a food safety auditor

Food Safety Standards mean the national food safety standards approved by the Australia New Zealand Food Standards Council and published in the *Australian Government Gazette* on 24 August 2000, and being Chapter 3 of the *Australia New Zealand Food Standards Code* (Australia only).

HACCP is an acronym for ‘Hazard Analysis Critical Control Point’ analysis methodology

Local authority means the council of the municipal district in which premises are located

Notifiable non-conformance means the auditor has identified a serious or imminent risk to public health. That is, the food, practice or situation has compromised consumers health, or if allowed to continue, will compromise consumers health. The Council must be notified as soon as practicable and within the terms of this Agreement of such a non-conformance being identified.

Premises has the same meaning as in the Act;

Proprietor has the same meaning as in the Act;

RABQSA is an acronym for Registrar Accreditation Board Quality Society of Australasia;

Secretary or Department of Human Services means the Secretary to the Department of Human Services

Standard means a standard in the *Australia New Zealand Food Standards Code*;

State means the Crown in the right of the State of Victoria;

1.2 Construction

The following rules of construction apply unless the context requires otherwise:

- a. Words importing a gender include any other gender.
- b. Words in the singular number include the plural and words in the plural include the singular.
- c. A reference to a person includes only that person.
- d. An obligation of two or more parties shall bind them jointly and severally.
- e. A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements to any of them.
- f. A reference to time is to local time in Melbourne.

2. Terms

This Agreement shall commence on the date it is executed and unless otherwise terminated in accordance with its provisions shall operate until the earlier of:

- a. 1 year or;
- b. the date on which Quality Society of Australasia registration or approval by Department of Human Services is cancelled or lapses.

3. Person bound

The person proposing to act as an auditor shall be certified by the Secretary as an auditor in accordance with the Act.

4. Person to be certified

A person proposing to act as a food safety auditor shall be endorsed by Quality Society of Australasia as a food safety auditor, or senior food safety auditor for designated categories of food to being approved by the Secretary in accordance with the Act.

5. Availability of audit services

If the auditor has agreed with a proprietor of a registered premises to conduct an audit/s, the auditor shall also make themselves available to undertake such follow-up audits, after notification of critical and major non-conformances, as requested by the local authority.

6. Reports

The auditor shall provide reports of audits undertaken to the local authority consistent with the format as per the appendices to this publication.

The auditor shall keep and maintain audit records that are self explanatory and easily understood by a third party. These audit records shall identify the:

- Food premises audited.
- Date the audit was conducted.
- Processing operations audited.
- Elements of the food safety program audit audited.
- Reasons why the audited elements of the program did or did not comply.

Audit records shall be supplied to the Department of Human Services and to the local authority when requested.

7. Dispute resolution expert determination

7.1 If the Secretary and the auditor are in dispute regarding any matter arising out of this agreement each of the parties will use its best endeavors to co-operatively resolve the dispute. If the parties are unable to resolve the dispute then the parties may seek a resolution through the Magistrates' Court.

8. Professional indemnity

8.1 The auditor indemnifies the Department of Human Services, the State of Victoria and the officers, employees, agents and contractors against any liability arising from all actions, proceedings, suits, claims, and demands, of any nature, including without limitation, any claim, liability, loss, or damage in respect of:

- a. personal injury or the death of any person; and
- b. loss of or damage to any property;

arising in any manner out of a breach by the auditor of its obligations under this agreement or any wilful or negligent act or omission or any unlawful action of the auditor or any personnel employed or retained by the auditor in the course of providing the services under this Agreement.

8.2 The indemnities in this clause 8.1 are not intended to, and do not, extinguish rights of law which the auditor might otherwise have to claim contribution or indemnity.

8.3 It is not necessary for the Department of Human Services or the State of Victoria to incur expense or make payment before enforcing a right of indemnity in this clause.

8.4 The auditor must perform and observe all obligations and requirements required of the auditor by law in relation to itself and its employees, including but not limited to paying all necessary wages, superannuation payments, taxes, duties and imposts and taking out and continuing all necessary insurances including compliance with the *Accident Compensation Act 1985* (Vic) by registration as an employer and the payment of any Work Cover premium required to be paid hereunder.

8.5 The auditor must on and from the commencement of this agreement maintain a comprehensive policy of insurance with respect to public risks arising out of or in any way connected with the services to be provided under this agreement, for an amount not less than \$5,000,000. The auditor shall provide documentary evidence of the currency and the details of insurances it is required to effect under this agreement if requested in writing to do so by Department of Human Services.

9. No subcontracting or assignment

The auditor shall not subcontract the performance of any of the audit services provided. The auditor shall not assign any of their rights or obligations under this agreement in whole or in part.

10. Conflict of interest

The auditor warrants that they do not hold any office or possess any property and is not engaged in any business, trade or calling and do not have any obligations or benefits by virtue of any contract or other engagement whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be creating conflict with their duties and interests under this agreement.

The food safety auditor shall inform the Department of Human Services of any matter connected with this agreement that may give rise to an actual or potential conflict of interest or duty at any time during the currency of the agreement.

If the Department of Human Services determines that a conflict of interest or duty exists, the Department of Human Services may terminate this agreement forthwith by notice in writing.

11. Termination

If the auditor is in breach of any of the provisions of this agreement the Department of Human Services may terminate this agreement by giving not less than fourteen (14) days notice in writing to the food safety auditor.

12. Probation

12.1 If the auditor is in breach of any of the provisions of this agreement the Department of Human Services may impose a period of probation during which the auditor will be required to agree to supervised audits and the submission of reports to the Department of Human Services

12.2 The Secretary Department of Human Services may terminate this agreement immediately by written notice to the auditor if they cease to hold relevant Registrar Accreditation Board Quality Society of Australasia accreditation.

If the role of the Department of Human Services is altered or government policy is changed so that audits are no longer

required the Department of Human Services may by notice in writing terminate this agreement.

This agreement may terminate if the Department of Human Services withdraws the approval of the auditor.

13. Notices

Any notice or document to be delivered or served in relation to this agreement may be delivered or served:

- By hand;
- By mail;
- By facsimile; or
- By delivering it or sending it to the address of the receiving party set out in the agreement.

A document is deemed to be delivered or served, in the case of the delivering person, when delivered. In the case of delivery by mail, two days after the date of posting. In the case of facsimile transmission, on the receipt by the sender of a transmission report from the dispatching machine showing the relevant number of pages, the correct destination and the result of the transmission as successful.

Send to:

Department of Human Services
Public Health Branch
Food Safety Unit
GPO Box 4057
Melbourne 3001
Fax: (03) 9096 9166

Signed by the auditor

Name:

RABQSA registration number:

Date: / /

Signed for and on behalf of the Secretary

Name:

Position:

Date: / /

Schedule 1

Department of Human Services auditing requirements

Definitions to be applied by an auditor in assessing non-conformances

Notifiable non-conformances

Critical non-conformance

A high risk non-conformance with the requirements of the Act or Standard (including a non-conformance with the registered businesses documented management system and food safety plan) where a serious or imminent risk to public health identified. That is, if the food, practice or situation has compromised public health, or if allowed to continue definitely will compromise health of consumers.

Notification of critical non-conformance

Council notified immediately. A copy of the written confirmation to the Council should also be sent to the Department of Human Services Food Safety Unit for information, preferably by facsimile.

Council environmental health officer to attend the premises immediately and ensure action taken within 24 hours to ensure risk to health is removed. When satisfied, council advises the auditor and re-audit required within 7 days. Auditor to contact the council if they have not heard back within 14 days.

Major non-conformance

A high potential risk situation.

A non-conformance with the requirements of the Act or Standard where the potential impact is likely to compromise food safety if no remedial action is taken to correct the non-conformance within a specified period of 7 days or less, including a non-conformance with the registered business' documented management system and food safety program.

Notification of major non-conformance

Council to be notified within 7 days

Follow up audit within 7 days

Non notifiable non-conformance

A low risk situation: a non-conformance with the requirements of the Act or Standard where the potential impact of the non-conformance is not likely to be a serious or imminent risk to public health. This includes a non-conformance with the registered business' documented management system and food safety program.

It is the responsibility of the auditor to set an appropriate timeframe for rectification, and to follow up as to how the non-conformance has been rectified.

Where more than one related minor non-conformances are raised which collectively are likely to compromise food safety, the non-conformances are to be classified as major or critical immediately, as appropriate

Non-notifiable non-conformances are reported to the council by the registered business by means of the audit report.

Certificates

Every auditor shall have a current Food safety auditor certificate issued by the Department of Human Services prior to undertaking an audit.

Assessment of the act or standards

Auditors shall assess those parts of the Act or Standards that set structural and fit out requirements for food premises. Auditors shall also assess those parts of the Act or Standards that set labelling requirements for food premises that are not included in the food safety program audit.

Notification of clients

When requested by the Department of Human Services, an auditor shall provide a list of registered premises by which they have been engaged.

Withdrawal of auditing services

An Auditor shall notify the council, in writing, of their withdrawal of auditing services from a current audit from any premises. The reasons for the withdrawal shall be included in the notification to the council.

Audit frequency

Auditors shall audit each premises to the frequency declared in the Government Gazette.

The auditor shall notify the council of any business that has not been audited in accordance with the declared frequency.

Auditing

Each element of the food safety program must be audited at least once per year.

Corrective action request (CAR)

Critical

Actions to be taken are as follows:

- The auditor will notify the council immediately.
- The auditor will immediately raise a corrective action request requiring the proprietor of the business to correct the situation and bring process under control.
- The council will take all necessary steps with the proprietor to prevent the sale of unsafe or unsuitable food; and
- The council will take all necessary steps with the proprietor to ensure the food is determined as unsafe or unsuitable as a result of the non-conformance is made suitable or safe by being reworked, or treated, or disposed.

If a critical non-conformity occurs during an audit and the proprietor immediately takes corrective action it is not necessary to raise a corrective action request. The incident and corrective action should be recorded in the audit report.

Major

A corrective action request (CAR) is raised by the auditor and a close out date set. The close date shall not exceed 7 days. The auditor will notify the council within 7 days.

A further compliance audit is conducted on the due date to determine whether the non-conformance has been rectified.

If the corrective action request is not closed out by the agreed date, the auditor will determine that the non-conformance is now a critical non-conformance and take action as below. If extenuating circumstances do not exist and the business is not making a genuine attempt to implement corrective action on the issue, then closure of the premises will be considered until the major non-conformance is rectified.

Minor

A corrective action request (CAR) is raised by the auditor and a suitable close out date agreed with the proprietor of the business. The close out date should reflect the potential of the non-conformance to affect food safety, and its ease of rectification.

If a minor corrective action request is not closed out by the agreed date, the auditor will review the reasons for non-closure with the proprietor and depending on the auditor's judgement of the overall nature of the non-conformance, and its potential to affect food safety, will take one of the following actions:

- a. Determine that a minor non-conformance still exists, cancel the existing corrective action request and raise a new corrective action request with a new close out date agreed with the proprietor, reporting on the action on the audit report; or
- b. Determine that the minor non-conformance is now a major non-conformance and raise a corrective action request with a close out date as required for major non-conformances.

Closing out a non-conformance

Any non-conformance raised is to be corrected by the proprietor of the business within the time frames set out below:

Critical: As advised through the auditor

Major: Within 7 days.

Minor: As agreed between the auditor and the proprietor of the business.

The council shall be notified of all critical non-conformances immediately, and major non-conformances within 7 days after they are identified.

Reporting

The auditor shall provide reports to the council as required by the Act and as stipulated by this agreement

Auditors are now advised to provide a copy of the audit report and the certificate of audit directly to the local authority at the completion of the audit as well.

Corrective action requests

Corrective action requests shall identify the proprietor, the business, registration number, date corrective action request was raised, details of the corrective action requests, close out date and the corrective action taken.

Cancellation of a food premises registration

The council will notify an auditor, in writing, of the revocation or suspension or the refusal of the registration, renewal of the registration or transfer of the registration of a premises. Only under these circumstances shall an auditor consider a premises registration cancelled.

Schedule 2

Standards and conditions

Standards

- Food Act 1984
- Food Standards Code Volumes 1 & 2 incorporating the Food Safety Standard
- Victorian Standard for the Hygienic Production of Meat at Retail Premises (1998)
- Export Control (Processed Food) Orders 1992 (Schedules 2 & 3).

Conditions

Food safety auditors certified under Section 19P of the *Food Act 1984* will abide by the following conditions:

- Maintain certification status with the auditor certification body;
 - Notify the Secretary of the Department of Human Services of any changes in certification, including any contact details or scope of audit status;
 - Notify factors influencing your performance of audits eg. health;
 - Audit relevant businesses to scope of registration. (ie sector experience);
 - Have adequate arrangements to cover liabilities arising from audit activities;
 - Undertake audits in accordance with ISO 10011 – AS3911;
 - Ensure that appropriate skills are brought to each audit;
- Apply the ‘Victorian Standard for Hygienic Production of Meat at Retail Premises’ to relevant premises registered under the *Food Act 1984*;
 - Apply the export control (Processed Food) Orders 1992 (Schedules 2 & 3) to retail ice-cream manufacturers as defined by DFSV.
 - Have adequate arrangements to safeguard confidentiality of information obtained in the course of audit activities;
 - Notify the registration authority as soon as is practicable after a serious risk to public health is identified;
 - Provide an audit certificate, stating the results of the audit, to the food business proprietor at the completion of each audit; and
 - Maintain records of audits for a minimum of 5 years.