

ENS and RSMS Audit agreement



National Meat Industry Training Advisory Council Limited

And

[Company name]

This contract is made on [Date]

1. Parties

National Meat Industry Training Advisory Council Limited ABN 28 058 494 063 of Suite 2 150 Victoria Road Drummoyne New South Wales 2047 (MINTRAC)

And

Company name ABN [] of [company's address]

2. Background

2.1 [Company name] wishes to engage MINTRAC to undertake an ENS/RSMS Audit on the terms set out in Schedule 1 of this contract.

2.2 MINTRAC has agreed to undertake the ENS/RSMS Audit on the terms set out in Schedule 1 of this contract.

3. Definitions

“Audit” means a systematic and independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which the Meat Audit Terms of Reference are fulfilled;

“Audit team” means one or more Auditors conducting an Audit;

“Auditor” means the person appointed by MINTRAC to conduct Audits;

“DIAC” means the Australian Government Department of Immigration and Citizenship;

“Meat Audit Terms of Reference” means the Terms of Reference supplied by DIAC, and appended to this contract as Schedule 1;

4. Contract Period

4.1 This contract commences from the date of this contract and continues until [insert date], unless terminated earlier in accordance with this contract within 14 days after invoice from MINTRAC.

5. Payment

- 5.1 [Company name] agrees to pay to MINTRAC fees in accordance with the Schedule 3.
- 5.2 Unless otherwise indicated, amounts stated in this contract do not include GST. In relation to any GST payable for a taxable supply (as defined under GST law) by a party under this contract, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice (as defined under GST law).

6. Audit Procedure

- 6.1 The 457 Visa Audits will be undertaken by one or more Auditors, who may at the discretion of MINTRAC be accompanied by an interpreter.
- 6.2 If [the Company] believes there may be a Conflict of Interest with a nominated auditor, it must provide a written statement to MINTRAC detailing the concerns before signing this contract. MINTRAC may or may not replace auditors at its discretion.
- 6.3 The 457 Visa Audit will be conducted in the following manner:
- (a) a preliminary desktop Audit on requested paperwork supplied by [the Company] to MINTRAC may be conducted prior to the on-site visit;
 - (b) on arrival at the [the Company]'s premises an Auditor will contact management of [the Company] and conduct an entry meeting to explain the scope of the Audit, the manner in which it will be conducted and answer questions which management may have in respect of the Audit;
 - (c) Auditors will Audit [the Company] according to the Meat Audit Terms of Reference;
 - (d) the Auditor will conduct an exit meeting and provide a written report of the Audit to [the Company];
 - (e) within five calendar days after completion of the on-site component of the Audit, MINTRAC will provide a copy of the draft report to [the Company]. [The Company] will be allowed two calendar days to:
 - i. comment on the accuracy of the information; and
 - ii. provide explanations; and
 - (f) [The Company]'s response to the draft report will be attached to the final report which will be sent to both [the Company] and DIAC within ten calendar days of the completion of the on-site component of the Audit.

7. Access to premises

- 7.1 [The Company] will provide:

- (a) access to areas of operation where workers proposed for ENS/RSMS sponsorship are currently working;
- (b) access to an interview room where Q-Fever inoculation is not a pre-requisite for entry (this may be off-plant);
- (c) appropriate working space for the Auditor; and
- (d) Personal Protective Equipment required for entry into areas to be visited during the Audit.

8. Access to records

8.1 [The Company] will provide:

- (a) access to sufficient [Company] records to substantiate information provided under Matters 1 of the Meat Audit Terms of Reference;
- (b) access to [Company] and personnel records sufficient for the Auditor to make a determination under Matter 2 of the Meat Audit Terms of Reference;
- (c) access to personnel records of workers proposed for sponsorship sufficient to enable the Auditor to make a determination under Matter 3 of the Meat Audit Terms of Reference; and
- (d) access to additional information requested by the Auditor, and identified as required in order to complete the information required under the Meat Audit Terms of Reference.

9. Access to personnel and other assistance

9.1 [The Company] will provide:

- (a) a [Company] representative to act as a guide during the Audit;
- (b) access to management personnel responsible for maintaining production and personnel records;
- (c) access to a minimum of 10% of all workers proposed for sponsorship for observation of their performance in the full-time skilled occupations for which they were nominated. These workers will be randomly selected by the Auditor on the day of interview and may be required to perform a number of tasks; and
- (d) access to a minimum of 10% of all workers proposed for sponsorship, for an off-site interview to audit Matters 1 through 3 of the Meat Audit Terms of Reference. These workers will be randomly selected by the Auditor on the day of interview.

9.2 No [Company] personnel will be permitted to accompany workers proposed for sponsorship during the off-plant interview.

9.3 [The Company] will provide MINTRAC with such assistance and information, and comply with such requirements, as MINTRAC reasonably requests for the purpose of conducting Audits.

- 9.4 The auditor may terminate the audit if an appropriate level of assistance and information is not provided by [the Company].

10. Disclosure of information

- 10.1 [The Company] acknowledges that MINTRAC may use information concerning [the Company] or the business of [the Company] obtained in connection with the Meat Audit Terms of Reference in such manner as MINTRAC considers appropriate for the purposes of the Meat Audit Terms of Reference, including providing any or all such information to DIAC.
- 10.2 [The Company] acknowledges that it may be required by MINTRAC to disclose Personal Information relating to its employees to MINTRAC on a need to know basis for the purpose of conducting the Audit.
- 10.3 Where MINTRAC has access to Personal Information under this contract, it will:
- (a) take all reasonable steps to protect the Personal Information against loss, unauthorised access, use, modification or disclosure and other misuse;
 - (b) not use the Personal Information other than for the purposes of this contract except as required by law;
 - (c) not disclose the Personal Information without the written agreement of the person concerned except as required by law; and
 - (d) take all reasonable steps to ensure that only authorised personnel have access to the Personal Information.

11. Force majeure

- 11.1 Where a party (**Affected Party**) is unable to carry out wholly or in part its obligations under this contract (other than an obligation to make any payment) due to an event beyond its reasonable control (**Force Majeure**), it must give the other party notice of the particulars of the Force Majeure and, so far as is known, the probable extent to which it will be unable to perform or be delayed in performing its obligations.
- 11.2 Subject to compliance with this clause 11, the obligations of the Affected Party insofar as they are affected by the Force Majeure will be suspended during the Force Majeure.
- 11.3 The Affected Party must take all steps and use all reasonable diligence to overcome or remove the Force Majeure as quickly as practicable, but is not required to settle any strike or other labour difficulty on terms not reasonably acceptable to it.

- 11.4 If the Affected Party is unable to perform its obligations under this contract due to Force Majeure for a continuous period of 30 days or longer, either party may by notice to the other party terminate this contract.

12. Termination

- 12.1 MINTRAC may by notice to [the Company] terminate this contract.
- 12.3 If [the Company]:
- (a) fails to provide appropriate access to premises, records and personnel and other assistance for the purposes of conducting an Audit;
 - (b) in the reasonable opinion of MINTRAC fails to make satisfactory arrangements for the conduct of an Audit; or
 - (c) otherwise breaches its obligations under this contract,
- MINTRAC may by notice to [the Company] terminate this contract.
- 12.4 If this contract is terminated under clause 12.1, [the Company] must pay to MINTRAC MINTRAC's reasonable assessment of any costs incurred prior to the date of termination.
- 12.5 Costs claimable by MINTRAC under clause 12.3 are limited to the fees specified in Schedule 2.

13. Liability

- 13.1 MINTRAC's only liability is as expressly stated in this contract. To the extent permitted by law, MINTRAC gives no warranty in connection with the provision of Audit services under this contract. MINTRAC's liability for any cause in connection with the provision of Audit services under this contract is limited to the payments made by [the Company] to MINTRAC under this contract. Except as imposed by statute all other liability, including for physical or financial consequential loss or damage and whether arising from negligence or in any other way, is excluded.

14. Dispute resolution

- 14.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this contract prior to commencing any proceedings.

- 14.2 If a party requires resolution of a dispute it must do so in accordance with the provisions of this clause 13 and compliance with these provisions is a condition precedent to any entitlement to claim relief or remedy in respect of such disputes.
- 14.3 If a party requires resolution of a dispute it must immediately submit full details of the dispute to, if the other party is a body corporate, the chief executive officer of the other party or, if the other party is an individual, the other party. If the dispute is not resolved within 1 month of submission of the dispute to them, or such other time as they agree, the provisions of clause 14.4 apply.
- 14.4 Disputes must be submitted to conciliation in accordance with and subject to The Institute of Arbitrators and Mediators Australia *Mediation and Conciliation Rules*. A party may not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within 1 month of submission to conciliation or such other time as the parties agree.

15. Notices

- 15.1 A notice under this contract must be in writing and may be given to the addressee by:
- (a) delivering it to the address of the addressee;
 - (b) sending it by pre-paid registered post to the address of the addressee; or
 - (c) sending it by fax to the fax number of the addressee,

and the notice will be deemed to have been received by the addressee on receipt.

- 15.2 A fax is deemed to have been received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the addressee.

16. Amendment

- 16.1 This contract may only be varied by the written agreement of the parties.

17. Entire agreement

- 17.1 This contract embodies the entire understanding and agreement between the parties as to its subject matter.

- 17.2 All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this contract are merged in and superseded by this contract.

18. Further assurance

- 18.1 Each party must promptly sign all documents and do all things that the other party from time to time reasonably requests to effect, perfect or complete this contract and all transactions incidental to it.

19 Legal costs

- 19.1 The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and signing of this contract and all documents incidental to it.

20 Governing law and jurisdiction

- 20.1 This contract is governed by and must be construed in accordance with the laws of New South Wales.
- 20.2 Each party:
- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
 - (b) waives any right to object to proceedings being brought in those courts for any reason.

SIGNED AS AN AGREEMENT

on behalf of [the Company]

Signed by:

.....
Name Signature

.....
Position Date

In the presence of:

.....
Name of witness Signature

.....
Position Date

on behalf of **National Meat Industry Training Advisory Council Limited**

Signed by:

.....
Name Signature

.....
Position Date

In the presence of:

.....
Name of witness Signature

.....
Date

Schedule 1

Meat Audit Terms of Reference:

The Auditor must use their professional expertise to advise the Department of Immigration and Citizenship (the Department) on the audit matters.

Matter 1: Identify the operational profile of the meat processing establishment and their capacity to employ full-time equivalent¹ slaughterpersons, butchers, supervisor meat tradespersons, smallgoods makers and/or “Skilled Meat Workers”. This matter is relevant to both new and existing sponsors.

The audit must identify the operational profile of the sponsor’s meat processing establishment and the number of full-time equivalent skilled slaughterpersons and/or butchers and/or supervisor meat tradespersons and/or smallgoods makers that would be effective to that operational profile. The Department will consider the results of this aspect of the audit to be ‘fit for purpose’ where the Department is able to assess from the information provided whether the actual or proposed use of the Employer Nomination Scheme (ENS) or Regional Sponsored Migration Scheme (RSMS) is consistent with the operations of the meat processing establishment.

For the purpose of this audit, the occupation of “Skilled Meat Worker”, which is an occupation that is not eligible for the ENS or RSMS, will be the same occupation as defined within the standard Meat Industry Labour Agreements between meat industry employers and the Commonwealth. A “Skilled Meat Worker” is a holder of a Subclass 457 visa, granted through a Meat Industry Labour Agreement, who possesses the following qualifications and work experience, and performs the following tasks under limited supervision and direction:

- Minimum Qualification - Assessed and verified by a MINTRAC registered assessor, or an assessor approved by the Commonwealth and the State, with a Certificate IV in Training and Assessment experienced in meat processing, to be a “Skilled Meat Worker” with a minimum skill level commensurate with the MINTRAC referenced AQF Certificate III in meat processing.
- Minimum Work Experience - A “Skilled Meat Worker” must demonstrate a minimum of 3 years skilled work experience obtained at a quality meat processing establishment as identified by a relevant Meat Industry Labour Agreement between a meat industry employer and the Commonwealth.
- Duties and Tasks - The duties and tasks of a “Skilled Meat Worker” reflect duties and tasks referenced by a MINTRAC Certificate III. A “Skilled Meat Worker” cannot be employed in a labouring position or undertake labouring or unskilled duties.

The Auditor will identify and report on the existing operational profile of the meat processing establishment including:

- the species of animal processed at the establishment;
- the number of each species of animal processed per shift;

- the number of shifts operated at the establishment;
- the number of ordinary hours operated on each shift;
- the number of full-time equivalent meat processing workers employed at the establishment;
- the number of full-time equivalent:
 - slaughterpersons;
 - butchers;
 - supervisor meat tradespersons;
 - smallgoods makers; and
 - “Skilled Meat Workers”,
 employed at the establishment; and
 - the number of full-time equivalent Australian:
 - slaughterpersons;
 - butchers;
 - supervisor meat tradespersons; and
 - smallgoods makers; and
 - “Skilled Meat Workers”,
 employed at the establishment.

The Auditor will identify and report on the sponsor’s proposed operational profile (where this differs from existing operational profile) for the meat processing establishment including:

- the species of animal to be processed at the establishment;
- the number of each species of animal to be processed per shift;
- the number of shifts to be operated at the establishment;
- the number of ordinary hours to be operated on each shift;
- the number of full-time equivalent meat processing workers to be employed at the establishment;
- the number of full-time equivalent:
 - slaughterpersons;
 - butchers;
 - supervisor meat tradespersons;
 - smallgoods makers; and
 - “Skilled Meat Workers”,
 to be employed at the establishment; and
 - the number of full-time equivalent Australian:
 - slaughterpersons;
 - butchers;
 - supervisor meat tradespersons; and
 - smallgoods makers; and
 - “Skilled Meat Workers”,
 to be employed at the establishment.

Where the number of full-time equivalent slaughterpersons, butchers, supervisor meat tradespersons, smallgoods makers and/or “Skilled Meat Workers” employed (or proposed to be employed) at the establishment exceeds 10 per cent of the number of full-time equivalent meat processing workers employed (or proposed to be employed) at the meat processing establishment, the Auditor must proffer an opinion on whether the meat processing establishment is capable of providing full-time employment for the workers proposed to be sponsored through the ENS or RSMS in the nominated

occupations of slaughterpersons, butchers, supervisor tradespersons and/or smallgoods makers.

Matter 2: Identify whether Subclass 457 visa holders who are currently working at the meat processing establishment are performing in the full-time occupations for which they were nominated. This matter is relevant to existing sponsors, as well as new sponsors, as part of monitoring after the sponsored workers have arrived.

The Auditor must identify and report on the full-time occupations in which each Subclass 457 visa holder is employed. The Department will consider the results of this part of the audit to be 'fit for purpose' where the Department is able to determine from the information provided whether the full-time occupation in respect of each sponsored worker is the skilled occupation for which they were nominated and as described by the 4511 ASCO description of Slaughterperson, Butcher, Small Goods Maker or Supervisor Meat Tradesperson, or by the Meat Industry Labour Agreement description of "Skilled Meat Worker". The Auditor will also need to identify whether any Subclass 457 visa holders employed in these occupations are working in any other skilled or unskilled occupation.

Matter 3: Identify whether Subclass 457 visa holders who are currently working at the meat processing establishment are skilled to perform the full-time occupations for which they were nominated. This matter is relevant to existing sponsors and to new sponsors as part of monitoring after the sponsored workers have arrived.

The Auditor will identify and report on the following for each Subclass 457 visa holder:

- whether they hold a valid Certificate III in Meat Processing qualification issued by an approved Australian Registered Training Organisation;
- the species of animal against which any Certificate III in Meat Processing was determined;
- whether they hold references that show they have undertaken employment at the same skill level as a Certificate III in Meat Processing, having performed the relevant duties for a minimum of three years;
- the name and address of the meat processing establishment at which their employment experience was attained; and
- the species of animal processed at the meat processing establishment at which their employment experience was attained.

The Department will consider the results of this aspect of the audit to be 'fit for purpose' where the Department is able to determine from the information provided whether the sponsored workers are skilled to effectively perform the full-time occupations to which they were nominated.

Performance of the Audit

Performance of this Audit must include:

- i. an 'on-site' component to verify audit Matters 1 through 3 as applicable.
Additionally, the audit must include the selection of a minimum of 10% of all Subclass 457 visa holders for observation of their performance in the full-time

- skilled occupations for which they were nominated. These workers should be randomly selected by the Auditor on the day of interview and measures put in place to verify each worker's identity; and,
- ii. an 'off-site' component to verify through interviews, with a minimum of 10% of all Subclass 457 visa holders, audit Matters 1 through 3. These workers should be randomly selected by the Auditor on the day of interview and measures put in place to verify each worker's identity. The assistance of an independent NAATI-accredited interpreter, of a classification higher than a Para-Professional Interpreter must be engaged for the interviews.

Audit Report

The Auditor will provide the Department with a written report, including an Executive Summary and details of the audit methodology and findings within 10 calendar days of the completion of the on-site component of the Assessment.

Notes:

1 "Full-Time Equivalent" in relation to a part-time employee, means the number instances of 38 ordinary hours of work in the occupation specified. For example: 2 part-time slaughterpersons, the first working 20 hours and the second working 15 hours, represents 0.9 equivalent full-time slaughterpersons $[(20 + 15)/38]$.

Schedule 2

ASCO 4511 descriptions

UNIT GROUP 4511 MEAT TRADESPERSONS

MEAT TRADESPERSONS slaughter livestock, and select, cut, trim and prepare meat and smallgoods.

Skill Level:

The entry requirement for this unit group is an AQF Certificate III or higher qualification. In some instances relevant experience is required in addition to the formal qualification.

Tasks Include:

- operating machinery to grind, mix, mince or tenderise meat
- preparing meat for sale by removing bones, trimming fat and cutting meat to shape and size for display or as ordered
- preparing crumbed cuts of meat, and marinating and seasoning special cuts
- making seasonings and pickles by mixing spices, salt and other ingredients according to recipes
- adding seasonings to ground meat and curing meat
- operating filling machines, smoking chambers and cooking kettles and vats
- slaughtering livestock in abattoirs and preparing carcasses for further processing

Occupations:

4511-01 Supervisor, Meat Tradespersons

4511-11 Butcher

4511-13 Smallgoods Maker

4511-15 Slaughterperson

4511-01 Supervisor, Meat Tradespersons

Supervises and coordinates the activities of Meat Tradespersons.

Skill Level:

The entry requirement for this occupation is an AQF Certificate III or higher qualification and at least 3 years relevant experience.

Tasks Include:

- determines work requirements and allocates duties to Meat Tradespersons
- confers with managers to coordinate activities with other organisational units
- maintains attendance records and rosters

- explains and enforces safety regulations
- oversees the work of the unit and suggests improvements and changes
- confers with workers to resolve grievances
- may perform the tasks of a Meat Tradesperson

Specialisations:

Supervisor, Abattoir Workers

Supervisor, Smallgoods Makers

4511-11 Butcher

Selects, cuts, trims, prepares and arranges meat for sale or supply.

Skill Level:

The entry requirement for this occupation is an AQF Certificate III or higher qualification.

Tasks Include:

- advises customers on the suitability and uses of cuts of meat
- operates machinery to grind, mix, mince or tenderise meat
- prepares meat for sale by removing bones, trimming fat and cutting meat to shape and size for display or as ordered
- prepares crumbed cuts of meat and marinates and seasons special cuts
- selects and prepares meat to produce smallgoods
- may assist in menu planning and scheduling, and in estimating food production costs

4511-13 Smallgoods Maker

Selects and prepares meat, operates meat or smallgoods processing machinery and manages the processes in the production of smallgoods.

Skill Level:

The entry requirement for this occupation is an AQF Certificate III or higher qualification.

Tasks Include:

- prepares meat by removing bones and trimming fat
- cuts, minces and grinds meat and fat
- makes seasonings and pickles by mixing spices, salt and other ingredients
- adds seasonings to ground meat
- operates filling machines, smoking chambers and cooking kettles and vats
- cures meat

4511-15 Slaughterperson

Slaughters livestock in abattoirs and prepares carcasses for further processing.

Skill Level:

The entry requirement for this occupation is an AQF Certificate III or higher qualification.

Tasks Include:

- operates restrainer and stunning equipment
- severs jugular veins of stunned animals to drain blood and facilitate dressing
- trims and removes head meat or severs animal heads
- skins or shaves carcasses
- slits open, eviscerates and trims animal carcasses
- trims, sorts and washes viscera to prepare and separate edible portions for further processing
- scribes, saws or splits carcasses into smaller portions for easier handling
- cleans work areas
- may slaughter livestock according to procedures required by religious customs

Schedule 3

Payment Schedule

Cancellation policy

If the company seeks to *cancel* the audit, the following fees will apply:

- (a) for cancellation between 28 and 14 calendar days before the scheduled audit:
50% of the audit fee will be payable
- (b) for cancellation within 14 calendar days of the scheduled audit, the full fee will be payable.

If a company seeks to *change* the audit date, it will be required to meet all non-refundable costs which have been incurred by MINTRAC in preparation for the original date.