



**[SUPPLIER]**

**AND**

**MINISTRY OF EDUCATION**

**Ka Ora, Ka Ako | Healthy School Lunches Programme**

School or Kura Name: [insert]

School or Kura No: [insert]

Ministry reference No: [insert]

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## **SERVICES AGREEMENT**

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## SERVICES AGREEMENT

**AGREEMENT** dated DD MM 2024

### Parties

*[Insert supplier legal name]* trading as *[Insert supplier trading name]* at *[Insert Location]*, company number *[insert]* (the *Supplier*)

**The Sovereign in Right of the Government of New Zealand** acting by and through the **Secretary for Education** or his or her duly authorised delegate, at Wellington (the *Ministry*)

### Overview

The Ministry appoints the Supplier, and the Supplier accepts the Ministry's appointment, to provide the Services and Deliverables on the terms and conditions set out in Schedule 1 (Agreement Details) and Schedule 2 (Terms and Conditions).

### SIGNATURES

For <b>[Insert]</b> :	For <b>Ministry of Education</b> :
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

**SCHEDULE 1**  
**AGREEMENT DETAILS**

The headings in this Schedule have legal effect.

<b>SUPPLIER'S DETAILS</b>  (Clause 16.7, Schedule 2)	Full legal name:	[Insert legal name of the Supplier – check companies or charitable trust office website and insert company/trust registration number] ( <b>Supplier</b> )
	Address for Notices:	[Insert physical address]
	Supplier Relationship Manager:	[Insert email name] Supplier Representative DDI: [Insert number] Email: [Insert email address]
<b>MINISTRY'S DETAILS</b>  (Clause 16.7, Schedule 2)	Full legal name:	Ministry of Education ( <b>Ministry</b> )
	Address for Notices:	1 The Terrace, Wellington Central, Wellington 6011
	Email:	School.lunches@education.govt.nz
	Attention:	Ka Ora, Ka Ako Programme Director
<b>BACKGROUND</b>	<p>The Ministry's <i>Ka Ora, Ka Ako   Healthy School Lunches</i> programme (the <b>Programme</b>) aims to reduce food insecurity by providing access to a nutritious lunch in school every day which will support child development, health, wellbeing and remove barriers to participation and achievement in education.</p> <p>The Supplier is a supplier to the Programme under a separate Agreement with the Ministry which is due to expire 24 December 2024. The Ministry has selected the Supplier to provide the Services and Deliverables to the Programme for a further year, which the Supplier has agreed to supply, on the terms and conditions set out in this Agreement.</p>	
<b>DELIVERABLES</b>	<p>The Deliverables include:</p> <ol style="list-style-type: none"> <li>1. Provision of a complete lunch service that delivers to the school or kura as identified in this Agreement.</li> <li>2. Ensuring that all aspects of the meal supply chain—including production, handling, storage, and transportation—comply with the Food Act 2014.</li> <li>3. Develop and maintain a waste and surplus management plan, ensuring waste and surplus is managed in accordance with Ministry requirements and in the manner agreed with the School in the Deliverables Form.</li> </ol>	

	<ol style="list-style-type: none"> <li>Providing reporting or collecting necessary data to support the Ministry's evaluation of the Programme and to inform possible improvements to the Programme, as required by the Ministry.</li> <li>Hold, maintain and provide to the Ministry an up-to-date Business Continuity Plan that addresses potential interruptions in service provision under this Agreement, with strategies and options to ensure continued service delivery.</li> <li>Have in place a system to manage and be able to report to the Ministry on risks, incident and issue notification and resolution.</li> <li>Hold a current registered and verified food control plan recorded with the Ministry of Primary Industries or other approved verifier (such as a local council) for the term of this Agreement.</li> <li>Provide other information as reasonably requested to inform the operation or management of the Programme.</li> </ol>																
<b>SERVICES</b>	<p>The Services that the Supplier will provide to the Ministry include:</p> <ol style="list-style-type: none"> <li>Providing a complete lunch service during the school term that supplies nutritious and healthy lunches with hot and/or cold food options in accordance with a Ministry approved menu and the frequency agreed via the Deliverables Form set out in the Appendix to Schedule 3 to the following School or Kura (School) participating in the Programme:</li> </ol> <table border="1"> <tr> <td><b>School or Kura Name:</b></td><td>[Insert School or Kura name]</td></tr> <tr> <td><b>School or Kura ID:</b></td><td>[Insert School or Kura ID]</td></tr> <tr> <td><b>Street Address:</b></td><td>[Insert School or Kura physical address]</td></tr> <tr> <td><b>Phone:</b></td><td>[Insert phone]</td></tr> <tr> <td><b>Email:</b></td><td>[Insert email]</td></tr> <tr> <td><b>Days lunches will be provided:</b></td><td>Refer to the Deliverables Form completed and signed by the School and the Supplier using the template in Appendix to Schedule 3 and provided to the Ministry (<b>Deliverables Form</b>).</td></tr> <tr> <td><b>School or Kura representative:</b></td><td>[Insert name]</td></tr> <tr> <td><b>Ministry representative and contact email:</b></td><td>[Insert name] [Insert email address]</td></tr> </table> <ol style="list-style-type: none"> <li>Ensuring that:</li> </ol>	<b>School or Kura Name:</b>	[Insert School or Kura name]	<b>School or Kura ID:</b>	[Insert School or Kura ID]	<b>Street Address:</b>	[Insert School or Kura physical address]	<b>Phone:</b>	[Insert phone]	<b>Email:</b>	[Insert email]	<b>Days lunches will be provided:</b>	Refer to the Deliverables Form completed and signed by the School and the Supplier using the template in Appendix to Schedule 3 and provided to the Ministry ( <b>Deliverables Form</b> ).	<b>School or Kura representative:</b>	[Insert name]	<b>Ministry representative and contact email:</b>	[Insert name] [Insert email address]
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<b>School or Kura representative:</b>	[Insert name]																
<b>Ministry representative and contact email:</b>	[Insert name] [Insert email address]																

	<ul style="list-style-type: none"> <li>a) Lunches are delivered accurately, safely and at or before the agreed time to schools and kura.</li> <li>b) All aspects of the meal supply chain including production, handling, storage, and transportation comply with the requirements of the Food Act 2014.</li> <li>c) Packaging used on lunches is plain with no obvious company logos, other than for the purposes of identifying ownership of any reusable packaging or to indicate allergens.</li> <li>d) Lunches meet the Nutrition Standards for Ka Ora, Ka Ako and the Ministry Special Diets and Complex Special Diets Policy, as published on the Ministry's website (education.govt.nz) and as updated from time to time; are age and culturally appropriate, and varied for both standard and special meals, informed by ongoing ākonga feedback.</li> <li>e) Meals meet the medical, ethical, and religious requirements of ākonga ensuring that no ākonga should be excluded from the Programme because of their dietary or cultural requirements.</li> <li>f) Records are kept and maintained of key actions, including menu testing, minutes of formal meetings held between the School or Kura and Supplier and any ākonga feedback gathered on the lunches.</li> </ul> <p><b>3. School, Kura and Ākonga Engagement &amp; Feedback</b></p> <p>To promote engagement in the Ka Ora, Ka Ako programme and reduce waste and surplus, the Supplier will collect and act on feedback at least once per term, including:</p> <ul style="list-style-type: none"> <li>a) Trialling new menu items with ākonga before full introduction.</li> <li>b) Gathering feedback from schools or kura on the appeal of new items.</li> <li>c) Reviewing the suitability and appeal of existing items with schools or kura and adapting as needed.</li> </ul> <p>Suppliers should recognise and respect the cultural contexts that makes Schools and Kura unique. Where possible and practical, support the kaupapa of individual Schools or Kura by understanding their cultural demographics and supporting the language, identity, and culture of ākonga and whānau through kai.</p> <p>This is expected to be achieved through demonstrating a willingness to learn, develop, promote, and implement approaches that support the language, identity, and culture of ākonga. This may include engaging with Schools and Kura, iwi or hapū and key stakeholders to understand the cultural, religious and tikanga customs that exist.</p> <p><b>4. Standard Dietary Accommodations</b></p>
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	<p>The Supplier must accommodate the following as part of standard lunch provisions:</p> <ul style="list-style-type: none"> <li>a) Top 10 common allergies: milk, egg, peanut, tree nut, sesame, fish, shellfish, kiwifruit, wheat, and soy.</li> <li>b) Common intolerances, including non-celiac gluten sensitivity and lactose intolerance.</li> <li>c) Religious dietary requirements.</li> <li>d) Ethical dietary requirements, noting that vegetarian and vegan diets may also fulfil religious practices.</li> </ul> <p><b>5. Support for Teen Parent Units</b></p> <p>In schools or kura with Teen Parent Units, meals for pregnant and breastfeeding ākongā must meet safety and nutritional standards for their specific needs.</p> <p><b>6. Special Diet Reporting</b></p> <p>The Supplier must maintain accurate records and be able to report on special dietary provisions, including the number of special dietary lunches, complex dietary needs, and high-risk medical conditions for each school or kura served.</p> <p><b>7. Complex Special Diets</b></p> <p>Where ākongā require a special dietary meal that is complex and outside of the scope of the meals (Complex Special Diets), the Supplier will notify the Ministry of their inability to provide a meal for a particular student. The Ministry and the School will work together to find a solution to allow the ākongā to receive a safe lunch at School or Kura. Complex special diets include:</p> <ul style="list-style-type: none"> <li>a) Multiple or rare allergies (three or more).</li> <li>b) Medically diagnosed intolerances beyond standard provisions, such as fructose or FODMAP intolerance.</li> <li>c) Medically prescribed diets that are incompatible with the standard menu.</li> <li>d) Special diets for multiple medical conditions (e.g., dysphagia and allergies).</li> <li>e) Special diets funded by Te Whatu Ora – Health New Zealand.</li> <li>f) Special diets for pregnant or breastfeeding ākongā.</li> <li>g) Sensory aversion diets due to medical conditions or disabilities.</li> <li>h) Meals requiring special preparation facilities.</li> <li>i) Complex religious dietary requirements, such as Kosher.</li> </ul> <p>If the Supplier cannot meet specific complex dietary requirements, they must notify the Ministry. The Ministry and school will collaborate to provide a safe alternative for the ākongā.</p>
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### **8. Sustainability, Waste, and Surplus Management**

The Supplier is responsible for waste management and removal including all food and packaging waste unless specified otherwise in a Deliverable Form. A waste management plan should be in place to deal effectively with any Ka Ora, Ka Ako related programme food waste e.g., composting or feeding chickens/ pigs unless otherwise specified.

Programme-related waste from schools or kura must be removed promptly as agreed with each school or kura, with no packaging waste left onsite.

### **9. Sustainable Packaging**

Reusable, recyclable, or certified compostable packaging should be used wherever feasible with any exceptions documented with justifiable rationale for reporting if required.

Use of non-recyclable packaging, plastic wrap, and single-use items should be minimised.

Ensure that all packaging is plain, without visible company logos, except to identify ownership of reusable packaging.

### **10. Waste and Surplus Management**

The Supplier will Collaborate with schools and kura to:

- a) Manage surplus lunches, food waste, packaging, and in-school distribution requirements.
- b) Gather feedback to continuously improve lunch uptake.
- c) Adjust lunch orders to align with expected attendance.
- d) Minimize food and packaging waste through menu planning and appealing meal options.

If requested, the Supplier will count surplus lunches for a period of time of up to 10 business days, as directed by the Ministry.

A mutually agreed plan with the Ministry should be in place for waste and surplus management, detailing minimisation targets. The plan should:

- a) Align with Te Rautaki Para, the Ministry for the Environment's national waste strategy.
- b) Include recycling and composting processes for waste from meal preparation, covering paper, cardboard, metals, and plastics (e.g., #1, 2, 5), as well as food scraps.
- c) Describe collection and sorting systems to ensure proper recycling, resource recovery, or waste reduction, with evidence available upon request.
- d) Demonstrate a proactive approach to reducing food and packaging waste across the supply chain.

- e) Include strategies for minimizing surplus meals.
- f) Outline methods for handling food waste (e.g., composting or animal feed) unless specified otherwise in the Deliverable Form.
- g) Include a mechanism to measure and report waste weight (food and packaging) sent to landfill from a representative sample of school or kura kitchens over a specified two-week period during term 2 or term 3.

### **11. Incident and Issue Resolution**

The Supplier must immediately report any incidents or issues involving the following to the Ministry to the extent that it relates to, or affects, the Services or this Agreement, particularly in the following areas:

- a) significant health and safety events.
- b) issues with food safety (e.g. food safety investigation undertaken on supplier premises, unacceptable outcome of a food verification audit).
- c) food contamination (e.g. foreign object, pest).
- d) food quality (e.g. burnt, frozen, uncooked, unpalatable).
- e) special diet production/labelling.
- f) media or reputation related events

Both parties agree to act in good faith throughout any issue notification or escalation process in order to resolve issues efficiently.

### **12. General Obligations**

In providing the Services and Deliverables and as necessary for the provision of the Services and Deliverables, the supplier will:

- a) pay all Supplier's Personnel involved in delivery of the Services and Deliverables, no less than the then current 'Living Wage' as published [https://www/livingware.org.](https://www/livingware.org;);
- b) take full responsibility for the performance of all tasks and activities necessary to provide the Services and Deliverables in accordance with this Agreement, other than tasks or activities specifically identified as being the Ministry's responsibility;
- c) ensure compliance with all applicable laws, including but not limited to the Food Act 2014, the Health and Safety at Work Act 2015, and the [New Zealand Government supplier code of conduct](#).
- d) comply with all reasonable directions, including any operational guidance relating to the Ka Ora, Ka Ako programme, given by the Ministry from time to time;



<b>Service Levels</b>	Service Levels are detailed in Schedule 4.	
<b>KEY PERSONNEL</b> (Clause 4.2, Schedule 2)	<b>Key Personnel</b>	<b>Role description</b>
	[insert name], [insert job title]	Supplier's Relationship Manager
	[insert name], Ka Ora, Ka Ako Service Delivery Manager	Ministry Relationship Manager
<b>RELATIONSHIP MANAGEMENT</b>	<p>The Supplier's Relationship Manager will:</p> <ol style="list-style-type: none"> <li>1. Serve as the primary point of contact with the Ministry and the School or Kura.</li> <li>2. Have primary responsibility for establishing and maintaining an effective, proactive business relationship and work collaboratively in partnership with the Ministry under this Services Agreement.</li> <li>3. Respond to School communication requests and notifications within 1 Business Day.</li> </ol> <p>Any change in the Supplier's Relationship Manager must be notified to the Ministry and School/Kura in writing.</p>	

**REPORTING  
REQUIREMENTS**

The following information and reporting requirements will be provided to the Ministry as requested, required or specified:

**Certification and Compliance Documents**

Required at least annually, or as specified/requested.

1. Current Registered and Verified Food Control Plan certificate.
2. Current (reviewed within years) Health and Safety Plan
3. Current Certificate of Insurance
4. Business Continuity Plan
5. Living Wage Compliance Report
6. Evidence of Safety Checks (Children's Act 2014)
7. Waste management Plan.
8. Site Specific Health and Safety plan (if providing service on site) at the commencement date and when updated.

**Menu and Nutritional Compliance:**

1. Provision of Menu's on a Termly basis (at least 3 weeks prior to term start or as otherwise requested, or when updated)
2. Testing and feedback adaptations for menu items

**Surplus and Waste Reports:**

1. Surplus Lunch Count (as requested, up to 10 business days)
2. Waste Measurement Report (two-week sample during Term 2 or 3)

**Quality Control and Incident Reports:**

1. Quality Control Measures (on request)
2. Incident Reports:
3. Minutes of formal School/Kura meetings, including feedback

**Additional Data and Programme Support:**

4. Any reporting or data reasonably required to support the Ministry's evaluation of the programme and to inform possible improvements to the programme including but not limited to:

	<ol style="list-style-type: none"> <li>5. special dietary requirements, complex needs, and high-risk conditions</li> <li>6. programme evaluation, performance management, and improvements.</li> <li>7. Additional information on surplus lunches, food/packaging waste, distribution</li> <li>8. Provision of reports or information as required as part of a Performance Management Plan</li> </ol>				
<b>MEETING REQUIREMENTS</b>	<p>The Supplier's representatives will participate in the following meetings, at the following times:</p> <table border="1"> <tr> <td><b>Meeting</b></td><td>1: Supplier Review Meeting</td></tr> <tr> <td><b>Description</b></td><td> <p>Supplier Review Meeting to assess service delivery performance against key metrics. Discussion points include progress against service levels, quality control, performance trends, and any specific challenges encountered.</p> <p>- Issue, Risk, and Action Review: Review outstanding issues and risks from previous meetings, document actions taken, and update any necessary follow-up actions for resolution.</p> <p>- Risk Identification and Mitigation: Identify any emerging risks, propose mitigation strategies, and outline actions to prevent service disruptions.</p> </td></tr> </table>	<b>Meeting</b>	1: Supplier Review Meeting	<b>Description</b>	<p>Supplier Review Meeting to assess service delivery performance against key metrics. Discussion points include progress against service levels, quality control, performance trends, and any specific challenges encountered.</p> <p>- Issue, Risk, and Action Review: Review outstanding issues and risks from previous meetings, document actions taken, and update any necessary follow-up actions for resolution.</p> <p>- Risk Identification and Mitigation: Identify any emerging risks, propose mitigation strategies, and outline actions to prevent service disruptions.</p>
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	<b>Attendees</b>	Supplier Relationship Manager Ministry representative
	<b>Frequency/Date</b>	3 monthly unless otherwise agreed
	<b>Responsible for Initiating meeting</b>	Ministry
	<b>Meeting</b>	2: Operational Meeting
	Description	Document and address operational details, including:  - Service level adherence and potential improvements  - Ākonga feedback, engagement, and lunch uptake trends  - Menu updates, lunch orders, waste, and surplus minimization  - Daily operations and any upcoming School or Kura scheduling adjustments (e.g., closures, teacher-only days, accord days, education outside the classroom)  - Operational Continuity: Assess continuity plans and adjust for any upcoming disruptions.  - Issue, Risk, and Action Review: Review outstanding issues and risks from previous meetings, document actions taken, and update any necessary follow up actions
	Attendees	<ul style="list-style-type: none"> <li>• Supplier</li> <li>• School or Kura</li> </ul> Ministry representative (if required)
	Frequency/Date	At least once/term
	Responsible for Initiating meeting	Supplier
<b>CHARGES</b> (Clause 6.1, Schedule 2)	1. Price per ākonga per lunch which includes food, labour, margins, and overheads relating to producing and delivering lunches as at school term 4, 2024 are as follows:  a. Standard Provision Lunches <ul style="list-style-type: none"> <li>i. Year 0-3: \$5.97 (plus GST)</li> <li>ii. Year 4-6: \$6.99 (plus GST)</li> </ul>	

	<p>2. Prices for Standard Provision Lunches will be calculated each school term.</p> <p>3. For the avoidance of doubt, these costs replace any other schools lunch costs under the relevant Contract on the relevant day(s).</p> <p>4. Additional payment or rate adjustments may also be considered and advised by the Ministry (Subject to the Ministry's Special Diets and Complex Special Diets Policy) for provision of Complex Special Diets.</p> <p>Delivery</p> <p>5. The Supplier may charge \$1.20/km for each kilometre travelled by the Supplier in delivering lunches from its usual kitchen premises to Schools or Kura, provided that the Supplier will use the most efficient routes, including charging for a delivery route that may cover delivery to more than one school or kura.</p> <p>6. A maximum charge for delivery will apply, which will be based on the distance between the School or Kura and the Supplier's kitchen, and with consideration of distances between any other Schools or Kura on the delivery route. Where applicable, this will be advised to the Supplier by the Ministry.</p> <p>Total Charges Payable – Standard Costs</p> <p>7. Total charges payable will be calculated based on the following standard costs:</p> <p>[(Price per ākonga x no. of lunches of each type and year group ordered by the School or Kura and provided per day) + (delivery charges)] + GST]</p> <p>Charges relating to Service Suspension by the Ministry</p> <p>In the event the Services are suspended by the Ministry the Supplier will be entitled to charge the Ministry the following agreed costs:</p> <p>Fixed costs for production and delivery (i.e. costs that are incurred regardless of whether lunches are being produced). These include finance/lease costs for equipment purchased specifically for the lunches programme (e.g. packaging machines, ovens), premises lease/rent, delivery vehicle finance (purchase/hire or lease) and, if delivery is sub-contracted (and depending on the sub-contract terms), the non-mileage component of the delivery costs.</p> <p>a) Fixed costs for corporate overheads (e.g. management staff).</p> <p>Perishable food orders that cannot be cancelled or stored or used later.</p> <p>Employee related production, delivery, and in-school lunch distribution costs (wages, KiwiSaver, holiday pay etc) associated with production of lunches that can't be cancelled.</p>
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## Additional Costs

8. Additional costs beyond those specified above may be considered only on a case-by-case basis, and must be pre-approved by the Ministry prior to reimbursement.

## Rates adjustment

A termly rate review will occur prior to the start of each school term, using a set weighted index and outcomes notified to the Supplier in advance of any adjustment. Where applicable, charges will be adjusted 10 Business Days before the start of each school term (Adjustment Date) using the following formula:

$$\text{Charges for school term } (x+1) = \text{Charges for school term } (x) + (\text{Charges for school term } (x) \text{ multiplied by } A\%)$$

When calculating A%, the data for the most recent month for which data is available will be used and the % change will be calculated with reference to the data used for the previous adjustment.

The Ministry will advise the applicable charges using the following weighted index adjustment:

Category	Series Name	Series	% Change	Weighting	Weighted adjustment
Food	Fruit and vegetables	SE9011	[ %]	15%	[ %]
	Meat, poultry, and fish	SE9012	[ %]	8%	[ %]
	Grocery foods	SE9013	[ %]	22%	[ %]
Labour	Accommodation and food services, All Salary, and Wage Rates	SG43G2	[ %]	34%	[ %]
Consumer Price Index	Housing and household utilities	SE904	[ %]	8.4%	[ %]
	Transport	SE907	[ %]	8.4%	[ %]
	Household contents and services	SE905	[ %]	2.9%	[ %]
	Communication	SE908	[ %]	0.6%	[ %]
	Education	SE910	[ %]	0.6%	[ %]
TOTAL			[ %]	100%	[ %]
Targeted Wage Requirement adjustment		(New living wage rate minus current living	[ %]	24%	[ %]

			wage rate) <i>divided</i> by the current living wage rate			
<b>INVOICING</b> (Clause 6.3, Schedule 2)	<p>Unless otherwise agreed by the Ministry, the Supplier may invoice the Charges each fortnight or month for Services and Deliverables provided during the previous fortnight or month. Each invoice is to be accompanied by an invoice charges report Containing the following information:</p> <ul style="list-style-type: none"> <li>a) Number of Standard Special Diet lunches for each of the year groups;</li> <li>b) Number of Complex Special Diet lunches for each of the year groups and the rate;</li> <li>c) Number of other lunches for each of the year groups;</li> <li>d) Reasons for any changes that affect the roll such as teacher only days, EOTC events, roll changes notified by the school or kura;</li> <li>e) Any perishable food and fixed costs as approved by the Ministry;</li> <li>f) daily delivery charge rate as approved by the Ministry.</li> </ul>					
<b>PAYMENT TERMS</b> (Clause 6.4, Schedule 2)	Within 10 Business Days from receipt of an accurate invoice.					
<b>EXPENSES</b> (Clause 6.6, Schedule 2)	No reimbursement of expenses.					
<b>COMMENCEMENT DATE</b> (Clause 9.1, Schedule 2)	[Insert date]					
<b>EXPIRY DATE</b> (Clause 9.1, Schedule 2)	24 December 2025					
<b>TERMINATION FOR CONVENIENCE</b> (Clause 9.2, Schedule 2)	<p>The Ministry may terminate this Agreement at any time by giving the Supplier at least 30 days' written notice.</p> <p>The Supplier may terminate this Agreement at any time by giving the Ministry at least 60 days' written notice</p>					
<b>SUSPENSION</b>	Without prejudice to any other right or remedy the Ministry may have in law or under a Services Agreement, the Ministry may immediately					

	<p>suspend this Agreement at any time by notice in writing to the Supplier if the Supplier:</p> <ul style="list-style-type: none"> <li>a) does not have a registered and verified Food Control Plan in accordance with the Food Act 2014</li> <li>b) is subject to an active food safety investigation.</li> </ul>
<b>INSURANCE</b> (Clause 11.1, Schedule 2)	<p>Supplier has the following Minimum insurance in place for the Term of this Agreement:</p> <p>Public liability: \$1,000,000</p>
<b>Additional Terms</b>	<ol style="list-style-type: none"> <li>1. The Supplier will conduct a safety check of any Personnel who may have regular contact with children as part of providing the Services and Deliverables in accordance with the Childrens Act 2014. The Supplier will undertake a risk assessment and be satisfied that each such Personnel would not pose a risk to the safety of children before providing the Services and Deliverables.</li> <li>2. Any information that will be published in a public domain in connection with the Supplier, the Ministry, the Programme, or this Agreement must be vetted and agreed by the other party before release.</li> <li>3. Ensuring their staff who are predominantly and directly working on school lunch preparation or distribution in connection with the Services are paid an hourly rate of at least \$27.80 from the Commencement Date, or such other amount as published at <a href="https://www.livingwage.org.nz">https://www.livingwage.org.nz</a>.</li> </ol>



## Schedule 2 – Terms and Conditions

### 1. Definitions

**1.1** In this Agreement, terms defined in the Schedules have the meanings given to them, and the following terms have the following meanings unless the context requires otherwise:

**Agreement** means this agreement, including the Schedules and any appendices to this agreement;

**Business Day** means any day other than a Saturday or Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington, New Zealand;

**Charges** means the fees set out in Schedule 1;

**Commencement Date** has the meaning given to that term in Schedule 1;

**Confidential Information** means, in relation to a party, all information of any kind, whether in tangible or documentary form, and whether marked or identified as being confidential, relating to that party or its business operations, customers or technologies and, in relation to the Ministry, includes the Ministry's Data;

**Deliverables** means all documentation, software and other materials provided, or to be provided, by the Supplier under or in connection with this Agreement, including all deliverables set out in Schedule 1;

**Expiry Date** means the expiry date set out in Schedule 1;

**Force Majeure Event** means, in relation to either party (Affected Party), an event or circumstance beyond the reasonable control of the Affected Party including:

- (a) an act of God;
- (b) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- (c) a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration

(other than one caused by the Affected Party),

but not including any event or circumstance, or any failure to comply with any term of this Agreement arising from such event or circumstance, that could have been avoided by the exercise, by the Affected Party, of business continuity or other practices in accordance with commercially reasonable practice;

**GST** means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

**Ministry Data** means all information relating to the Ministry, its business, operations, business strategies, marketing plans, facilities, technologies, stakeholders, customers, and suppliers;

**Intellectual Property Rights** means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including all copyright, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs, rights in relation to trade marks, business names and domain names;

**Key Personnel** means the Personnel specified, if any, in Schedule 1 and any of their replacements made in accordance with this Agreement;

**Personnel** means any employee, agent or representative of the Supplier, or any subcontractor of the Supplier, who provides any Service or Deliverable;

**Records** means information, whether in its original form or otherwise, including a document, a signature, a seal, text, images, sound, speech, or data compiled, recorded, or stored, as the case may be:

- (a) in written form on any material;
- (b) on film, negative, tape, or other medium so as to be capable of being reproduced; or

(c) by means of any recording device or process, computer, or other electronic device or process;

**Services** means the services described in Schedule 1, all services reasonably incidental to those services and all other services provided by the Supplier under this Agreement;

**Service Levels** means the standards of service specified in this Agreement, including the service levels specified in Schedule 1; and

**Term** means the term of this Agreement described in clause 9.1.

**1.2** In this Agreement:

- (a) except as otherwise expressly stated, headings are for convenience only and have no legal effect;
- (b) references to the singular include the plural and vice versa;
- (c) references to a party include that party's successors, executors, administrators and permitted assignees (as the case may be);
- (d) references to clauses and Schedules are to the clauses and Schedules to this Agreement;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) references to any statute include any amendment to, or replacement of, that statute and any subordinate legislation made under it;
- (g) references to a person include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority;
- (h) wherever the words "includes" or "including" (or similar words) are used, they are deemed to be followed by the words "without limitation";
- (i) except as otherwise expressly stated, monetary references are

references to New Zealand currency; and

(j) if there is any conflict between the terms of this Agreement, the following order of precedence will apply:

- (i) the terms of Schedule 2;
- (ii) the terms of Schedule 1; and
- (iii) any other terms of this Agreement.

## **2. Services and Deliverables**

**2.1** The Supplier agrees to provide the Services and Deliverables to the Ministry on the terms and conditions of this Agreement.

**2.2** The parties agree that the Supplier's appointment under this Agreement is non-exclusive and the Ministry does not guarantee any minimum level of business or services by entering into this Agreement. For the avoidance of doubt, this does not effect any volume commitment made in Schedule 1.

**2.3** The Supplier acknowledges that the Ministry is relying on the Supplier's expertise in entering into this Agreement, including all statements made by the Supplier regarding the Supplier's or the Personnel's skills, experience and expertise and the quality and performance of the Services and Deliverables.

## **3. Supplier's obligations**

**3.1** In providing the Services and Deliverables and complying with its other obligations under this Agreement, the Supplier must:

- (a) provide the Services and the Deliverables promptly, efficiently and to a standard of skill, care and diligence which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator in the same or similar circumstances;
- (b) provide the Services and Deliverables so as to meet or exceed the Service Levels;
- (c) provide the Services and Deliverables without disrupting or

adversely affecting any part of the Ministry's operations or its information technology or telecommunications systems;

(d) ensure the Services and Deliverables meet the requirements set out in this Agreement and as reasonably specified by the Ministry in writing from time to time;

(e) assign to the Ministry, or if it is unable to do so, hold for the sole benefit of the Ministry, all warranties and guarantees provided by third parties to the Supplier in respect of the provision of any Services and Deliverables under this Agreement;

(f) comply with all of its legal obligations (including under statute, regulation, and contract);

(g) co-operate with the Ministry and all other contractors and service providers to the Ministry, to ensure the Services, Deliverables and all products and services related to them are delivered efficiently and seamlessly to the Ministry;

(h) comply with all the Ministry's policies and procedures notified to the Supplier from time to time;

(i) comply with all reasonable directions given by the Ministry from time to time; and

(a) promptly notify the Ministry in writing of:

(i) any breach of the Supplier's obligations under this Agreement; and

(ii) any matter that may impact on the Supplier's ability to perform its obligations in accordance with this Agreement.

**3.2** The Supplier must provide the Deliverables in such format, and on such medium, as is reasonably required by the Ministry.

**3.3** If the Services or Deliverables are not, in the Ministry's reasonable opinion, provided in accordance with this Agreement, or do not

otherwise meet the Ministry's requirements as specified to the Supplier in writing, the Ministry may, without limiting its other rights and remedies, do either or both of the following:

(a) require the Supplier to remedy the deficiency immediately in which case the Supplier will do so at its cost; and

(b) withhold any payment due to the Supplier until the deficiency is remedied to the Ministry's reasonable satisfaction.

**3.4** The Supplier must not engage in any activity or conduct that might, in the Ministry's reasonable opinion, damage the reputation or image of the Ministry or the Crown.

**3.5** The Supplier agrees not to enter into any agreement or arrangement that will, or is likely to:

(a) prejudice the Supplier's ability to meet its obligations under this Agreement; or

(b) create a conflict of interest for the Supplier, without obtaining the Ministry's prior written consent.

**3.6** The Supplier will:

(a) permit the Ministry at any time and at its expense, to audit any records in connection with this Agreement, and the Ministry will comply with the Supplier's reasonable security and confidentiality requirements in conducting any audit under this clause;

(b) assist the Ministry with any audit conducted under clause 3.6(a) and will ensure its personnel and subcontractors also assist the Ministry, including by making their premises, systems and records available to the Ministry or its nominee if requested

## **4. Personnel**

**4.1** The Supplier:

(a) must ensure the Services and Deliverables are provided by

appropriately experienced, skilled and qualified Personnel;

(b) is responsible for all acts and omissions of the Personnel as if they were acts or omissions of the Supplier; and

(c) must ensure that all Personnel comply with this Agreement including the obligations in clause 3.1.

**4.2** The Supplier must ensure the Key Personnel (if any) provide the Services and Deliverables they are required to provide under this Agreement. The Supplier may only replace any Key Personnel if:

(a) that person is unavailable due to resignation, illness or death;

(b) the replacement person is, in the reasonable opinion of the Ministry, appropriately experienced, skilled and qualified to perform the applicable role; and

(c) the Supplier bears all costs relating to replacing the Key Personnel and up-skilling each replacement.

**4.3** If the Ministry considers (acting reasonably) that any of the Personnel are unsatisfactory or unsuitable then, without limiting any of its other rights or remedies:

(a) the Ministry may, by written notice, require the Supplier to replace the relevant Personnel or subcontractor; and

(b) the Supplier will do so as soon as possible at its own cost, but in any event no later than five Business Days after receipt by the Supplier of the notice.

**4.4** The Ministry may conduct criminal checks in relation to the Supplier and any of its Personnel and subcontractors at any time during the Term and the Supplier must obtain all necessary consents for such purpose. Where the Ministry is not satisfied with the result of any criminal check for any Personnel or subcontractor, the Ministry may:

(a) without limiting any of its other rights or remedies, immediately

terminate this Agreement by giving notice in writing to the Supplier; or

(b) without limiting any of its other rights or remedies, require the removal of the Personnel or subcontractor from providing any Services or Deliverables by giving notice in writing to the Supplier and the Supplier must comply with that notice within five Business Days.

## **5. Health and safety**

**5.1** The Supplier shall:

(a) consult, cooperate and coordinate with the Ministry, to the extent required by the Ministry, and to ensure that the Ministry and the Supplier will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Agreement;

(b) perform its, and ensure that its Personnel perform their, obligations under this Agreement in compliance with its and their obligations under the Health and Safety at Work Act 2015;

(c) comply with all reasonable directions of the Ministry relating to health, safety, and security;

(d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Ministry to the extent that it relates to, or affects, this Agreement;

(e) comply with any additional health and safety requirements described in the Appendix to Schedule 1.

## **6. Charges and invoicing**

**6.1** Subject to clauses 3.3 and 6.5, the Ministry must pay the Charges and GST (if any) to the Supplier in accordance with Schedule 1.

**6.2** The Supplier:

(a) acknowledges that, except as expressly specified in this Agreement, no other payments or benefits will be payable or provided by the Ministry to

the Supplier, including in relation to any of the Personnel; and

(b) indemnifies the Ministry from and against any and all liability, losses, damages, costs and expenses suffered or incurred by the Ministry arising out of any failure to pay compensation, taxes, duties, levies or benefits in respect of any Personnel.

**6.3** The Ministry is not obliged to pay any Charges until the Supplier provides a valid tax invoice to the Ministry in accordance with the invoicing and payment terms in Schedule 1. The invoice must include:

(a) details of the Services and Deliverables to which the invoice relates;

(b) enough information to enable the Ministry to validate the claim for payment including any Agreement reference number assigned by the Ministry; and

(c) any other information that the Ministry may reasonably request.

**6.4** Subject to clauses 6.3 and 6.5, and unless otherwise expressly stated in Schedule 1, the Ministry must pay each invoice by the 20th of the month following the month in which the invoice is received.

**6.5** Without limiting the Ministry's rights under clause 3.3, if the Ministry disputes in good faith any amount invoiced, it may withhold the disputed amount until the dispute is resolved. If the disputed amount forms part of an invoice, the Ministry will either pay the undisputed portion of the invoice by the due date for payment or will pay the entire amount by that date in which case the Supplier must promptly credit the disputed portion pending resolution of the dispute.

**6.6** The Ministry will reimburse the Supplier for expenses incurred by the Supplier in providing the Services and Deliverables only if, and to the extent, specified in Schedule 1 and only following receipt of a valid tax invoice.

## **7. Meetings and reporting**

**7.1** The parties will meet at intervals reasonably determined by the Ministry to monitor and discuss the Supplier's progress in providing the Services and Deliverables as well as health and safety matters.

**7.2** The Supplier will report on the progress of the Services and Deliverables to the Ministry as and when reasonably required by the Ministry.

## **8. Records**

**8.1** Without limiting its other obligations under this Agreement or at law, the Supplier must, and must ensure that its subcontractors, create and maintain full, accurate and accessible Records relating to the provision of the Services and Deliverables (including health and safety matters) and the Charges charged under this Agreement, to the standards required under the Public Records Act 2005 as notified by the Ministry from time to time.

**8.2** Without limiting clause 8.1:

(a) the Records created and maintained under clause 8.1 must, at a minimum, describe or specify:

(i) the nature and scope of the Services and Deliverables provided under this Agreement;

(ii) the transactions that took place in the provision of all Services and Deliverables;

(iii) the basis on which each invoice has been prepared and submitted to the Ministry under this Agreement;

(iv) all health and safety matters in connection with this Agreement; and

(v) the contract reference number for the Agreement; and

(vi) any other information reasonably required by the Ministry from time to time; and

(b) the Supplier must ensure the Records created and maintained under clause 8.1 are:

- (i) maintained in an accessible form;
- (ii) retained for the Term; and
- (iii) if requested by the Ministry, provide to the Ministry in an accessible form on termination or expiry of this Agreement and at any other time on the Ministry's request.

**8.3** The Ministry may at any time notify the Supplier that the Ministry wishes to audit the Supplier's compliance with the terms of this Agreement. The Supplier will allow the Ministry or its nominee to inspect the Supplier's premises, systems and records on and from the date notified by the Ministry during the Supplier's normal business hours for the purpose of conducting the audit. The Ministry will comply with the Supplier's reasonable security and confidentiality requirements in conducting any audit.

**8.4** The Supplier will assist the Ministry with any audit conducted under clause 8.3 and will ensure its Personnel also assist the Ministry, including by making their premises, systems and records available to the Ministry or its nominee if requested.

## **9. Term and termination**

**9.1** This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms or extended in accordance with Schedule 1, continues until the Expiry Date.

**9.2** Unless otherwise expressly stated in Schedule 1, the Ministry may terminate this Agreement for any reason by giving the Supplier at least 10 Business Days' notice in writing.

**9.3** The Ministry may terminate this Agreement immediately by giving notice in writing to the Supplier if the Supplier:

- (a) dies, commits an act of bankruptcy, becomes insolvent or enters into any arrangement with its creditors;

(b) enters into liquidation or becomes subject to the appointment of a receiver; or

(c) commits any act or omission that damages, or is likely to damage, the Ministry's business, reputation or systems.

**9.4** Without limiting clause 9.3, either party may terminate this Agreement immediately by giving notice in writing to the other party (Defaulting Party) if the Defaulting Party commits any material breach of its obligations under this Agreement and fails to remedy the material breach within 20 Business Days of receiving notice requiring it to do so.

**9.5** On termination or expiry of this Agreement for any reason whatsoever:

(a) the Ministry may recover any Charges or expenses paid in advance to the Supplier under this Agreement;

(b) the Supplier will return or, if requested by the Ministry, destroy or erase, all:

(i) Confidential Information belonging the Ministry;

(ii) materials containing Confidential Information or the subject of Intellectual Property Rights belonging to the Ministry; and

(iii) other property belonging to the Ministry,

in the Supplier's possession or control or the possession or control of its Personnel or subcontractors;

(c) the Supplier will provide such information and assistance required by the Ministry to allow the Ministry to make an orderly transition of all or any of the Services and Deliverables to the Ministry or any nominated alternative service provider or both of them;

(d) clauses 6.2(a), 8.1, 9.5, 10, 11, 12, 13, 14 and 16 any other clauses intended to survive termination or

expiration, will remain in full force and effect; and

(e) the rights and remedies of the parties accrued before termination or expiry, including for any prior breach of this Agreement, will remain unaffected.

## **10. Liability**

**10.1** Subject to clause 10.2 and 10.3, the Supplier indemnifies and holds the Ministry and its officers, employees and agents harmless from and against any and all liability, losses, damages, costs and expenses of any nature whatsoever awarded against, incurred or suffered by them, arising out of or resulting from:

(a) the non-performance or breach by the Supplier of any of its obligations under this Agreement; or

(b) the negligence of the Supplier or its Personnel or subcontractors.

**10.2** Subject to clause 10.3, each party's liability to the other party for damages (under the law of contract, tort including negligence, equity or otherwise) arising out of or in connection with this Agreement will be limited in aggregate to:

(a) in the case of the Supplier, the amount specified in Schedule 1;

(b) in the case of the Ministry, an amount equal to the Charges paid and the Charges payable under this Agreement in the month period preceding the month in which the relevant cause of action arose,

provided that liability is not limited:

(c) in the case of wilful default, property damage or fraud;

(d) in relation to any unauthorised use of the other party's Intellectual Property or Confidential Information; or

(e) in the case of the Supplier, liability under clause 12.5 (Intellectual Property indemnity).

**10.3** Despite any other provision of this Agreement, neither party will be liable to the other (under the law of contract, tort, equity

or otherwise) for any damages of any kind arising out of or in connection with this Agreement

that are indirect or consequential (meaning not arising in the ordinary course as a direct, natural or probable consequence of the act or omission complained of), regardless of the cause of such damages or whether the other party had been advised of the possibility of such damage.

## **11. Insurance**

**11.1** During the Term and for three years after termination or expiry of this Agreement, the Supplier will maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Supplier, and in particular will maintain coverage in respect of public liability and professional indemnity for the amounts specified in Schedule 1. The Supplier will, upon request at any time, provide the Ministry with a certificate from the insurer or insurers confirming the terms of such insurance.

## **12. Intellectual property**

**12.1** All Intellectual Property Rights:

(a) existing before the Commencement Date that are owned by, or licensed to, either party or its licensors; or

(b) developed by, licensed to or in the possession of that party after the Commencement Date, but not in relation to the Agreement, remain the property of that party or its licensors.

**12.2** Subject to clause 12.1, all Intellectual Property Rights in Services or Deliverables provided, created or developed by the Supplier, its Personnel or subcontractors under or in connection with this Agreement, will be owned by the Ministry upon creation. To the extent that any Intellectual Property Rights described in this clause 12.2 are not owned by the Ministry on their creation, the Supplier will hold such Intellectual Property Rights on trust for the Ministry and will, if called upon to do so by the Ministry, assign such Intellectual Property Rights to the Ministry.

**12.3** Subject to clause 12.2, if any Service or Deliverable incorporates or relies on

Intellectual Property Rights that are owned by the Supplier or any third party, the Supplier grants the Ministry a perpetual, royalty-free, irrevocable, transferable, sub-licensable licence under those Intellectual Property Rights to use, copy, modify and sublicense the Services and Deliverables to the extent necessary to receive the full benefit of the Services and Deliverables.

**12.4** The Supplier warrants that the Services and Deliverables, and the Ministry's use and possession of them, do not infringe the Intellectual Property Rights of any person.

**12.5** The Supplier indemnifies the Ministry against all liability, losses, damages, costs and expenses suffered or incurred by the Ministry as a result of any claim that the Services or Deliverables, or the Ministry's use or possession of them, infringes the Intellectual Property Rights of any person.

**12.6** If the Services or Deliverables, or the Ministry's use or possession of them, infringes the Intellectual Property Rights of any person, the Supplier will, at its expense and without limiting the Ministry's other rights and remedies:

(a) modify the Services or Deliverables so they no longer infringe but still comply with this Agreement; or

(b) obtain a licence to enable the Ministry to use the relevant Services or Deliverables on terms acceptable to the Ministry, and pay all fees for that licence.

### **13. Confidentiality**

**13.1** Each party (Receiving Party) who receives Confidential Information of the other party (Disclosing Party) must:

(a) use the Disclosing Party's Confidential Information solely for the purpose of performing its obligations under this Agreement or, in the case of the Ministry, for its business and operational purposes and to obtain the full intended benefit of the Services and Deliverables;

(b) only disclose the Disclosing Party's Confidential Information to its employees, agents or contractors who

have a need-to-know for the purposes of fulfilling the Receiving Party's obligations under this Agreement or, in the case of the Ministry, for its business and operational purposes and to obtain the full intended benefit of the Services and Deliverables; and

(c) effect and maintain adequate security measures to safeguard the Disclosing Party's Confidential Information from access or use by unauthorised persons.

**13.2** The Receiving Party's obligations under clause 13.1 do not apply to Confidential Information to the extent that such Confidential Information:

(a) is in, or becomes part of, the public domain through no fault of the Receiving Party's;

(b) was, before the Receiving Party received such Confidential Information, in the Receiving Party's possession without any obligations of confidence;

(c) is subsequently disclosed to the Receiving Party, without any obligations of confidence, by a third party who has not derived it from the Disclosing Party; or

(d) is required to be disclosed by law.

**13.3** The Supplier acknowledges that the Ministry's compliance with clause 13 is subject to its obligations under the Official Information Act 1982 and the Privacy Act 2020.

**13.4** The Supplier will advise the Ministry in writing if it is legally required to disclose any of the Ministry's Confidential Information and will follow the Ministry's reasonable directions in order to limit the disclosure to the extent possible.

**13.5** The Supplier must not make any announcement regarding this Agreement to any person, without the Ministry's prior written consent.

**13.6** The Supplier must not:

(a) transfer any of the Ministry Data outside of New Zealand;



(b) make any of the Ministry Data available to any person outside of New Zealand; or

(c) permit or authorise any of the things described in (a) and (b) to occur, without first obtaining the Ministry's written consent.

#### **14. Dispute resolution**

**14.1** Subject to clause 14.2, if a dispute arises in relation to this Agreement, the parties will attempt to resolve the dispute using the dispute resolution process set out below before pursuing any other remedies available at law or otherwise.

(a) If either party receives notice of a dispute, the parties will work together in good faith to resolve the dispute via negotiation and will escalate the dispute to appropriate levels within their respective organisations.

(b) If the dispute is not resolved within a reasonable time under clause 14.1(a), and if both parties agree, then either party may, by written notice to the other party (Mediation Notice), require the dispute to be submitted to mediation (Mediation) in New Zealand in accordance with the protocols of the Arbitrators' and Mediators' Institute of New Zealand Inc (AMINZ).

(c) The Mediation will be conducted by a mediator, and at a fee, agreed by the parties. If the parties fail to agree such matters within 10 Business Days following the date of the delivery of the Mediation Notice, the President for the time being of AMINZ will select the mediator and determine the mediator's fee. The parties will share equally the cost of the mediator's fee. The parties will share equally the cost of the mediator's fee.

**14.2** Nothing in this clause 14 will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under this Agreement.

**14.3** Subject to clause 14.2, a party to the dispute will only be entitled to pursue other

remedies available to it at law or otherwise, if the parties have failed to resolve the dispute within 20 Business Days after commencement of the Mediation.

**14.4** Each party will continue to perform its obligations under this Agreement to the extent it is able to do so pending the final settlement of any dispute under this clause 14.

#### **15. Force majeure**

**15.1** Neither party will be liable to the other for any failure to perform its obligations under this Agreement to the extent the failure is caused by a Force Majeure Event, provided that the party seeking to rely on this clause 15.1 has:

(a) notified the other party in writing as soon as practicable after the Force Majeure Event occurs and provided full information concerning the Force Majeure Event, including an estimate of the time likely to be required to overcome it;

(b) used its best endeavours to overcome the Force Majeure Event and minimise the loss to the other party; and

(c) continued to perform its obligations under this Agreement as far as practicable.

**15.2** If a Force Majeure Event prevents, or is likely to prevent, either party from complying with its obligations under this Agreement to a material extent for a continuous period of 20 Business Days or more, the other party may terminate this Agreement by giving the non-

complying party at least 10 Business Days' notice in writing.

#### **16. General**

**16.1** Each party warrants that it has full power and authority to enter into, and perform its obligations under, this Agreement.

**16.2** No amendment to this Agreement will be effective unless it is in writing and signed by the parties.

**16.3** Assignment:

(a) The Supplier may not assign, transfer or subcontract any of its rights or obligations under this Agreement without the prior written consent of the Ministry which will not be unreasonably withheld or delayed.

(b) If the Supplier is a company, any transfer of shares, or any other arrangement, that changes the effective control of the Supplier is deemed to be an assignment for the purposes of clause 16.3(a).

(c) the Ministry may assign, novate or otherwise transfer any or all of its rights and obligations under this Agreement to any person, agency or regulatory body tasked by the Crown with fulfilling any of the functions of the Ministry by giving notice in writing to the Supplier.

**16.4** No failure or delay by a party to exercise any right or remedy under this Agreement will be construed or operate as a waiver of such right or remedy, nor will any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy. No waiver will be effective unless in writing and signed by the relevant party.

**16.5** If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provisions, which will be deemed deleted.

**16.6** This Agreement contains the whole of the contract and understanding between the parties in respect of the matters covered by it and supersedes all prior representations, agreements, statements and understandings between the parties in respect of those matters, whether verbal or in writing.

**16.7** Any notice, consent, approval, agreement, undertaking, report or other

communication given by a party for the purposes this Agreement will be of no effect unless given in writing and addressed to the recipient at the address last notified by the recipient to the other party, and marked for the attention of the person or office holder (if any), set out in Schedule 1. Delivery may be effected by hand, by post with postage prepaid, or by email and will be deemed to have been received:

(a) in the case of hand delivery or pre-paid post sent from outside New Zealand, at the time of actual delivery to the recipient's address;

(b) in the case of delivery by pre-paid post sent from within New Zealand, no later than the 2nd Business Day after posting; or

(c) in the case of delivery by email, no later than when the recipient's email server acknowledges receipt,

However, if a notice or other communication is received or deemed to have been received after 5 pm on a Business Day, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

**16.8** This Agreement is governed by New Zealand law. Subject to clause 15, the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

**16.9** This Agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same Agreement. A party may enter into this Agreement by signing any counterpart.

**16.10** Each party will do all things and execute all documents reasonably necessary to give effect to the terms of this Agreement.

**Schedule 3: Ka Ora, Ka Ako | Healthy School Lunches Programme – Deliverables Form Template**

Attached Separately

#### Schedule 4: Service Levels & Performance Measures

Below are the Service Levels, performance measures and success indicators that are applicable for the Services. Additional Service Levels and Performance Measures may be agreed from time to time.

Topic area	Service Level	Reporting to the Ministry	Indicator
<b>School or kura and ākonga Engagement &amp; Feedback</b>	<p>Engage with each school or kura at least once per term, or more frequently if required to address performance concerns.</p> <p>Review daily operations, lunch orders, risks, and issues, and respond as needed.</p> <p>Gather feedback from ākonga on menu quality, appeal, and suitability, and make necessary adaptations.</p>	<p>Engagement results, meeting minutes, and documented actions taken in response to feedback and requests, provided to the Ministry on request.</p> <p>Documented risks, issues, and adjustments made during each term are available on request.</p> <p>Stakeholder feedback and timely issue resolution</p>	<p>Evidence of ākonga sampling and termly feedback adaptations.</p> <p>Documentation of engagement with each school or kura once per term.</p> <p>Reasonable change requests can be shown to be actioned and implemented promptly as required.</p>
<b>Meal Provision &amp; Food Quality</b>	<p>Provide a reliable, consistent service to Schools and Kura</p> <p>Quality control measures ensure meals are visually appealing, fresh, flavoursome, and meet standards for temperature, texture, and portion sizes.</p> <p>Meals meet Ministry Nutrition Guidance, dietary needs and adapt over time.</p> <p>Mechanisms are in place for gathering, managing, and reporting feedback, risks, issues, and incidents from all stakeholders.</p> <p>Risks, Issues and incidents are promptly reported.</p>	<p>Feedback, risk, and issue data centrally collated, with reports available to the Ministry on request.</p> <p>Evidence can be provided of implemented quality control measures., nutritional compliance, satisfaction, allergen, medical, ethical, and religious requirements and special dietary management of ākonga</p>	<p>No more than 2 validated complaints per school per term (or 10% if serving 10+ schools).</p> <p>Complaints acknowledged within 1 business day and resolved within the agreed timeframe.</p> <p>Significant issues or incidents (e.g., food safety, contamination, diet labeling errors) are reported within 2 hours.</p> <p>80% of assessed meals meet nutritional standards;</p> <p>90% of assessed meals meet or exceed minimum weight and portion size requirements</p> <p>no ākonga are excluded from the Programme because of their dietary or cultural requirements..</p>

<b>Surplus Meal Management</b>	<p>Ensure participating ākonga engage with the Ka Ora, Ka Ako programme and consume at least part of the provided lunch.</p> <p>Collaboration with schools and kura on surplus reduction and management</p>	<p>Uptake data collected over a 5-day period each term, reported to the Ministry via the approved template or as otherwise agreed.</p> <p>Monitoring and reporting to ensure compliance with any surplus reduction plans</p>	<p>Average of at least 90% of attending ākonga who regularly engage with Ka Ora, Ka Ako eat all or part of their lunch daily.</p> <p>Ensure lunch order numbers align with expected attendance or as directed by the Ministry to minimise waste</p>
<b>Menu</b>	Submit a complete menu at least 3 weeks before each term's start.	Termly menu submitted to the Ministry, with data and adaptation reports available on request.	Menu received 3 weeks before term start, demonstrating compliance with Ministry standards and adaptations based on feedback.
<b>Food Safety</b>	<p>A current, registered and verified up-to-date Food Control Plan is in place, ensuring food safety and minimizing risks</p> <p>Meals are delivered on time, accurately, and safely</p>	<p>Incident reports submitted in line with agreement requirements, with evidence of corrective action for future prevention.</p> <p>Regular monitoring of delivery times and compliance with safety protocols</p>	<p>Zero high-risk food safety incidents per kitchen.</p> <p>Immediate notification to the Ministry for Primary Industries or approved verifier if an incident occurs.</p> <p>Documented incident responses and corrective actions.</p>
<b>Waste Management &amp; sustainability</b>	<p>Minimize food and packaging waste going to landfill, and ensure waste tracking is in place.</p> <p>Collaborate with schools and kura to reduce waste through menu planning and a focus on providing appealing lunches</p> <p>Reusable, recyclable or certified compostable packaging, cutlery, and tableware is used wherever possible in all instances.</p> <p>Proactively minimise the use of non-recyclable packaging, plastic wrap, and single-use items.</p>	<p>Waste weight report for a representative sample of school/kura sites during a 2-week period in term 2 or 3, provided to the Ministry via the agreed template.</p> <p>Exceptions for non-compliant packaging use should be captured along with justifiable rationale to enable reporting if required or on request</p>	<p>Annual evidence of waste reduction, using measured weight of waste sent to landfill.</p> <p>100% of programme waste is collected from school and kura sites as per agreed plan.</p> <p>Compliance to waste and surplus management plan and agreed targets</p> <p>≤90% of packaging used is reusable, recyclable or certified compostable</p>

<b>Business Continuity</b>	Ensure continuity of service despite disruptions	A business continuity plan is in place	Service is maintained during disruptions with no major delivery disruptions.
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