

SERVICES AGREEMENT

THIS AGREEMENT IS MADE ON

__ / __ / 20__

PARTIES

NESTLÉ AUSTRALIA LTD ABN 77 000 011 316 of 1 Homebush Bay Drive, New South Wales (NQAC)

LIMITED ABN ## of ## (**Customer**):

_____ **LIMITED** ABN (For Australian Business only) __ __ __ __

of _____

BACKGROUND

The Customer has agreed to engage NQAC to provide the Services and NQAC has agreed to accept the engagement on the terms set out in this agreement.

AGREEMENTS

1. Definitions

Where commencing with a capital letter:

Effective Date is the earliest of the date of this agreement, notice to Customer confirming that Customer has been registered to submit Samples to NQAC and Customer's online submission of Order through the NQAC Website;

GST has the same meaning as in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*;

Samples has the meaning set out in clause 2;

Sample Retention Period has the meaning set out in clause 3;

Testing Services has the meaning set out in clause 2; and

Term has the meaning set out in clause 12.

2. TESTING SERVICES

Pursuant to this Agreement the Customer may submit food, ingredients, packaging, or other samples (**Samples**) to NQAC for analysis and testing (**Testing Services**).

The Testing Services will be undertaken in the time period agreed to between NQAC and the Customer and in the absence of agreement within a reasonable time; NQAC will not be liable for any delay in providing the Testing Services. In the event that the time period agreed will not be respected, NQAC will inform the Customer before the due date of results.

Any reports issued by NQAC relate exclusively to the Sample provided by the Customer and do not relate to the lot (batch) from which Sample have been obtained.

NQAC may delegate or subcontract the performance of part or all of the Testing Services to a third party and the Customer authorizes the release of all information necessary to the third party for the provision of the Testing Services.

NQAC may reject any Samples and/or refuse to provide Testing Services to any Customer, at any time, for any reason, as determined in its sole discretion.

3. SAMPLE RETENTION

Unless an extended period is approved by NQAC in writing prior to, or at the time of, Customer's Sample submission or before Sample disposal, NQAC shall endeavor to retain Samples submitted for analysis and testing hereunder for a period of 07 days after all the results have been reported (**Sample Retention Period**).

Notwithstanding the foregoing, Customer acknowledges and agrees that the Sample Retention Period may be compromised by the stability of the Sample, the quantity of Sample, or other factors. In such event, NQAC shall have no responsibility or liability for any Samples that are not retained for the full Sample Retention Period. To the extent NQAC agrees, in its sole discretion, to provide Customer an extended Sample Retention Period, NQAC reserves the right to charge Customer additional fees. For clarity, NQAC shall have no obligation to provide Customer an extended Sample Retention Period.

4. QUALITY ASSURANCE AND DOCUMENTATION

Unless additional specifications are approved by NQAC in writing prior to the commencement of the Testing Services, all Testing Services provided by NQAC will be performed in accordance with NQAC's Quality Assurance Program, as may be amended from time to time. To the extent Nestle agrees, in its sole discretion, to provide the Testing Services in accordance with additional specifications or documentation provided by Customer, NQAC reserves the right to charge Customer additional fees. For clarity, NQAC shall have no obligation to provide the Testing Services in accordance with any additional specifications or documentation provided by Customer.

5. RAW DATA

NQAC maintains analytical raw data from the testing services for 2 years on site, plus an additional 7 years offsite after testing services are complete. Copies of pertinent raw data will be provided upon Customer's request, in a manner and format determined by NQAC in its sole discretion. NQAC reserves the right to charge Customer additional fees for extended storage and/or copies of raw data, duplicate reports, or other special reporting requirements.

6. CONFIDENTIALITY AND REFERENCES TO NQAC

All services, documents, analysis and reports provided to Customers pursuant to this Agreement are provided on a confidential basis. Customer will not disclose such confidential information to any third parties without the prior consent of NQAC.

Customer will not identify NQAC as a service provider of Customer, or reference NQAC (or its affiliates) or use any trade name, trademark, trade dress, service mark or any intellectual property of NQAC or its affiliates in any press release, advertising or promotional materials

in any media whatsoever, or represent that any sample has been tested, analyzed, endorsed or approved by NQAC or its affiliates, without NQAC's prior written consent.

NQAC may disclose information, analysis, reports and similar documents to its employees and the employees of the NQAC group of companies and any third party (for e.g. subcontractors) where disclosure is necessary in connection with the performance of Testing Services or to its legal or professional advisors.

NQAC will not provide any analysis and report in respect of the Testing Services performed for the Customer to any other third party without the Customer's written consent, such consent not to be unreasonably withheld.

7. WARRANTY

NQAC will perform the Testing Services in a manner consistent with the level of care and skill ordinarily exercised by analytical laboratories currently practicing under similar conditions and circumstances and performing similar services.

To the extent permitted by law, all other warranties, whether expressed or implied, including, but not limited to, those related to fitness for particular purpose, merchantability, satisfactory quality, accuracy or completeness of results and non-infringement are excluded.

8. INDEMNITY

To the fullest extent permitted by law, Customer agrees to indemnify, hold harmless and defend NQAC, its officers, directors, agents, representatives and employees from any and all claims, judgments, fines, penalties, liabilities, damages, and expenses, including, without limitation, reasonable attorneys' fees and court costs, loss of earnings or profits, arising from or in connection with (i) any breach by Customer of the terms of this Agreement; or (ii) any defect related to a manufactured product where a Sample of such product was tested hereunder.

9. PERSONAL DATA PROTECTION CLAUSE

The services do not involve any collection or processing of personal data, which is generally any data that could identify an individual.

10. LIMITATION OF LIABILITY

NQAC shall not be liable for any delayed, partial or total non-performance of the Testing Services arising directly or indirectly from any event outside NQAC control including failure by the Customer to comply with any of its obligations in this agreement. In no event shall NQAC, its affiliates and their directors, officers, agents or employees be liable for any non-direct damages, including incidental, indirect, special or punitive damages, or loss of business revenues or profits or loss of opportunity, relating in any way to any services provided under this Agreement, under any theory of law and whether or not the parties are aware of the possibility of such damages.

By receiving and/or using the data from Testing Services performed by NQAC in any manner, Customer acknowledges and agrees that the total liability of NQAC, its directors, officers, agents or employees to Customer arising out of or in connection with the Testing Services performed shall not exceed the invoiced amount for said Testing Services. The foregoing shall apply notwithstanding any provision to the contrary in any Customer purchase order or other order for work issued.

In no event shall Nestle be liable for any information provided or otherwise set forth in NQAC's customer day-to-day or mass communication correspondence, including without limitation, any errors contained therein.

Unless NQAC explicitly agrees in writing, the Testing Services shall be provided solely for the benefit of the Customer and cannot be relied on by a third party. The Customer will indemnify and hold NQAC harmless against any and all third party claims relating to the provision of the Testing Services to the Customer.

11. Payment

Customer will pay NQAC for the Testing Services and any additional fees incurred hereunder within 30 days from Customer's receipt of NQAC's invoice therefor.

Fees are exclusive of GST, which will be paid by the Customer.

In the event that any unforeseen circumstances or expenses arise in undertaking the Testing Services, NQAC will endeavor to inform the Customer of any additional costs incurred by NQAC and unless the Customer advises NQAC not to undertake any further works, the Customer will be responsible for the additional costs.

In the event Customer fails to pay NQAC all or a portion of the fees due and owing hereunder, NQAC shall have the right, in addition to any other rights or remedies available at law or in equity, to immediately suspend or terminate all or a portion of any outstanding Testing Services, immediately suspend and/or withhold any and all Customer lab results, immediately reject any and all Customer requests for Testing Services (disposal fees of Samples and/or other fees may apply), and review Customer's credit account, until such time that NQAC has received Customer's payment in full.

Customer is solely liable for any transfer fees, excises, levies or taxes which NQAC may be required to pay or collect, under any existing or future law, upon or with respect to the Testing Service, and Customer agrees to pay the amount thereof on the same terms as it shall pay the fees. Approved methods of payment are bank transfer only.

12. TERM AND TERMINATION

12.1 Notice

This Agreement will commence as of the Effective Date and remain in full effect until the Testing Services are complete (**Term**), unless sooner terminated as provided herein.

A party may terminate this Agreement immediately if: (i) the other party commits any material breach and fails to cure such material breach within 30 days after written notice thereof from the non-breaching party; or (ii) the other Party enters bankruptcy proceedings, becomes insolvent, or otherwise becomes generally unable to meet its liabilities as they fall due.

Additionally, NQAC may terminate this Agreement, in whole or in part, without cause or penalty, at any time by providing Customer at least 30 days prior written notice of termination.

If this Agreement is terminated pursuant to this clause, Customer agrees to pay NQAC any portion of the fees due to NQAC up to the date of termination

13. FORCE MAJEURE

Except for any payment obligations hereunder, non-performance by either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party. Any party claiming that a force majeure condition has arisen will immediately notify the other party of the same. Such party will notify the other party as soon as possible (no more than 3 days) after such condition has ceased.

14. Miscellaneous

14.1 Notices

A notice under this agreement 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.

14.2 Amendment

This agreement may only be varied by the written agreement of the parties. No quotations, proposals, contracts, invoices, purchase orders, confirmation orders, work orders, or similar documents, regardless of when dated, will modify this Agreement.

14.3 Assignment

Customer may not assign, subcontract, or otherwise transfer this Agreement or any of its related rights or obligations without NQAC's prior written consent. For purposes hereof, an assignment will be deemed to occur upon the sale or transfer of (i) a controlling interest in the stock of Customer or any entity which, either indirectly or directly, owns or controls Customer, or (ii) all, or substantially all, of Customer's assets. Any attempted assignment, subcontracting or transfer of this Agreement by Customer will be null and void, and will be deemed a non-curable material default of this Agreement by Customer, entitling NQAC to exercise any right or remedy available to NQAC at law or in equity by virtue of such default.

NQAC may freely assign, subcontract, or otherwise transfer this Agreement or any of its related rights or obligations.

14.4 Entire agreement

This agreement embodies the entire understanding and agreement between the parties as to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

14.5 Governing law and jurisdiction

This agreement is governed by and must be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and all courts which have jurisdiction to hear appeals from those courts.

SIGNED AS AN AGREEMENT

Signed by **Nestlé Australia Ltd:**

.....
Signature of witness

.....
Signature of authorised person

.....
Name of witness (print)

.....
Office held

.....
Name of authorised person (print)

Signed by _____ **Limited:**

.....
Signature of witness

.....
Signature of authorised person

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Name of witness (print)

.....
Office held

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Name of authorised person (print)