



**Australian Government**  
**Department of Agriculture,  
Water and the Environment**

Department of Agriculture, Water and the Environment

Food Import Compliance Agreement

*Imported Food Control Act 1992*

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Commonwealth of Australia (**Commonwealth**)  
(**Other Party**)

# FICA Information

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## Parties

Name	The Commonwealth of Australia as represented by the Secretary of the Department of Agriculture, Water and the Environment or their delegate
Short form name	<b>Commonwealth</b>
Contact	Director, Imported Food section
Address	GPO Box 858 Canberra ACT 2601
Email	<a href="mailto:fica@awe.gov.au">fica@awe.gov.au</a>

Name	
Short form name	<b>Other Party</b>
ABN	
Contact	Work phone: Mobile phone:
Address	
Email	

## Overview

- A Section 35A(1) of the *Imported Food Control Act 1992 (IFC Act)* provides that the Secretary may, on behalf of the Commonwealth, enter into a compliance agreement, known as a Food Import Compliance Agreement (**FICA**), with a person in connection with:
- (i) the application of particular procedures in respect of food that may be imported into Australia;
  - (ii) the keeping of records in respect of compliance with those procedures; and
  - (iii) the supervision, monitoring and testing of the person's compliance with those procedures.
- B Failure to comply with the requirements of the FICA is a serious offence and consequences include pecuniary penalties and imprisonment (refer Section 35A of the IFC Act).

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# Agreed Terms

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## Part 1 – FICA Terms

### 1. Interpretation

#### 1.1 Definitions

In this FICA, except where the contrary intention is expressed, the following definitions are used:

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<b>Applicable Standard</b>	The definition in subsection 3(1) of the IFC Act applies as follows:  <i>applicable standard, in relation to particular food, or a particular matter affecting food, at a particular time, means the national standard in force in relation to that food or matter at that time.</i>
<b>Appointed Analyst</b>	a person that has been appointed by the Secretary under section 34 of the IFC Act.
<b>Approved Auditor</b>	an Authorised Officer.
<b>Authorised Officer</b>	The definition in subsection 3(1) of the IFC Act applies as follows:  <i>authorised officer means:</i>  (a) <i>the secretary; or</i>  (b) <i>an APS employee in the Department appointed by the Secretary under subsection 40(1); or</i>  (c) <i>a person appointed by the Secretary under subsection 40(2).</i>
<b>Authorised Personnel</b>	those Personnel listed in Schedule 1 who are authorised to give a certificate, assurance or declaration that all Procedures have been complied with in respect of FICA Food for the purposes of section 35A of the IFC Act.
<b>Biosecurity Law</b>	all Commonwealth legislation that regulates the import of goods to Australia and export of goods from Australia. This includes, but is not necessarily limited to the; <i>Biosecurity Act 2015, Export Act 2020, Export Control (Consequential Amendments and Transitional Provisions) Act 2020, IFC Act and Customs Act 1901</i> , as amended from time to time and includes all instruments made pursuant to those Acts.
<b>Competent Auditor</b>	in relation to assessment of a Manufacturer’s food safety and compliance system, means a person who has the necessary abilities, experience, qualifications and other attributes relevant to identifying risks associated with the food safety and compliance system and the Food the subject of the assessment.
<b>Compliance System</b>	the Other Party’s Food Safety Compliance System, as required by clause 5.

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<b>Department</b>	the Department of Agriculture, Water and the Environment and includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering the IFC Act.
<b>Downgrading</b>	in relation to Noncompliant Food means the food will no longer be used for human consumption. Food, other than animal derived food (including dairy products), may be used as animal feed.
<b>FICA</b>	this Food Import Compliance Agreement between the Commonwealth and the Other Party, as amended from time to time.
<b>FICA Food</b>	means the Food to which this FICA applies, as specified in Schedule 2.
<b>FICA Information</b>	Information about the Parties to this Food Import Compliance Agreement set out at the beginning of the Agreement
<b>Food</b>	<p>The definition in section 3A of the IFC Act applies as follows:</p> <p><i>(1) Food includes:</i></p> <ul style="list-style-type: none"> <li><i>(a) any substance or thing of a kind used, capable of being used, or represented as being for use, for human consumption (whether it is live, raw prepared or partly prepared); and</i></li> <li><i>(b) any substance or thing of a kind used, capable of being used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a); and</i></li> <li><i>(c) any substance used in preparing a substance or thing referred to in paragraph (a);</i></li> <li><i>(d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and</i></li> <li><i>(e) any substance or thing declared to be a food under a declaration in force under section 6 of the Food Standards Australia New Zealand Act 1991.</i></li> </ul> <p><i>(It does not matter whether the substance, thing or chewing gum is in a condition fit for human consumption).</i></p>
<b>Food Inspection Scheme</b>	<p>The definition in subsection 3(1) of the IFC Act applies as follows:</p> <p><b><i>Food Inspection Scheme</i></b> means the inspection scheme established by regulations made under section 16.<sup>1</sup></p>
<b>Food that poses a risk to human health</b>	<p>The definition in subsection 3(2) of the IFC Act applies as follows:</p> <p><i>Food poses a risk to human health if:</i></p> <p><i>(a) it contains:</i></p> <ul style="list-style-type: none"> <li><i>(i) pathogenic micro-organisms or their toxins; or</i></li> </ul>

<sup>1</sup> See Part 3 of the *Imported Food Control Regulations 2019*.

	<p>(ii) <i>micro-organisms indicating poor handling; or</i></p> <p>(iii) <i>non-approved chemicals or chemical residues; or</i></p> <p>(iv) <i>approved chemicals, or chemical residues, at greater levels than permitted; or</i></p> <p>(v) <i>non-approved additives; or</i></p> <p>(vi) <i>approved additives at greater levels than permitted; or</i></p> <p>(vii) <i>any other contaminant or constituent that may be dangerous to human health; or</i></p> <p>(b) <i>it has been produced, processed, manufactured, stored, packed, packaged or transported under conditions which render it dangerous or unfit for human consumption.</i></p>
<b>FSA</b>	Food Safety and Compliance Assessment.
<b>IFC Act</b>	means the <i>Imported Food Control Act 1992</i> as amended from time to time.
<b>IFC Regulations</b>	means the regulations made under section 43 of the IFC Act.
<b>IFC Order</b>	means the <i>Imported Food Control Order 2019</i> as amended from time to time or any other instrument made for the purposes of paragraph 16(2)(a) of the IFC Act.
<b>Law</b>	any applicable statute, regulation, instrument, order, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>Lot</b>	The definition in section 5 of the IFC Regulations applies as follows: <i>means a quantity of food of a particular kind prepared or packed under essentially the same conditions (ordinarily from a particular preparation or package unit and during a particular time, usually not exceeding 24 hours).</i>
<b>Manufacturer</b>	in relation to Food means the person who last processed or packaged the Food before it was exported to Australia.
<b>Material Variation</b>	any variation of the Compliance System that affects or is capable of affecting compliance with the FICA.
<b>Noncompliant Food</b>	FICA Food that does not meet an Applicable Standard.
<b>Personal Information</b>	has the same meaning as in the <i>Privacy Act 1988</i> as amended from time to time.
<b>Personnel</b>	in relation to a party, any natural person who is an employee, officer, agent, or professional advisor of that party.

<b>Procedures</b>	means the procedures set out in Part 2 of this FICA.
<b>Recognised Food Safety Management Certificate</b>	means: a) a Recognised Foreign Government Certificate; or b) a certificate covered by a determination in force under subsection 18A(1) of the IFC Act.
<b>Recognised Foreign Government Certificate</b>	means a certificate covered by a determination in force under subsection 18(1) of the IFC Act.
<b>Risk Food</b>	FICA Food that would be classified as risk food by an order made under section 10 of the IFC Regulations if this FICA did not apply to it.
<b>Schedule</b>	a schedule to this FICA.
<b>Secretary</b>	means the Secretary of the Department of Agriculture, Water and the Environment and includes any delegate.
<b>Surveillance Food</b>	FICA Food that would be classified as surveillance food under the IFC Regulations if this FICA did not apply to it.
<b>WHS Law</b>	The <i>Work Health and Safety Act 2011</i> (Commonwealth) and any legislative instruments executed under that Act and any applicable work health and safety legislation that applies to the Other Party.

## 1.2 Interpretation

In this FICA, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this FICA, and a reference to this FICA includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a party is to a party to this FICA, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this FICA or any part of it;

- (j) headings are for ease of reference only and do not affect interpretation.

## 2. Application of FICA

### 2.1 FICA period

This FICA begins on the date of execution by both parties and continues unless cancelled in accordance with this FICA or the *Imported Food Charges (Collection) Act 2015*.

### 2.2 Application of FICA

This FICA applies to Food imported by the Other Party as specified in Schedule 2.

## 3. Other Party obligations

The Other Party must:

- (a) apply the Procedures in respect of the FICA Food in accordance with this FICA; and
- (b) comply with all applicable Laws, including the IFC Act and WHS Law; and
- (c) comply with all applicable Commonwealth policies; and
- (d) comply with all directions made by an officer of the Commonwealth or an Authorised Officer; and
- (e) provide any information or assistance requested by an officer of the Commonwealth to the Commonwealth; and
- (f) keep the records set out in this FICA; and
- (g) otherwise act in accordance with the provisions of this FICA.

## 4. Certificate or assurance

For the purposes of section 35A(5) of the IFC Act, each person listed in Schedule 1 is authorised to give a certificate, assurance or declaration that all Procedures to which this FICA refers have been complied with in respect of FICA Food.



## Part 2 – Procedures

### 5. Compliance System

#### 5.1 Compliance System

In relation to Food the Other Party imports or proposes to import, the Other Party must at all times have and implement a Compliance System that:

- (a) meets the requirements set out in and otherwise complies with this FICA; and
- (b) manages the risk of contraventions of the IFC Act, in particular sections 8 and 8A; and
- (c) ensures compliance with Biosecurity Law.

#### 5.2 Documenting the Compliance System

- (a) The Compliance System must be documented clearly and concisely in an easily accessible electronic form, and must meet the following requirements:
  - (i) each document in the Compliance System must bear a unique identifier; and
  - (ii) contain an index of all documents that make up the Compliance System.
- (b) A complete copy of the fully documented Compliance System must be provided to the Commonwealth. When the Compliance System is varied in any way, an updated copy of the Compliance System must be provided to the Commonwealth.

#### 5.3 Compliance System requirements

The Compliance System must:

- (a) prescribe adequate and effective measures to ensure that FICA Food imported by the Other Party complies with Applicable Standards and does not pose a risk to human health; and
- (b) allocate responsibilities and authority with respect to Food safety and compliance with this FICA and Biosecurity Law to appropriate Personnel and ensure these responsibilities are clearly communicated and understood; and
- (c) ensure that Personnel with responsibilities under this FICA, or who otherwise undertake activities that affect or may affect Food safety or compliance with Biosecurity Law, are competent, have the necessary abilities, experience, qualifications and other attributes relevant to identifying risks associated with FICA Food, and receive appropriate education and training in Food safety; and
- (d) clearly set out the resources that will be applied to manage Food safety risks and compliance with this FICA and Biosecurity Law; and
- (e) provide for the identification, secure storage, retrieval of and disposal of records.

#### 5.4 Internal review of Compliance System

The Compliance System must provide for internal reviews of the Compliance System at least once every 12 months, with the review process at a minimum providing for:

- (a) assessment of the effectiveness of the Compliance System in managing Food safety and compliance with Applicable Standards; and
- (b) assessment of the Other Party's compliance with the requirements of the Compliance System and this FICA; and

- (c) specified Personnel who will conduct a review, ensuring that Personnel do not review their own work where possible; and
- (d) the scope of, and methods for, conducting a review; and
- (e) how results of a review are to be reported to the Other Party's senior management; and
- (f) use of the results of a review by the Other Party to facilitate continuous improvement of the Compliance System.

## **5.5 Periodic food testing**

- (a) The Compliance System must provide for the periodic testing of imported FICA Food by an Appointed Analyst.
- (b) Risk Food that has been sourced from a specific Manufacturer during any 12 month period must be subjected to periodic testing at least once in that 12 month period.
- (c) The periodic testing of Risk Food required by clause 5.5(b) must at a minimum include those tests that are applied to Food that is classified as Risk Food under the Food Inspection Scheme, and which are listed from time to time on the Department's website or otherwise published by the Department.
- (d) Surveillance Food, that has been sourced from each Manufacturer, at a minimum, must be subjected to periodic testing at least once every three years.
- (e) The periodic testing of Surveillance Food required by clause 5.5(d) must at a minimum include those tests applied to Food that is classified as Surveillance Food under the Food Inspection Scheme and which are listed from time to time on the Department's website or otherwise published by the Department.

## **5.6 Food Safety and Compliance Assessments**

The Compliance System must include appropriate measures, including periodic food testing in accordance with clause 5.5, to deal effectively with the risks identified in a Food Safety and Compliance Assessment (FSA) conducted in accordance with clause 7.

## **5.7 Foreign Government Certificates**

The Compliance System must provide that the Other Party will ensure that each consignment of Risk Food is accompanied by a Recognised Foreign Government Certificate, if the consignment contains Risk Food of a kind that is required to be covered by a Recognised Foreign Government Certificate by an order made under the IFC Act.

## **5.8 Food Safety Management Certificates**

The Compliance System must provide that the Other Party will ensure that each consignment of Risk Food is accompanied by a Recognised Food Safety Management Certificate, if the consignment contains Risk Food of a kind that is required to be covered by a Recognised Food Safety Management Certificate by an order made under the IFC Act.

## **5.9 Release of Noncompliant Food**

The Compliance System must provide for the following where Noncompliant Food or Food that poses a risk to human health is released by the Other Party:

- (a) notification of the Secretary, relevant State and Territory authorities with Food safety functions, and any other relevant persons; and
- (b) provision for a recall or withdrawal of the Noncompliant Food from sale or distribution; and
- (c) handling of recalled or withdrawn Noncompliant Food, including Noncompliant Food still held by the Other Party, subject to the requirements of this FICA.

## **5.10 Traceability**

- (a) The Compliance System must provide for the tracing of imported Lots of FICA Food from each Manufacturer to possession and control by the Other Party and the sale or other disposal, delivery, export or destruction of the FICA Food.
- (b) Traceability records must be kept for the shelf life of the FICA Food or three years, whichever is shorter.

## **5.11 Receival procedures**

The Other Party must ensure its receival procedures for imported FICA Food:

- (a) verify that the correct FICA Food, in the correct quantity, has been received; and
- (b) verify that all relevant and necessary documentation relating to the FICA Food, has been received for the consignment; and
- (c) check labelling on the FICA Food for compliance with Applicable Standards.

## **5.12 Variation of Compliance System**

The Other Party may vary its Compliance System at any time, subject to the following notice requirements:

- (a) where the variation is a Material Variation – notice of the variation and its impact on the Compliance System is provided to the Secretary a minimum of five Business Days before the variation comes into effect; or
- (b) where the variation is a Material Variation, and the variation is reasonably necessary to deal with a risk to human health – notice of the variation and its impact on the Compliance System is provided to the Secretary within 48 hours after the variation comes into effect.
- (c) where the variation is not a Material Variation – notice setting out the details of the variation is provided to the Secretary within five business days after the variation comes into effect.

# **6. Premises requirements**

## **6.1 FICA Warehouse Register**

- (a) The Other Party must keep and provide the Commonwealth with an up to date FICA warehouse register that lists the name, location, contact officers and contact details for all warehouses involved in the importation of FICA Food by the Other Party.
- (b) The Other Party must notify the Commonwealth in writing by completing a FICA notification form, available on the Department's website, within five business days of any changes to the FICA warehouse register.

## **6.2 Premises and facilities**

The Other Party must ensure that:

- (a) all warehouses used for dealing with FICA Food are registered or licensed Food facilities with the relevant State or Territory food authority unless that authority has confirmed that registration or licensing is not required; and
- (b) visitors to any premises used for dealing with or treating FICA Food are properly supervised at all times.

## **6.3 Direct delivery to customer**

Where imported FICA Food is delivered directly from the overseas supplier into a customer's warehouse, the Other Party must:

- (a) be able to demonstrate how it ensured compliance with the requirements in clause 5.11 above; and
- (b) notify the Commonwealth of any direct delivery to customer arrangement; and
- (c) keep a register of such arrangements for audit purposes.

# **7. Food safety and compliance assessment requirements**

## **7.1 Food safety and compliance assessment**

- (a) The Other Party must conduct a food safety and compliance assessment (FSA) that meets the requirements set out in clause 7.2 below for each kind of FICA Food before it imports that FICA Food.
- (b) Where something occurs that affects or may affect the FSA for a FICA Food, the Other Party must ensure that the FSA is reviewed and where necessary amended before the FICA Food is imported.

## **7.2 FSA requirements**

- (a) A FSA must identify, for the particular kind of FICA Food to which it relates:
  - (i) the risks that the FICA Food will not comply with Applicable Standards; and
  - (ii) the risks that the FICA Food will pose a risk to human health.
- (b) In identifying risks, the Other Party must:
  - (i) assess the FICA Food against the Applicable Standards; and
  - (ii) at a minimum take into account the:
    - (A) name and description of the FICA Food; and
    - (B) composition of the FICA Food; and
    - (C) biological, chemical and physical characteristics of the FICA Food; and
    - (D) intended shelf life of the FICA Food; and
    - (E) conditions under which the FICA Food should and will be stored; and
    - (F) packaging of the FICA Food; and
    - (G) labelling of the FICA Food; and
    - (H) method to be used to distribute the FICA Food; and

- (I) supply chains through which the FICA Food will be imported; and
- (J) any imported food risk statements published by Food Standards Australia New Zealand that apply to the FICA Food; and
- (K) any information published by the department about the risks associated with the FICA Food.

## 8. Assurance requirements

### 8.1 Manufacturer assurance

Prior to importing FICA Food from a Manufacturer and then on an ongoing basis as set out in this clause 8, the Other Party must assess, or ensure an assessment of, the Manufacturer in accordance with the processes set out in subclause 8.2 to verify that the Manufacturer is capable of producing Food that complies with Applicable Standards, is safe for human consumption and does not pose a risk to human health.

### 8.2 Assessment

- (a) Where FICA Food imported from the Manufacturer is or includes Risk Food, the assessment in clause 8.1 must be conducted by the Other Party:
  - (i) satisfying itself by reasonable inquiry at least once every two years that the Manufacturer has a documented food safety management system (such as a Hazard Analysis Critical Control Point based system, ISO 22000, Safe Quality Food or British Retail Consortium accredited system); and
  - (ii) doing at least one of the following at least once every two years:
    - (I) conducting an audit of the Manufacturer's documented food safety management system at one or more of the sites where the FICA Food is manufactured or otherwise dealt with to assess the system's implementation and effectiveness; or
    - (II) arranging for an independent Competent Auditor to conduct the audit in subparagraph (i) above; or
    - (III) obtaining satisfactory evidence that an independent Competent Auditor has conducted an audit referred to in subparagraph (i) above and certified the Manufacturer's food safety management system.
- (b) Where FICA Food imported from the Manufacturer is Surveillance Food only, the assessment in clause 8.1 must be conducted by the Other Party:
  - (i) conducting the assessment processes in subparagraphs 8.2(a)(i) and (ii) above; or
  - (ii) if it is not reasonably possible to meet the requirements of subparagraphs 8.2(a)(i) and (ii) above, by satisfying itself by reasonable inquiry at least once every two years that the Manufacturer:
    - (I) is capable of producing the FICA Food to the Other Party's product specification, including compliance with relevant Applicable Standards, traceability, and ensuring that the Food does not pose a risk to human health; and

- (II) verifying that samples received from the Manufacturer comply with the product specification.

### **8.3 Process control requirements**

The Other Party must take all reasonable steps to:

- (i) advise the Manufacturer of FICA Food which the Other Party imports of Applicable Standards; and
- (ii) ensure that FICA Food which the Other Party imports is secured and protected from contamination during shipping and storage so fitness for human consumption is not adversely affected.

## **9. Responding to Commonwealth publications about Food**

### **9.1 Commonwealth notifications**

The Other Party must:

- (a) retain evidence for monitoring of all publications from the Commonwealth of Food that fails inspection under the Food Inspection Scheme and changes to testing requirements under the Food Inspection Scheme, including Imported Food Notices and the monthly failing food report published on the Department's website; and
- (b) consider whether any variations to its Compliance System are required in response to Commonwealth publications; and
- (c) ensure its Compliance System addresses relevant hazards and risks identified in Commonwealth publications and obtains a Recognised Food Safety Management Certificate or a Recognised Foreign Government Certificate for the Risk Food requiring such certification as a condition of import.

## **10. Noncompliant Food**

### **10.1 Notice of Noncompliant Food, FICA Food that poses a risk to human health, or recalled FICA Food**

- (a) The Other Party must notify the Commonwealth in writing by completing a FICA notification form, available on the Department's website, as soon as it becomes aware of any of the following:
  - (i) FICA Food is Noncompliant Food because of the presence of a biological or chemical agent or contaminant; or
  - (ii) FICA Food is recalled, whether by order of a government agency, by the Other Party or by a retailer of the Food, because it poses a risk to human health or does not comply with Applicable Standards; or
  - (iii) FICA Food imported by the Other Party poses a risk to human health.
- (b) Notice must include the following about the Food:
  - (i) detailed particulars of the Food; and
  - (ii) what caused the Food to be Noncompliant Food, to pose a risk to human health, or to be recalled; and
  - (iii) current location of the Food; and

- (iv) what action the Other Party proposes to take about the matter, having regard to clause 10.3 below; and
- (v) what action any other person concerned in the matter proposes to take, where known by the Other Party; and
- (vi) contact details of a person able to provide further information about the matter.

## **10.2 Noncompliant Food or FICA Food that poses a risk to human health not to enter food chain**

- (a) Noncompliant Food or FICA Food that poses a risk to human health imported by the Other Party must not be released from the Other Party's possession or control unless approved by an Authorised Officer.
- (b) Subparagraph (a) does not apply where Food is Noncompliant Food only because of a failure to comply with an Applicable Standard relating to labelling, and the failure to comply with the relevant Applicable Standard is corrected by the Other Party prior to release.

## **10.3 Dealing with Noncompliant Food, FICA Food that poses a risk to human health, or recalled FICA Food**

- (a) Subject to obtaining the approval specified in clause 10.3(b) Noncompliant Food, FICA Food that poses a risk to human health or recalled FICA Food in the Other Party's possession or control may only be dealt with by:
  - (i) being treated (including reprocessing or further processing using a validated recognised treatment) to ensure that the Food complies with Applicable Standards; or
  - (ii) being downgraded to Food not for human consumption; or
  - (iii) being exported; or
  - (iv) being destroyed;
 in accordance with this clause 10, or as otherwise directed by an Authorised Officer.
- (b) The Other Party must obtain an Authorised Officer's written approval before dealing with Noncompliant Food, FICA Food that poses a risk to human health or recalled FICA Food which is in the Other Party's possession or control under clause 10.3(a).
- (c) Written approval under clause 10.3(b) may be given subject to conditions which must be complied with when dealing with Food under clause 10.3(a).
- (d) The Other Party must notify the department when Noncompliant Food, FICA Food that poses a risk to human health or recalled FICA Food has been dealt with under this clause 10.

## **10.4 Treatment of Noncompliant Food**

Noncompliant Food must:

- (a) be treated by the Other Party as a unique Lot and not mixed with other Food for the treatment; and
- (b) not be released for human consumption unless verification testing has been carried out on the Food in accordance with the Compliance System and established that the Food complies with Applicable Standards and does not pose a risk to human health.

## **10.5 Downgrading of Noncompliant Food**

The Other Party must not downgrade:

- (a) animal derived FICA Food, including dairy products; and
- (b) Noncompliant Food unless approved by an Authorised Officer.

## **10.6 Downgrading or destruction of Noncompliant Food**

- (a) FICA Food which is downgraded to Food not for human consumption or destroyed must be downgraded or destroyed in accordance with the requirements of the Biosecurity Law and relevant State or Territory laws.
- (b) The Other Party must keep records of FICA Food that is downgraded or destroyed that clearly specify the Food, Lot codes and quantity.

## **10.7 Export of Noncompliant Food**

- (a) Noncompliant Food may only be exported to the country from which it was imported unless an Authorised Officer approves export to another country.
- (b) To obtain the approval of an Authorised Officer under clause 10.7(a), the Other Party must provide written acknowledgment from the government authority in the other country that demonstrates:
  - (i) the government authority is aware the Noncompliant Food does not comply with specified Applicable Standards or poses a specified risk to human health; and
  - (ii) that the Noncompliant Food may be imported into that country.
- (c) The Other Party must keep records of export of Noncompliant Food, which must include:
  - (i) relevant bills of lading specifying departure date, vessel name, port of loading, port of discharge, estimated date of arrival, container number and seal number; and
  - (ii) packing lists including Food description, Lot codes and quantity.

## **11. Dealing with noncompliance**

- (a) Where any of the following occur, the Other Party must, as soon as practicable, take adequate and effective action to remedy the effects of the event and take steps to ensure that the event does not recur:
  - (i) the FICA is not complied with;
  - (ii) FICA Food that has been imported by the Other Party has breached an Applicable Standard in a material way;
  - (iii) FICA Food that has been imported by the Other Party poses a material risk to human health;
  - (iv) the Other Party has materially failed to comply with its obligations under a Biosecurity Law or a law of a State or Territory that relates to Food safety.



## 12. Subcontractors

- (a) The Other Party must not subcontract the application of the Compliance System without the prior written approval of the Commonwealth. The Other Party must provide all information about the subcontractor reasonably requested by the Commonwealth.
- (b) The Other Party must ensure that any subcontractor approved by the Commonwealth complies with this FICA and all applicable Laws.
- (c) The Other Party is fully responsible for application of the Compliance System even if the Other Party subcontracts any aspect of the application of the Compliance System.
- (d) Where the Other Party subcontracts otherwise than in accordance with this clause 12, the Commonwealth may cancel this FICA, in accordance with clause 20.

## Part 3 – General Terms

### 13. Records

- (a) The Other Party must keep complete and accurate records of its activities that relate to the importation of and dealings with FICA Food, including a record of any failure by the Other Party to comply with this FICA.
- (b) Records must be kept:
  - (i) in writing and in a format that is legible; and
  - (ii) in a way that facilitates audits; and
  - (iii) at the address specified in the FICA Information or some other location approved by the Secretary; and
  - (iv) unless otherwise provided in this FICA – for at least three years after the date of the transaction or event to which the record relates.
- (c) Records of all results of testing and analysis conducted under the FICA must be retained for a minimum period of three years.

### 14. Notifiable events

#### 14.1 Notifiable events

- (a) The Other Party must notify the Commonwealth immediately if:
  - (i) the Other Party breaches a provision of the Biosecurity Law; or
  - (ii) the Other Party breaches a provision of a State or Territory law that relates to food safety; or
  - (iii) FICA Food imported by the Other Party breaches an Applicable Standard or poses a risk to human health; or
  - (iv) the Other Party being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Other Party; or
  - (v) the Other Party ceases to carry on business; or
  - (vi) the Other Party ceases to be able to pay its debts as they become due; or

- (vii) there is a change to any factors that do, will or could affect the capacity of the Other Party to comply with this Food Import Compliance Agreement, or the capacity of their associates(s) to comply where the Other Party ought to reasonably know about factors affecting the associate(s') capacity to comply; or
- (viii) the Other Party enters into liquidation or has a controller or managing controller or liquidator or administrator appointed; or
- (ix) the Other Party being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- (x) where the Other Party is a partnership, any step is taken to dissolve that partnership; or
- (xi) staff in management and control for the Other Party have an adverse change to their capacity to comply with this compliance agreement.

## 15. Monitoring and compliance

### 15.1 Right to conduct audit

An Approved Auditor may at any time conduct an audit to monitor the Other Party's compliance with this FICA.

### 15.2 Access by the Commonwealth for audit purposes

- (a) In order to conduct an audit for the purposes of this clause 15, an Approved Auditor may at any time:
  - (i) access any premises of or under the control of the Other Party, its employees, agents or subcontractors, with the consent of the occupier of the premises and to the extent relevant to the performance of the Other Party's obligations under this FICA; and
  - (ii) require the provision by the Other Party, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Approved Auditor by use of the Approved Auditor's existing computer hardware and software; and
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Other Party, its employees, agents or subcontractors; and
  - (iv) require assistance in respect of any inquiry into or concerning the performance of the obligations under this FICA. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry, any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) If an Approved Auditor requires access to premises of or under the control of the Other Party, its employees, agents or subcontractors for the purposes of this clause 15, the Other Party must ensure that consent to that access is given.
- (c) The Other Party and its employees, agents and subcontractors must provide access to its computer hardware and software to the extent necessary for the Approved Auditor to exercise their rights under this clause 15, and provide the Approved Auditor with

any reasonable assistance requested by the Approved Auditor to use that hardware and software.

- (d) The Other Party must ensure that its employees, agents and subcontractors cooperate fully and promptly with an audit conducted under this clause 15, and must provide any assistance requested by the Approved Auditor.

## 16. Fees and charges

- (a) The Commonwealth will charge in accordance with section 30 of the IFC Regulations, the *Imported Food Charges (Imposition - General) Act 2015* and the *Imported Food Charges (Collection) Act 2015*.
- (b) The Other Party must pay any fees or charges charged by the Commonwealth in accordance with the relevant legislation.

Note: This FICA may be suspended or revoked in accordance with the *Imported Food Charges (Collection) Act 2015* if the Other Party is liable to pay an imported food charge or late payment fee that is due and payable.

## 17. Indemnity

### 17.1 Indemnity

- (a) The Other Party will at all times indemnify, hold harmless and defend the Commonwealth, its officers, employees, and agents (referred to in this clause 17.1 as those indemnified) from and against any loss or liability, including:
  - (i) loss of, or damage to, property of the Commonwealth;
  - (ii) claims by any person in respect of personal injury or death;
  - (iii) claims by any person in respect of loss of, or damage to, any property; and
  - (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 17.1(a)(ii) or clause 17.1(a)(iii),arising out of or as a consequence of any breach of this FICA by the Other Party and any related entity, or negligence on the part of the Other Party or its Personnel or wrongful or unlawful act or omission on the part of the Other Party or its Personnel.
- (b) The Other Party's liability to indemnify those indemnified under clause 17.1(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

## 18. Confidentiality and privacy

The Commonwealth may disclose information, including confidential information and Personal Information, provided by the Other Party:

- (a) to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this FICA; or
- (b) to internal management Personnel, solely to enable effective management or auditing of the Procedures and associated activities under this FICA; or
- (c) to the responsible Minister; or
- (d) to a House or Committee of the Parliament of the Commonwealth of Australia; or

- (e) to another Commonwealth agency, where this services the Commonwealth's legitimate interests; or
- (f) to a State or Territory agency, where necessary for Food safety compliance; or
- (g) to the Auditor General, Ombudsman or Privacy Commissioner; or
- (h) if required by Law to disclose the information.

## 19. WHS Law

- (a) The Other Party must comply with applicable WHS Law, including in respect of any Approved Auditor who accesses any premises of or under the control of the Other Party pursuant to clause 15 of this agreement.
- (b) The Other Party must take all reasonable steps to assist the Commonwealth meet its obligations under WHS Law, including providing any relevant information as reasonably requested by the Commonwealth in respect of any injury or health and safety incident involving an Approved Auditor.

## 20. Suspension and cancellation

Note: see also section 12 of the *Imported Food Charges (Collection) Act 2015*.

### 20.1 Suspension

- (a) The Secretary may, where satisfied it is necessary to achieve the purposes of the IFC Act, at any time, by notice, immediately suspend the operation of this FICA, or a part of this FICA, for the period of time specified in the notice or until the happening of an event specified in the notice.
- (b) On suspension of this FICA, or part of this FICA, any Food imported by the Other Party which is covered by the part of the FICA which is suspended, ceases to be classified as FICA Food and will be subject to inspection in accordance with the Food Inspection Scheme set out in the IFC Regulations for the duration of the suspension.
- (c) The Other Party must continue to comply with any directions given by an Authorised Officer.
- (d) The Secretary may, by notice, revoke the suspension of the FICA at any time.

### 20.2 Cancellation for convenience

- (a) The Secretary may at any time, by notice, cancel this FICA.

### 20.3 Cancellation for breach

- (a) Without limiting any other rights the Commonwealth has under this FICA, the Secretary may cancel this FICA effective immediately by giving notice to the Other Party if:
  - (i) the Other Party breaches a provision of this FICA where that breach is incapable of remedy; or
  - (ii) the Other Party breaches any provision of this FICA and fails to remedy the breach within 14 days or the period specified in the notice after receiving notice requiring it to do so; or
  - (iii) a notifiable event specified in clause 14.1 occurs and the event poses an ongoing risk to human health.

## 20.4 Consequences of cancellation

- (a) On cancellation of this FICA, Food imported by the Other Party ceases to be classified as FICA Food for the purposes of the IFC Act, in accordance with the Food Inspection Scheme.
- (b) The Commonwealth is not liable for any loss suffered by or claim against the Other Party as a result of cancellation under this clause.
- (c) If this FICA is cancelled under clause 20, the Other Party is liable for reasonable costs actually incurred by the Commonwealth and directly attributable to the cancellation.

## 21. Survival

The following provisions survive the cancellation or expiry of this FICA:

- (a) clause 13 (records);
- (b) clause 16 (fees);
- (c) clause 17 (indemnity);
- (d) clause 18 (confidentiality and privacy);
- (e) clause 20 (suspension and cancellation).

## 22. Variation

- (a) The Secretary may at any time, by notice in writing, vary this FICA.
- (b) Any variation will take effect from the date specified in the notice.

## 23. Notices and other communications

### 23.1 Service of notices

A notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand-delivered or sent by prepaid post or email to the recipient's address for notices specified in the FICA Information.

### 23.2 Effective on receipt

A notice given in accordance with clause 23.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery; or
- (b) if sent by prepaid post, after five business days; or
- (c) if sent by email, at the time of receipt under the *Electronic Transactions Act 1999* (Cth);

but if the delivery, receipt or transmission is not on a business day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next business day.

**24. Miscellaneous**

**24.1 Assignment and novation**

The Other Party must not assign its rights or novate its rights and obligations under this FICA.

**24.2 Costs**

Each party must pay its own costs of negotiating, preparing and executing this FICA.

**24.3 Counterparts**

This FICA may be executed in counterparts. All executed counterparts constitute one document.

**24.4 Entire agreement**

This FICA constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

**24.5 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this FICA and any transaction contemplated by it.

**24.6 Relationship**

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This FICA does not create a relationship of employment, agency or partnership between the parties.

# Signing page

EXECUTED as an agreement.

**Signed** for and on behalf of the **Commonwealth of Australia as represented by the Secretary of the Department of Agriculture, Water and the Environment** by their duly authorised delegate in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

Date executed by the Commonwealth  
/ / 2022

← \_\_\_\_\_  
Signature of delegate

\_\_\_\_\_  
Name of delegate (print)

\_\_\_\_\_  
Position of delegate (print)

**Executed by**

ACN:                    in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary  
(Please delete as applicable)

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Name of director (*print*)

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Name of director/company secretary (*print*)

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On:

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On:



# Schedule 1 – Authorised Personnel

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For the purposes of section 35A of the IFC Act, the following Personnel are authorised to give a certificate, assurance or declaration that all the Procedures have been complied with in respect of FICA Food:

Name

# Schedule 2 – Food to which this FICA applies

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For the purposes of clause 2.2, this FICA applies to the following Food imported by the Other Party (FICA Food):
