

AUSTRALIAN COMMISSION ON SAFETY AND QUALITY IN HEALTH CARE

D15-20102

SERVICES CONTRACT

CONTRACT IN RELATION TO THE OPERATION OF THE AUSTRALIAN
GROUP ON ANTIMICROBIAL RESISTANCE JULY 1, 2015 TO
DECEMBER 31, 2016

Australian Commission on Safety and Quality in Health Care
ABN 97 250 687 371

Australian Society for Antimicrobials
ABN 31 081 739 370

CONTENTS

1.	Interpretation	1
	1.1. Definitions	1
	1.2. Interpretation	4
	1.3. Guidance on construction of contract	4
	1.4. Commencement	5
2.	Provision of Services	5
	2.1. Principal obligations of Service Provider	5
	2.2. Liaison with Project Officer	5
	2.3. Subcontractors	5
	2.4. Specified Personnel	6
	2.5. Responsibility of Service Provider	6
3.	Fees, allowances and assistance	7
	3.1. Principal obligations of Commission	7
	3.2. the Commission's rights to defer payment	7
	3.3. Taxes, duties and government charges	7
	3.4. Superannuation	7
4.	Intellectual Property	7
	4.1. Use of Commission Material	7
	4.2. Rights in Contract Material	8
	4.3. Moral Rights	8
5.	Confidentiality of Official Information and other security obligations	9
	5.1. Interpretation	9
	5.2. Confidentiality of Official Information	9
	5.3. Other security obligations of Service Provider	10
6.	Dealing with Copies and Access to Documents	10
	6.1. Interpretation	10
	6.2. Actions at end of contract	11
	6.3. Access to documents	11
7.	Confidential Information of Service Provider	11
	7.1. Confidential Information not to be disclosed	11
	7.2. Exceptions to obligations	11
	7.3. Period of confidentiality	12
8.	Liability	12
	8.1. Proportionate liability regimes excluded	12
	8.2. Indemnity	12

9.	Dispute resolution	13
	9.1. Procedure for dispute resolution	13
	9.2. Costs	13
	9.3. Continued performance	13
	9.4. Exemption	13
10.	Termination or reduction in scope of Services	14
	10.1. Termination for convenience	14
	10.2. Termination for fault	14
11.	Notices	15
	11.1. Format, addressing and delivery	15
	11.2. When effective	15
12.	General provisions	16
	12.1. Work health and safety	16
	12.2. Obligations of Service Provider in relation to privacy	16
	12.3. Audit and access	16
	12.4. Insurance	17
	12.5. Extension of provisions to subcontractors and Personnel	17
	12.6. Conflict of interest	17
	12.7. Relationship of parties	18
	12.8. Waiver	18
	12.9. Variation	18
	12.10. Assignment	18
	12.11. Survival	18
	12.12. Compliance with Legislation	19
	12.13. Applicable law	19
	The Schedule - Contract Details	20

CONTRACT

Parties

This Contract is made between and binds the following parties:

1. **Australian Commission on Safety and Quality in Health Care**
ABN 97 250 687 371 Level 5, 255 Elizabeth Street, Sydney NSW 2001
(the Commission)
2. **Australian Society for Antimicrobials**
ABN 31 081 739 370 16 Hogg Avenue, Salter Point WA 6152
(the Service Provider)

Context

This Contract is made in the following context:

- A. The Commission requires the provision of certain services.
- B. The Service Provider has fully informed itself about the requirement and has submitted the proposal referred to in Item 1 of the Schedule.
- C. The parties have agreed that the Service Provider will perform the Services for the Commission on the terms and conditions set out in this contract.

Operative Provisions

1. Interpretation

1.1. Definitions

1.1.1. In this contract, unless the context indicates otherwise:

Australian Group on Antimicrobial Resistance (AGAR)	means the collaboration of clinicians and scientists from major microbiology laboratories in Australia to test, collect and analyse information on the level of antimicrobial resistance in bacteria causing important and life threatening infections.
Australian Society on Antimicrobials (ASA)	means the entity responsible for the operation of the Australian Group on Antimicrobial Resistance (AGAR);
Attachment	means a document attached to the contract or incorporated by reference in the Schedule, and includes the Attachment as amended or replaced from time to time by agreement in writing between the parties;

Australian Privacy Principle	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item 23;
Commencement Date	means the date on which this contract is made, unless otherwise specified in Item 5;
Commission	means the Australian Commission on Safety and Quality in Health Care
Commission Material	means any Material: <ul style="list-style-type: none"> a. provided by the Commission to the Service Provider for the purposes of this contract; or b. derived at any time from the Material referred to in paragraph a;
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in Item 18.
Contract Material	means any Material: <ul style="list-style-type: none"> a. created for the purposes of this contract; b. provided or required to be provided to Commission as part of the Services; or c. derived at any time from the Material referred to in paragraphs a or b;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Information Officer	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing privacy functions as defined in that Act;
Instalment	means the fee payable under clause 3.1.1.a and Item 10 in relation to a specified part or the whole of the Services;
Intellectual Property	includes: <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and

circuit layouts; and

- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:

- d. Moral Rights;
- e. the non-proprietary rights of performers; or
- f. rights in relation to Confidential Information;

Material means any thing in relation to which Intellectual Property rights arise;

Moral Rights means the following non-proprietary rights of authors of copyright Material:

- a. the right of attribution of authorship;
- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed;

Official Information means any information developed, received or collected by or on behalf of the Commission to which the Service Provider gains access under or in connection with this contract, and includes the Contract Material and the terms of the contract;

Open Access Licence means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see <http://creativecommons.org.au/learn-more/licences>);

Personnel means:

- a. in relation to the Service Provider - any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors; and
- b. in relation to the Commission - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth.

Project Officer means the person specified (by name or position) in Item 7 or any substitute notified to the Service Provider;

Schedule	means the schedule to this contract entitled 'Contract Details', and includes the Schedule as amended or replaced from time to time by agreement in writing between the parties;
Services	means the services described in Item 2 and includes the provision to the Commission of the Material specified in Item 3; and
Specified Personnel	means the Personnel specified in Item 9 as required to perform all or part of the work constituting the Services.

1.2. Interpretation

1.2.1. In this contract, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an Item in the Schedule;
- i. the Schedule and any Attachments form part of this contract;
- j. if any conflict arises between the terms and conditions contained in the clauses of this contract and any part of the Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
- k. if any conflict arises between any part of the Schedule and any part of an Attachment, the Schedule prevails; and
- l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of contract

1.3.1. This contract records the entire agreement between the parties in relation to its subject matter.

- 1.3.2. As far as possible all provisions of this contract will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of the contract remains in force.
- 1.3.4. A provision of this contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement

- 1.4.1. The terms of this contract apply on and from the Commencement Date.

2. Provision of Services

2.1. Principal obligations of Service Provider

- 2.1.1. The Service Provider agrees to:
- a. perform the Services as specified in Item 2;
 - b. provide to the Commission the Material specified in Item 3;
 - c. adopt relevant best practice, including any Commission, Commonwealth or industry standards and guidelines specified in Item 4;
 - d. comply with relevant privacy laws with regard to the collection, use, handling and storage of data;
 - e. comply with the time frame for the performance of the Services specified in Item 5; and
 - f. submit invoices, and any required supporting documents, in the manner specified in Item 6.
- 2.1.2. The Service Provider agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by the Commission under this contract to be determined.

2.2. Liaison with Project Officer

- 2.2.1. The Service Provider agrees:
- a. to liaise with the Project Officer as reasonably required; and
 - b. to comply with directions of the Project Officer that are consistent with this contract.

2.3. Subcontractors

- 2.3.1. The Service Provider agrees not to subcontract the performance of any part of the Services without the Commission's prior written approval.
- 2.3.2. The Commission may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.

2.3.3. The Commission has approved the subcontracting of the performance of the parts of the Services to the persons, and subject to the conditions (if any), specified in Item 8.

2.3.4. The Service Provider agrees to make available to the Commission (if requested), details of all subcontractors engaged in the performance of the Services.

2.3.5. The Service Provider acknowledges, and must inform all subcontractors that, the Commission may publicly disclose the names of any subcontractors engaged in the performance of the Services.

2.4. Specified Personnel

2.4.1. The Service Provider agrees that the Specified Personnel will perform work in relation to the Services in accordance with this contract.

2.4.2. If Specified Personnel are unable to perform the work as required under clause 2.4.1, the Service Provider agrees to notify the Commission immediately.

2.4.3. The Service Provider agrees, at the request of the Commission acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Services.

2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Service Provider will provide replacement Personnel acceptable to the Commission at no additional cost and at the earliest opportunity.

2.5. Responsibility of Service Provider

2.5.1. The Service Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this contract, and will not be relieved of that responsibility because of any:

- a. involvement by the Commission in the performance of the Services;
- b. subcontracting of the Services;
- c. acceptance by the Commission of Specified Personnel; or
- d. payment made to the Service Provider on account of the Services.

2.6. Illegal Workers

2.6.1. In this clause 2.6:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

2.6.2. The Service Provider must ensure that its Service Provider Personnel do not include any Illegal Workers and must notify the Commission immediately if it becomes aware of any of its Service Provider Personnel being an Illegal Worker.

3. Fees, allowances and assistance

3.1. Principal obligations of Commission

3.1.1. The Commission agrees to:

- a. pay the fees in the Instalments specified in Item 10;
- b. pay the allowances and meet the costs specified in Item 11;
- c. make all payments as and when specified in Item 6; and
- d. provide facilities and assistance as specified in Item 12.

3.2. The Commission's rights to defer payment

3.2.1. The Commission will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment if and for so long as the Service Provider has not completed, to the satisfaction of the Commission, that part of the Services to which the Instalment relates.

3.3. Taxes, duties and government charges

3.3.1. Except as provided by this clause 3.3, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this contract.

3.3.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this contract is exclusive of any GST imposed on the supply.

3.3.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

3.3.4. No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an input tax credit or decreasing adjustment.

3.4. Superannuation

3.4.1. This contract is entered into on the understanding that the Commission is not required to make any superannuation contributions in connection with the contract, unless stated to the contrary in Item 10.

4. Intellectual Property

4.1. Use of Commission Material

4.1.1. The Commission agrees to provide the Commission Material to the Service Provider as specified in Item 13.

4.1.2. The Commission grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt the Commission Material for the purposes of this contract.

4.1.3. The Service Provider agrees to use the Commission Material strictly in accordance with any conditions or restrictions set out in Item 14, and any direction from the Commission.

4.2. Rights in Contract Material

4.2.1. Intellectual Property in all Contract Material vests or will vest in the Commission.

4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:

- a. any Commission Material incorporated into Contract Material; or
- b. any Material in existence at the Commencement Date and specified in Item 15.

4.2.3. The Service Provider grants to (or will procure for) the Commission a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material referred to in clause 4.2.2.b, in conjunction with the Contract Material, for any purpose.

4.2.4. The Service Provider agrees that the licence granted in clause 4.2.3 includes a right for the Commission to licence the existing Material in conjunction with the Contract Material to the public under an Open Access Licence.

4.2.5. For the avoidance of doubt, the Service Provider is not permitted to use, copy, adapt, supply or communicate the Contract Material for any purpose other than for the purposes of this contract.

4.2.6. The Service Provider agrees, on request by the Commission, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 4.2.

4.2.7. The Service Provider warrants that:

- a. it is entitled; or
- b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 4.2.

4.3. Moral Rights

4.3.1. In this clause 4.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;
 - b. supplementing the Contract Material with any other Material;

c. using the Contract Material in a different context to that originally envisaged; and

d. releasing the Contract Material to the public under an Open Access Licence,

but does not include false attribution of authorship.

4.3.2. Where the Service Provider is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Commission or any person claiming under or through the Commission (whether occurring before or after the consent is given).

4.3.3. Where clause 4.3.2 does not apply, the Service Provider agrees to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commission or any person claiming under or through the Commission (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to the Commission.

4.3.4. This clause 4.3 does not apply to any Commission Material incorporated in the Contract Material.

5. Confidentiality of Official Information and other security obligations

5.1. Interpretation

5.1.1. In this clause 5:

Official Resources

includes:

- a. Official Information;
- b. people who work for or with the Commission; and
- c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Commission;

Security Classified Resources

means Official Resources that, if compromised, could have adverse consequences for the Commission; and

Security Incident

means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

5.2. Confidentiality of Official Information

5.2.1. The Service Provider will not, without prior written authorisation of the Commission, disclose any Official Information to any person (unless required to do so by law).

- 5.2.2. The Service Provider is authorised, subject to clause 5.3.1.a to 5.3.1.c, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this contract.
- 5.2.3. The Service Provider agrees, on request by the Commission at any time, to arrange for the Personnel and subcontractors referred to in clause 5.2.2 to give a written undertaking in a form acceptable to the Commission relating to the use and non-disclosure of Official Information.
- 5.2.4. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

5.3. Other security obligations of Service Provider

- 5.3.1. The Service Provider agrees:
- a. to ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
 - b. to make its Personnel available to attend any security training provided by the Commission;
 - c. to notify the Commission of any change in the personal circumstances of Personnel referred to in 5.3.1.a;
 - d. to notify the Commission immediately if it becomes aware that a Security Incident has occurred and otherwise implement the Commission's procedures for Security Incident reporting as advised by the Commission from time to time;
 - e. not to perform the Services outside Australia without the Commission's prior written approval; and
 - f. to comply with the additional security requirements specified in Item 16, if any, and any variations or additions to those requirements as notified by the Commission from time to time.

The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 5 and will provide details of these procedures to the Commission on request.

6. Dealing with Copies and Access to Documents

6.1. Interpretation

6.1.1. In clause 6.2:

Copy means any document, device, article or medium in which Commission Material, Contract Material, or Official Information is embodied.

6.2. Actions at end of contract

6.2.1. The Service Provider agrees, on expiration or termination of this contract, to deal with all Copies as directed by the Commission, subject to any requirement of law binding on the Service Provider.

6.3. Access to documents

6.3.1. In this clause 6.3, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

6.3.2. The Service Provider acknowledges that this contract is a Commonwealth contract.

6.3.3. Where the Commission has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this contract (and not to the entry into the contract), the Commission may at any time by written notice require the Service Provider to provide the document to the Commission and the Service Provider must, at no additional cost to the Commission, promptly comply with the notice.

6.3.4. The Service Provider must include in any subcontract relating to the performance of this contract provisions that will enable the Service Provider to comply with its obligations under this clause 6.3.

7. Confidential Information of Service Provider

7.1. Confidential Information not to be disclosed

7.1.1. Subject to clause 7.2, the Commission will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

7.2. Exceptions to obligations

7.2.1. The obligations of the Commission under this clause 7 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by the Commission to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this contract;
- b. is disclosed by the Commission to its internal management Personnel, solely to enable effective management or auditing of contract-related activities;
- c. is disclosed by the Commission to the responsible Minister;
- d. is disclosed by the Commission in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Commission within the Commission's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;

- f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 7.
- 7.2.2. Where the Commission discloses Confidential Information to another person pursuant to clauses 7.2.1.a – 7.2.1.e, the Commission will notify the receiving person that the information is confidential.
- 7.2.3. In the circumstances referred to in clauses 7.2.1.a, 7.2.1.b and 7.2.1.e, the Commission agrees not to provide the information unless the receiving person agrees to keep the information confidential.
- 7.3. Period of confidentiality**
- 7.3.1. The obligations under this clause 7 in relation to an item of information described in Item 18 continue for the period set out there in respect of that item.

8. Liability

8.1. Proportionate liability regimes excluded

- 8.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this contract.

8.2. Indemnity

- 8.2.1. The Service Provider indemnifies the Commission from and against any:
- a. cost or liability incurred by the Commission;
 - b. loss of or damage to property of the Commission; or
 - c. loss or expense incurred by the Commission in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commission,
- arising from either:
- d. a breach by the Service Provider of this contract; or
 - e. an act or omission involving fault on the part of the Service Provider or its Personnel in connection with this contract.
- 8.2.2. The Service Provider's liability to indemnify the Commission under clause 8.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Commission or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 8.2.3. The right of the Commission to be indemnified under this clause 8.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commission is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

9. Dispute resolution

9.1. Procedure for dispute resolution

9.1.1. The parties agree that a dispute arising under this contract will be dealt with as follows:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within 5 Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;
- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 9.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 9.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

9.2. Costs

9.2.1. Each party will bear its own costs of complying with this clause 9, and the parties will bear equally the cost of any third person engaged under clause 9.1.1.d.

9.3. Continued performance

9.3.1. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Commission not to do so) continue to perform the Services.

9.4. Exemption

9.4.1. This clause 9 does not apply to:

- a. action by the Commission under or purportedly under clause 10.1;
- b. action by either party under or purportedly under clause 10.2; or

- c. legal proceedings by either party seeking urgent interlocutory relief.

10. Termination or reduction in scope of Services

10.1. Termination for convenience

- 10.1.1. The Commission may by notice, at any time and in its absolute discretion, terminate this contract or reduce the scope of the Services immediately.
- 10.1.2. The Service Provider agrees, on receipt of a notice of termination or reduction:
 - a. to stop or reduce work as specified in the notice;
 - b. to take all available steps to minimise loss resulting from that termination or reduction; and
 - c. to continue work on any part of the Services not affected by the notice.
- 10.1.3. In the event of termination under clause 10.1.1, the Commission will be liable only:
 - a. to pay any Instalment relating to Services completed before the effective date of termination;
 - b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 10.1.3.a;
 - c. to pay any allowance and meet any costs unavoidably incurred under Item 11 before the effective date of termination; and
 - d. to provide the facilities and assistance necessarily required under Item 12 before the effective date of termination.
- 10.1.4. The Commission will not be liable to pay amounts under clause 10.1.3.a and 10.1.3.b which would, added to any fees already paid to the Service Provider under this contract, together exceed the fees set out in Item 10.
- 10.1.5. In the event of a reduction in the scope of the Services under clause 10.1.1, the Commission's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 3 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.
- 10.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.

10.2. Termination for fault

- 10.2.1. If a party fails to satisfy any of its obligations under this contract, then the other party - *if it considers that the failure is:*
 - a. *not capable of remedy* - may, by notice, terminate the contract immediately; or

- b. *capable of remedy* - may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the contract immediately by giving a second notice.
- 10.2.2. The Commission may also by notice terminate this contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
 - a. *being a corporation* - comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*, or has an order made against it for the purpose of placing it under external administration; or
 - b. *being an individual* - becomes bankrupt or enters into a scheme of arrangement with creditors.

11. Notices

11.1. Format, addressing and delivery

- 11.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:
 - a. *if given by the Service Provider to the Commission* - addressed to the Project Officer at the address specified in Item 19 or as otherwise notified by the Commission; or
 - b. *if given by the Commission to the Service Provider* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in Item 20 or as otherwise notified by the Service Provider.
- 11.1.2. A notice is to be:
 - a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

11.2. When effective

- 11.2.1. A notice is deemed to be effected:
 - a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by post* - upon delivery to the relevant address;
 - c. *if transmitted electronically* - upon actual receipt by the addressee.
- 11.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

12. General provisions

12.1. Work health and safety

12.1.1. The Service Provider agrees, in carrying out this contract, to comply with:

- a. all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
- b. all applicable policies and procedures relating to work health and safety, including those that apply to the Commission's premises when using those premises.

12.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 12.1.1, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

12.2. Obligations of Service Provider in relation to privacy

12.2.1. The Service Provider agrees, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by the Commission, would be a breach of an Australian Privacy Principle under the Privacy Act; and
- b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item 17, to the extent that they are consistent with the obligations in subclause a above.

12.2.2. The Service Provider agrees to notify the Commission immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 12.2.

Note: For information about the *Privacy Act 1988 (Cth)* see the fact sheet referred to in Item 22.

12.3. Audit and access

12.3.1. The Service Provider agrees:

- a. to give the Project Officer, or any persons authorised in writing by the Project Officer, access to premises where the Services are being performed or where Official Resources are located; and
- b. to permit those persons to inspect and take copies of any Material relevant to the Services.

12.3.2. The rights referred to in clause 12.3.1. are subject to:

- a. the Commission providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises; and

- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

12.3.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 12.3.

12.3.4. This clause 12.3 does not detract from the statutory powers of the Auditor-General or Information Officer (including their delegates).

12.4. Insurance

12.4.1. The Service Provider agrees:

- a. to effect and maintain the insurance specified in Item 21; and
- b. on request, to provide proof of insurance acceptable to the Commission.

12.4.2. This clause 12.4 continues in operation for so long as any obligations remain in connection with the contract.

12.5. Extension of provisions to subcontractors and Personnel

12.5.1. In this clause 12.5:

Requirement means an obligation, condition, restriction or prohibition binding on the Service Provider under this contract.

12.5.2. The Service Provider agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this contract imposes all relevant Requirements on the other party.

12.5.3. The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Commission.

12.6. Conflict of interest

12.6.1. In this clause 12.6:

Conflict means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Commission diligently and independently.

12.6.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.

12.6.3. If, during the period of this contract a Conflict arises, or appears likely to arise, the Service Provider agrees:

- a. to notify the Commission immediately;
- b. to make full disclosure of all relevant information relating to the Conflict;
and
- c. to take any steps the Commission reasonably requires to resolve or otherwise deal with the Conflict.

12.7. Relationship of parties

12.7.1. The Service Provider is not by virtue of this contract an officer, employee, partner or agent of the Commission, nor does the Service Provider have any power or authority to bind or represent the Commission.

12.7.2. The Service Provider agrees:

- a. not to misrepresent its relationship with the Commission; and
- b. not to engage in any misleading or deceptive conduct in relation to the Services.

12.8. Waiver

12.8.1. A failure or delay by a party to exercise any right or remedy it holds under this contract or at law does not operate as a waiver of that right.

12.8.2. A single or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

12.9. Variation

12.9.1. A variation of this contract is binding only if agreed in writing and signed by the parties.

12.10. Assignment

12.10.1. The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this contract without the Commission's prior written approval.

12.11. Survival

12.11.1. Unless the contrary intention appears, the expiry or earlier termination of this contract will not affect the continued operation of any provision relating to:

- a. licensing of Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;

g. audit and access;

h. an indemnity;

or any other provision which expressly or by implication from its nature is intended to continue.

12.12. Compliance with Legislation

12.12.1. In this clause 12.12:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

12.12.2. The Service Provider agrees to comply with any Legislation applicable to its performance of this contract.

12.12.3. The Service Provider acknowledges that its attention has been drawn to the fact sheet referred to in Item 22 which provides details of some Legislation that may be applicable to the performance of the contract.

12.13. Applicable law

12.13.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item 23.

12.13.2. The parties submit to the jurisdiction of the courts of that State or Territory.

THE SCHEDULE - CONTRACT DETAILS

1. Proposal

The Australian Commission on Safety and Quality in Health Care (the Commission) is engaged by the Australian Government Department of Health (Health) to develop a national antimicrobial resistance (AMR) and antimicrobial usage (AU) surveillance system by 30 June 2016. This work is referred to as the Antimicrobial Use and Resistance in Australia (AURA) Project.

Under the AURA Surveillance System, a range of data, including susceptibility data on specified isolates, will be collected from existing programs, supported by jurisdictions and Health. One of these programs includes the Australian Group on Antimicrobial Resistance (AGAR), which is operated by the Australian Society for Antimicrobials (ASA).

The Commission has been requested by Health to fund and manage the contract previously funded by Health for AGAR's operation. The Commission therefore seeks to engage ASA for the continuation of AGAR, to perform its surveillance functions and in doing so, within the period of this contract, enhance the scope of its data collection, analyses and reporting, along with the potential for integration of its data as part of the AURA Surveillance System.

2. Services

2.1 A Project Plan which confirms the scope and timing of the deliverables for this contract.

2.2 Reports on the following:

- Community- and Hospital Onset *Staphylococcus aureus* Sepsis Program (ASSOP):
 - Determine the AMR rates and resistant phenotypes of community-onset and hospital onset *Staphylococcus aureus* infections by jurisdiction.
 - Determine the percentage of community *Staphylococcus aureus* infection caused by PVL positive and negative MRSA.
 - Determine the important CA-MRSA and HA-MRSA clones in Australia by jurisdiction.
 - Monitor the emergence and spread of PVL positive and negative CA-MRSA clones in Australia, by jurisdiction.
 - Monitor the transmission of the PVL genes into naïve clones.
 - Provide detail of infection types associated with *Staphylococcus aureus* sepsis.
 - Provide breakdowns of outcomes (30-day all-cause mortality, length of stay post-episode) by community- versus hospital-onset, and also for MSSA, CA-MRSA and HA-MRSA.

- Determine trends using data from previous ASSOP programs by jurisdiction.
- Community- and Hospital-Onset *Enterococcus* Sepsis Programme (AESOP):
 - Determine the AMR rates and resistant phenotypes of community-onset and hospital onset *Enterococcus species* infections by jurisdiction.
 - Provide detailed analysis of glycopeptide, high level gentamicin/streptomycin resistant phenotypes and β -lactamase producers by jurisdiction.
 - Provide detail of infection types associated with *Enterococcus* sepsis.
 - Provide breakdowns of outcomes (30-day all-cause mortality, length of stay post-episode) by community- versus hospital-onset, and also for vancomycin-susceptible versus resistant strains.
 - Monitor the emergence and spread of vancomycin-resistant *Enterococcal* clones and *van* genes in Australia by jurisdiction.
 - Determine trends using data from previous AESOP programs by jurisdiction.
- Finalisation of Community- and Hospital Onset *Enterobacteriaceae*, *P. aeruginosa* and *Acinetobacter* Surveillance (GNSOP):
 - Determine the AMR rates and resistant phenotypes of community-onset and hospital onset *Enterobacteriaceae*, *P. aeruginosa* and *Acinetobacter* infections by jurisdiction.
 - Provide detailed analysis of carbapenem, fluoroquinolone, 3rd or 4th generation cephalosporin resistant phenotypes and ESBL/AmpC producers by jurisdiction.
 - Provide detail of infection types associated with *Enterobacteriaceae*, *P. aeruginosa* and *Acinetobacter* sepsis
 - Provide breakdowns of outcomes (30-day all-cause mortality, length of stay post-episode) by community- versus hospital-onset, and also resistance and multi-resistant phenotypes.
 - Perform trending using data from previous GNSOP programs by jurisdiction.
- *Streptococcus pneumoniae*:
 - Determine the AMR rates and resistant phenotypes of *Streptococcus pneumoniae* by jurisdiction.

The Service Provider will meet quarterly with the Commission, for the purpose of regular discussion of key reports, and to support progress of the national AURA Surveillance system.

The Service Provider is responsible for ensuring effective management of the reagents, samples, testing protocols, quality assurance, data, and recording of results from each AGAR participating institution.

The Service Provider is responsible for the appropriate processes to be in place for the collection, analyses, secure storage, and reporting on the data; the appropriate authority from each AGAR participating institution; and compliance with relevant legislation.

The Service Provider acknowledges that an underlying principle of this contract is for the Commission and AGAR to work together to promote an effective integration of AGAR into the AURA Surveillance System, with the shape or form and the process for the integration to be determined during the period of this contract. AGAR will also work with the Commission to test the feasibility of the Enterprise Data Warehouse (EDW) being utilised as a secure data repository with potential for enhanced, accessible and efficient data analyses.

3. Required Contract Material

(see clause 2.1.1.b)

- A Project Plan for activities for the period of the contract.
- Detailed Extended Annual Reports for the period covering the 2015/16 financial year, modelled on previous ENSOP Financial Year Reports, provided electronically. The reports should be provided in a format suitable for publication on the Commission's website. The scope of these reports will be, for hospital and community onset:
 - *Staphylococcus aureus*
 - *Enterobacteriaceae*
 - *Enterococcus*
 - *Streptococcus pneumonia*
 - *Pseudomonas aeruginosa*
 - *Acinetobacter species*
- Two detailed reports (Report #1 and Report #2) on key findings of AGAR's work to be jointly published on the AGAR and the Commission websites. The subject material will be jointly agreed by February 16, 2016 in the Project Plan.
- A summary paper which indicates the key points of discussion and outcomes of significant AGAR meetings for the period covered under this contract.

4. Policies, Standards and Guidelines
(see clause 2.1.1.c)

All reports must be compatible with Microsoft (MS) Word 2010 and MS Excel 2010.

The Annual Report must comply with the latest Commission Style Guide.

5. Commencement and Time-frame
(see clause 2.1.1.e)

Commencement Date:

The contract is deemed to have commenced upon execution and concludes on 31 December 2016.

Time-frame:

Timeframes for the delivery of the Contract Material is as follows:

Deliverable	Due date
Project Plan	16 February 2016
Report #1 (see Item 3)	1 April 2016
Report #2 (see Item 3)	1 June 2016
Extended Annual Reports	30 June 2016

6. Invoicing and Payment
(see clauses 2.1.1.f & 3.1.1.c)

Invoices:

Invoices will be issued by the Service Provider in accordance with the Fees under Item 10.

To be correctly rendered, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. the Service Provider's name;
- c. the Service Provider's ABN;
- d. the Commission's name and address;
- e. the date of issue of the tax invoice;
- f. the title of this contract and the contract number or purchase order number (if any);

- g. details of fees, allowances and costs including the items to which they relate;
- h. the total amount payable (including GST);
- i. the GST amount shown separately; and
- j. written certification in a form acceptable to the Commission that the Service Provider has paid all remuneration, fees or other amounts payable to its Personnel and/or subcontractors involved in performance of the contract.

All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Service Provider's entitlement to those allowances or costs.

An invoice is not correctly rendered where:

- a. it includes amounts that are not properly payable under this contract or are incorrectly calculated; or
- b. it relates to a payment in relation to which the Commission has exercised its rights under clause 3.2 of the contract.

All invoices must be addressed to the Project Officer.

Payment:

The due date for payment by the Commission is 30 calendar days after receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, the due date for payment is the next Business Day.

7. Project Officer
(see clause 2.2)

The Project Officer is the person for the time-being holding, occupying or performing the duties of Director, Commonwealth Programs, currently Kathy Meleady, available on telephone number (02) 9126 3640 or via the address and email set out in Item 19.

8. Subcontractors
(see clause 2.3)

The Service Provider may subcontract the performance of parts of the Services as follows:

Part of the Services being subcontracted	Subcontractor	Additional conditions
Provision of assistance for the Australian <i>Staphylococcus aureus</i> Sepsis Outcome Programme (ASSOP) and the Australian <i>Enterococcal</i> Sepsis Outcome Programme (AESOP)	Denise Daley	Not applicable
Provision of assistance for the Gram-Negative Sepsis Outcome Programme (GNSOP)	Jan Bell	Not applicable

9. Specified Personnel
(see clause 2.4)

The Service Provider agrees that the Services required under this Contract will be performed by Professor Geoff Coombs, Chair, AGAR, and members of AGAR, as agreed with the Commission.

10. Fees
(see clauses 3.1.1.a, 10.1.3.a & 10.1.3.b)

The total fee for the Service is \$710,175 (GST exclusive) payable in five equal Instalments in the following manner:

- a. Payment 1 - 20% of total (GST exclusive) upon execution of this Contract;
- b. Payment 2 - 20% of total (GST exclusive) upon Commission's acceptance of the Project Plan (as described in Item 3);
- c. Payment 3 - 20% of total (GST exclusive) upon Commission's acceptance of the Report #1 (as described in Item 3);
- d. Payment 4 - 20% of total (GST exclusive) upon Commission's acceptance of the Report #2 (as described in Item 3); and,
- e. Payment 5 - 20% of total (GST exclusive) upon Commission's acceptance of the Extended Annual Reports (as described in Item 3).

Total expenditure under this contract will not exceed \$710,175 inclusive of fees, charges, allowances and costs.

11. Allowances and Costs

(see clauses 3.1.1.b & 10.1.3.c)

Not applicable

12. Facilities and Assistance

(see clauses 3.1.1.d & 10.1.3.d)

Not applicable

13. Required Commission Material

(see clause 4.1)

Any documents, reports or data owned by the Commission and agreed by the Commission as necessary for the Service Provider's performance of the required Services.

14. Use of Commission Material

(see clause 4.1.3)

Any use of the Commission Material must be in accordance with any directions from the Commission for the use of that Material.

15. Existing Material

(see clause 4.2.2)

Any documents, reports or data owned by the Service Provider and agreed by the Service Provider as necessary for the performance of the required Services.

16. Security Requirements

(see clause 5)

16.1.1. The Service Provider must comply with Protective Security Policy Framework (PSPF)

17. Privacy Directions, Guidelines, Determinations or Recommendations

(see clause 12.2.1.b)

Not applicable

18. Service Provider's Confidential Information

(see clause 7)

Any data that could be used to identify, or potentially identify, patients.

19. Commission's Address for Notices

(see clause 11.1.1.a)

Physical address Level 5, 255 Elizabeth Street, Sydney
NSW 2000

Postal address GPO Box 5480, Sydney NSW 2001

Email Kathy.Meleady@safetyandquality.gov.au

20. Service Provider's Address for Notices
(see clause 11.1.1.b)

Physical address 16 Hogg Avenue, Salter Point, WA
6152

Postal address PO Box 8266, Angelo Street, South
Perth WA 6151

Email g.coombs@murdoch.edu.au

21. Insurance
(see clause 12.4)

Required insurance:

- a. workers' compensation as required by law;
- b. public liability insurance to a value of \$10 million; and
- c. professional negligence insurance to a value of \$5 million.

22. Applicable Legislation
(see clause 12.12.3)

When entering into a contract with the Australian Government the Service Provider should be aware of Commonwealth laws that may be relevant to their engagement and contractual arrangements. See AGS Fact Sheet: Commonwealth legislation that may apply to Australian Government contractors, available at:

<http://www.ag.gov.au/publications/agspubs/factsheets/index.htm>

23. Applicable Law
(see clause 12.13)

New South Wales

