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NSAI CERTIFIED COMPANIES CONTRACT

CONDITIONS OF CONTRACT

Definitions

In these Conditions of Contract, unless the context otherwise requires the following words and expressions shall have the following meaning: -

(1) **Client**

The term 'Client' means an applicant that has applied to NSAI for Certification and/or a company/entity that has entered into a Contract with NSAI to have specified systems and/or products certified for conformity with Standard/Specified Requirements.

(2) **NSAI**

NSAI means The National Standards Authority of Ireland Inc, a New Hampshire Voluntary Corporation together with its corporate affiliates (NSAI).

(3) **Certification**

Procedure by which NSAI gives written assurances that a product or service conforms to specified requirements.

(4) **Management System**

The direction and control of an organisation in the establishment of policies and objectives and in the achievement of those objectives.

(5) **Certificate**

Document issued under the rules / guidelines of a certification system, providing confidence that a duly identified product, process or service is in conformity with a specific Standard or Technical Specification. A Licence to use the Irish Standard Mark is deemed to be a Certificate for the purposes of this Contract.

(6) **Conditions of use of the Standard Mark**

Document defining the conditions for use of the Standard Mark.

(7) **Standard/Specified Requirements**

Documentation against which NSAI provides Certification. Such documentation includes but is not limited to the following:-

(a) **Standard**

Document, established by consensus and approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context. Any reference to the applicable Standard in this Contract will refer to the particular Management System Standard and/or Product Standard Specification for which the application is made.

(b) **International Standard**

Standard that is adopted by an international standardising/standards organisation and made available to the public.

(c) **Regional Standard**

Standard that is adopted by a regional standardising/standards organisation and made available to the public.

(d) **National Standard**

Standard that is adopted by a national standards body and made available to the public.

(e) EC Legislation

Legislation of the European Union which states an objective which each member state must realise within a prescribed period. "A directive shall be binding, as to the result to be achieved, but shall leave to the national authorities the choice of form and methods": Treaty of Rome 1957 art.189 (3); now art. 249 of the consolidated Treaty establishing the European Community.

(f) Prestandard

Document that is adopted provisionally by a standardizing body and made available to the public in order that the necessary experience may be gained from its application on which to base a Standard.

(g) Technical Specification

Document that prescribes technical requirements to be fulfilled by a product, process or service.

Notes

- i. A Technical Specification should indicate, whenever appropriate, the procedure(s) by means of which it may be determined whether the requirements given are fulfilled.
- ii. A Technical Specification may be a Standard, a part of a Standard or independent of a Standard.

(h) Technical Annex

A document that sets out the required procedures, equipment, tests to be carried out, and methods of evaluating the results of such tests, or that incorporates Technical Regulations, that apply to a specific certification scheme and/or Technical Specification that is the basis for the grant of a Certificate

(i) Code of Practice

Document that recommends practices or procedures for the design, manufacture, installation, maintenance or utilisation of equipment, structures or products. - *Note* A Code of Practice may be a Standard, a part of a Standard or independent of a Standard.

(j) Regulation

Document providing binding legislative rules, that is adopted by an authority.

(k) Technical Regulation

Regulation that provides technical requirements, either directly or by referring to or incorporating the content of a Standard, Technical Specification or Code of Practice. - *Note: A Technical Regulation may be supplemented by technical guidance that outlines some means of conformity with the requirements of the Regulation, i.e. deemed-to-satisfy provision.*



1. PREAMBLE

1.1 This Contract is made effective on the signing of the quotation letter by and between NSAI and the Client.

1.2 NSAI and the Client agree that the evaluation and registration (including preliminary audits and continuous assessments) of systems and/or products shall be performed in accordance with the applicable Standard, Code of Practice, Technical Specification (if applicable), and this Contract, including documents incorporated herein and made part of this Contract including (though not limited to):

- (a) Quotation
- (b) Application Form
- (c) Technical Annex (for Product Certification)

1.3 This Contract governs the grant of Certification by which NSAI gives written assurances that, to the best of its knowledge and belief, a service and/or product conforms to Specified Requirements and to any specified Product Standard and under which the Client undertakes to continue to comply with the applicable Standard, Code of Practice, Technical Specification (if applicable), and other relevant documents as set out in Clause 1.2 above.

2. CERTIFICATION PROCESS

2.1 Enquiry

Following enquiry from the Client, NSAI will provide the Client with a quotation for its services, specifying fees, and the period of validity of such quotation.

2.2 Application

As acceptance of a quotation, NSAI shall require the client to;

- (a) execute this contract and return the prescribed application;
- (b) pay a non-refundable application fee to cover an initial review and administration costs of application.

2.3 Assessment

To enable NSAI to establish confidence that the Management System satisfies both its Conditions and the applicable Standard, NSAI shall require the Client to:

- (a) advise NSAI of changes which may affect the quotation;
- (b) permit NSAI and its authorised representatives access to its premises;
- (c) demonstrate conformity with the applicable Standard.

2.4 Management Representative

NSAI shall require the Client to nominate a management representative who will be responsible for the execution of this Contract on behalf of the Client.

2.5 Certificate Issue

When the Client has satisfied NSAI that it conforms to the terms attached to grant of Certification, NSAI shall agree a scope of Certification describing the assessed activities and their locations. The Client will then be required to agree to this Certificate. As evidence of conformity to the applicable Standard, the Client will be presented with a signed Certificate. Where NSAI is not satisfied with conformity, NSAI may at its absolute discretion refuse to authorise the issue of a Certificate.

2.6 Surveillance and Reassessment

To enable NSAI to maintain confidence that systems remain in conformance with specified schemes, the management representative shall advise NSAI in writing of any changes that may impact upon the certification or incidents of nonconformity with these Conditions or the applicable Standard.

2.6.1 NSAI shall carry out periodic surveillance and reassessment (if applicable) at a sufficient frequency to verify continuing conformity with the applicable Standard. The period for surveillance shall not be greater than one year. Reassessment is applicable in the case of Management System Standards alone and the period for reassessment shall not be greater than three years.

2.6.2 NSAI's representative shall at all times during business hours or when the facility is in operation have access to the facility in order that such representative may properly perform his functions under NSAI's certification service. The right of NSAI's representative to obtain such free access shall not be conditional upon the execution of any other contract, waiver or release which in any way purports to affect the representative's legal rights or the rights or obligations of NSAI. NSAI, however, shall direct its representatives to exercise due care in complying with any safety regulations, which may be applicable generally to the Client's facility personnel.

2.6.3 The Client shall extend all necessary privileges and assistance to NSAI's representatives in order that such representatives may properly perform their functions under NSAI's certification service, and shall make all written material utilising the NSAI Mark and other means of displaying the Mark available at all reasonable times for inspection by NSAI's representative.

2.6.4 Should NSAI's representative identify items that are not in conformity with the Standard or the applicable Standard/Specified Requirements or this Contract, the Client will take corrective action in respect of such items as designated by NSAI's representative. In the event of disagreement between the Client and NSAI's representative as to whether the system and/or its goods or services conform with the Standard, the Client may appeal the decision to the Director of Client Services.

2.6.5 In accordance with Accreditation Guidelines, the Client will facilitate witnessed audits by NSAI Accreditation Representatives upon written requests from NSAI.

3. PUBLICITY AND PROMOTION

3.1 Statements

In order to maintain the integrity of NSAI's service, the Client will make no misleading statement concerning the application or Certification and will use best endeavours to ensure that no one connected with the Client gives any such misleading impression.

3.2 The Irish Standard Mark

Under the terms of the National Standards Authority of Ireland Act, 1996, NSAI is the owner of the Irish Standard Mark (and is

hereinafter referred to as the 'Mark'). The goods or services that are the subject of Certification are entitled to bear the Mark to indicate that such goods or services are certified by NSAI under its certification scheme.

3.2.1 The Client shall use only the Mark prescribed by NSAI for use in any particular certification scheme in accordance with Conditions for Use of the Irish Standard Mark.

3.2.2 NSAI retains the right to control the display or other use of the Certificate and Mark. NSAI's representative shall have the right, on demand, to acquire possession of the Certificate and Mark and any or all advertising and promotional material, or other means of displaying the Certificate and Mark when in the judgement of NSAI's representative, such action is warranted.

3.2.3 The Certificate and right to use the NSAI Mark is as defined in this Contract and cannot be sold, lent or used as an asset of the company.

3.2.4 The Client assumes full and complete responsibility for its use of NSAI's Certificate and Mark and agrees that its system and/or product will be in conformity with the applicable Standard/Specified Requirements. The Client agrees that its use of the NSAI Certificate and Mark constitutes its declaration that its system and/or products has been assessed by NSAI in accordance with one or more of the Requirements and that the goods and/or services covered by the NSAI Certificate have been produced in accordance with the applicable Standard/Specified Requirements.

4. CONFIDENTIALITY

4.1 Except as expressly provided for herein, NSAI will refrain, without the Client's prior authorisation in writing, from voluntarily disclosing to third parties confidential information which is obtained by NSAI in confidence from the Client and which is not already known to NSAI, already available to the public or subsequently acquired from other sources.

4.2 Certain information and disclosures are excluded from the confidentiality obligations set forth above, as follows: information which (a) is in the public domain or generally known in the industry or becomes such other than by

NSAI disclosure; (b) is already known to NSAI or is later developed by it without use of the Client's information; (c) is acquired by NSAI lawfully and in good faith from a third party; (d) is disclosed by the Client on a non-confidential basis, or (e) is required to be disclosed by Applicable Law or Regulation or Court Order (provided that, in this last case, NSAI shall exercise its best efforts to so notify the Client before or at the time of making the required disclosure).

5. FEES

5.1 Application fees are payable on application and are non-refundable.

5.2 Assessment fees will be invoiced after the assessment.

5.3 An annual certification/management fee and continuing surveillance fee are charged each year following Certification and the amount will vary according to the work involved in carrying out the surveillance activities. The annual certification/management fee is non-refundable.

5.4 Fees are payable within 30 days of the issue of the invoice. If charges are not paid within this period the Client shall be considered in default of this Contract.

5.5 Charges will be billed to the Client at quoted rates, which may be changed from time to time as NSAI may determine and upon written notice to the Client.

5.6 It is understood that where an abnormal amount of time is required as a result of the Client's failure to conform to the Standard or Standard/Specified Requirements, or where the Client's control procedures are below that considered normal under the circumstances, the cost of the extra service shall also be billed to the Client.

6. SCHEDULING, POSTPONEMENT OR CANCELLATION

6.1 Certification activities shall be scheduled at the mutual convenience of both parties. The Client shall notify NSAI in writing if the Client decides to postpone or cancel scheduled appointments (the Notification). The Client shall pay to NSAI a postponement/cancellation fee if the Notification is received by NSAI less than 30 days prior to the date of such

scheduled meeting or evaluation. The amount of such fee shall be as follows:

- (a) if Notification is received less than 30 days but more than 7 days prior to any scheduled meeting(s) or evaluation(s), the fee of 50% of the cost of each such meeting or evaluation;
- (b) if the Notification is received less than 7 days prior to any scheduled meeting(s) or evaluation(s), the fee will be 75% of the cost of each such meeting or evaluation.

7. TERMINATION

7.1 If the Client defaults in any of its obligations under this Contract with NSAI, NSAI may at its election immediately terminate or suspend the Certification of the system and/or any goods or services covered thereunder, the rights or authority conferred by this Contract without prejudice to any other rights which NSAI may have. The Client understands that NSAI may notify vendors, authorities, potential users, and others of an improper or unauthorised use of NSAI's Mark, or any other improper or unauthorised reference to NSAI, when in the judgement of NSAI such notification is necessary in the interest of public safety or for NSAI's own protection.

7.2 Where in the opinion of the NSAI representative, the Client consistently fails to conform to the Standard and or Standard/Specified Requirements the NSAI may at its election terminate this Contract and refuse to certify the Client.

7.3 NSAI may terminate in whole or in part, the Certification of the Client's system and/or any goods or services covered thereunder, the rights or authority conferred by this Contract upon not less than thirty (30) days written notice to the other party indicating an intention to terminate and specifying the proposed termination date upon the occurrence of any of the following events or conditions:

- (a) the filing of any voluntary or involuntary petition in bankruptcy by or with respect to the Client;
- (b) the making of any arrangement or composition with creditors of the Client;
- (c) the appointment of a receiver of the business of the Client, or
- (d) the voluntary liquidation of the business of the Client.

7.4 Either party may, without cause, terminate, as to the Certification of the Client's

system and/or any goods or services covered thereunder, the rights or authority conferred by this Contract upon not less than sixty (60) days written notice to the other party.

7.5 Any notice of intention to terminate the Contract shall specify the proposed termination date and shall be sufficient if sent by registered or certified mail addressed to the party to be notified at its last known address. Any notice sent pursuant to this clause which is not returned to the sender as undelivered shall be deemed to have been received on the third business day after the envelope containing the same was so posted; and proof that the envelope containing any such notice was properly addressed, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice has been duly received.

7.6 Termination of this Contract by whatever means shall not affect any liability of the parties existing as of the date of such termination, shall not relieve the Client of its obligation of indemnity, and shall not excuse the Client from paying any charges owing to NSAI.

7.7 Upon termination, with or without cause, of any rights or authority conferred by this Contract, NSAI shall take one or both of the following actions: (a) discontinue in whole or in part NSAI Certification of the system and/or any goods or services covered thereunder, and (b) NSAI's representative shall have the right to acquire possession of any written material utilising the NSAI Certificate, Mark, and any other form or reference to NSAI, which in his judgement were used in connection with any system, goods or services which are no longer subject to Certification. Upon effective date of termination, the Client shall discontinue any reference to or use of NSAI's Certificate, Mark and any other form or reference to NSAI on or in connection with its system and any goods or services which are no longer subject to NSAI Certification. The foregoing does not in any way limit the actions that NSAI may take in the event of the termination of any rights or authority conferred by this Contract.

8. SAFETY

8.1 The Client is responsible for ensuring that those NSAI representatives and/or agents who visit its sites have adequate protective

equipment for the environment they are likely to enter.

8.2 The Client agrees to provide, at the Client's expense, training for NSAI personnel in the Client's safety procedures at each location covered by the assignment as well as all necessary safety equipment.

8.3 The Client shall be responsible for all expenses arising out of any injury to NSAI personnel except in the event of their gross negligence or wilful misconduct.

8.4 Where specialist training may be required by NSAI personnel in carrying out their functions under the terms of this Contract, the Client must disclose this to NSAI with its application.

8.5 The Client shall be responsible for ensuring that NSAI Representatives are not subject to bullying, sexual harassment and harassment in accordance with prevailing legislation. Such actions will constitute a breach of this contract resulting in suspension / termination of this contract.

9. INDEMNITY

9.1 The Client shall indemnify NSAI against liabilities to third parties, including Client employees, and other costs (including reasonable legal fees) which NSAI may incur as a result of the Client's failure to comply with the requirements of this Contract or the Client's use or misuse of the Mark.

9.2 The Client shall also indemnify NSAI in respect of any damages which may reasonably be agreed to or awarded against NSAI in respect of death or injury to any NSAI employee or agent, arising in the course of his conduct of any assessment of the Client under the terms of this Contract.

9.3 Both NSAI and the Client shall obtain and maintain third party liability insurance of a type and to a level appropriate to its business operations or establish and maintain adequate self-insurance reserves, including but not limited to insurance and/or reserves for general comprehensive public liability and professional indemnity risks and product liability risks. Such insurance may be in the normal form for the risks involved. As and when reasonably required to do so each party shall produce documentary evidence that the

insurances required by this clause are properly maintained.

9.4 In all cases where indemnification is claimed, the indemnitee will promptly notify the indemnitor. The indemnitor may, except as provided in Condition 9.2 assume the defence of the claim or cause of action with legal counsel reasonably acceptable to the indemnitee while keeping the indemnitee reasonably informed as to the progress of the defence. Provided the indemnitee is held harmless and its rights are not adversely affected, the indemnitor may control the defence and any compromise or settlement of any such claim or cause of action.

10. LIMITATION OF LIABILITY

10.1 The Client agrees that NSAI, in performing its functions in accordance with its objects and purposes, does not assume or undertake to discharge any responsibility of the Client to any other party or parties. The Client recognises that the opinions and findings of NSAI represent its judgement given with due consideration to the necessary limitations of practical operation and in accordance with its objects and purposes and agrees that NSAI does not warrant or guarantee its opinions or that its findings will be recognised or accepted.

10.2 The Client agrees that the surveillance services of NSAI and any assessments conducted by NSAI in connection therewith, are designed to serve only as a check on the means which the Client exercises to determine conformity of its system and/or product with the Standard and the applicable requirements, and that the Client is in no way relieved of its responsibility for its system and those goods or services that are the subject of the Certificate issued by NSAI.

10.3 Both NSAI and the Client shall not be liable for consequential, punitive, exemplary, indirect or incidental damages or for lost profits or business losses (regardless of whether it has been advised of the possibility of such damages and/or losses).

11. FORCE MAJEURE

11.1 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

11.2 Notwithstanding any other provision in this Contract, neither party shall be deemed to be in breach of this Contract, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Contract, to the extent that the delay or non-performance is caused by war, insurrection, riot, fire, explosion, flood strike, lock-out, injunction, inability to obtain raw materials, containers, or transportation, accident, malfunction of machinery or apparatus, national defence requirements, Acts or Regulations of national or local governments, or act of God, or any other cause beyond the reasonable control of the parties, and of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

11.3 If the Force Majeure in question prevails for a continuous period in excess of one month, the parties shall enter into bona fide discussions with a view to alleviating its effects, or agreeing upon such alternative arrangements as may be fair and reasonable.

12. LAW

12.1 Any failure of NSAI to insist upon observance or performance by the Client of the provisions of this Contract will not be deemed a waiver by NSAI of any such provision or the right to claim a violation by reasons of such failure. The payment of any sum by the Client to NSAI will not be deemed to be a waiver of such violation or any other violation. No waiver will be binding upon NSAI unless it is in writing and signed by NSAI. Any written waiver will apply only to the specific violation or to the instance specified, and a waiver of any violation will not be deemed a waiver of any other violation, whether or not similar to the violation waived. NSAI's rights and remedies hereunder will be cumulative and not exclusive of each other and may be pursued separately or concurrently as NSAI determines. In addition to those remedies set forth in this Contract, NSAI will be entitled to any and all remedies otherwise available to it in law or equity.

12.2 Revisions of these Conditions may be made by NSAI on reasonable notice.

12.3 In the event of any dispute arising out of or relating in any way to these Conditions of Contract or the relationship between NSAI and applicant or Client, the parties will attempt in

good faith to resolve any controversy or claim by negotiations between them.

12.4 Where a dispute with NSAI (other than pursuant to Conditions 7.2 and 7.4) cannot be resolved by discussion, the Client may invoke the NSAI Appeals Procedure by giving notice in writing to the Secretary of NSAI.

12.5 This Contract shall be governed by, and construed in accordance with, the laws of New Hampshire. Any dispute arising with respect to the interpretation of any clause or matter contained in this Agreement shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association ("AAA"). The arbitration proceeding shall be heard by a single arbitrator chosen in accordance with the rules of the AAA sitting in Boston, Massachusetts. The arbitrator shall apply the laws of the State of New Hampshire without giving effect to any principle, which would refer enforcement to the laws of another jurisdiction. An award shall be made in a written decision setting forth the factual and legal issues and the reasons for the arbitrator's decision. Each party shall bear its own attorneys' fees and costs, as well as one-half of the expenses of the arbitrator, except that if the arbitrator finds that a party has engaged in bad faith or vexatious conduct, the arbitrator shall be permitted to award attorneys' fees and costs, as well as the full expenses of the arbitrator, to the aggrieved party. The award of the arbitrator shall be final, binding and non-appealable, and either party may seek enforcement of the award in any court of competent jurisdiction.

All notices and other communications required under these Conditions of Contract shall be in writing and shall be sent by commercial overnight delivery service or deposited with the U.S. Postal Service mailed first class, registered or certified mail, postage prepaid, as set forth below:

If to NSAI, addressed to: The National Standards Authority of Ireland, Inc.
20 Trafalgar Square, Suite 603
Nashua, NH 03063
Attn: President/CEO

If to the Client, addressed as set forth in the Quotation. Notices shall be deemed given upon the first business day following the day the same is delivered to a commercial overnight delivery services or three business days after mailing by the U.S. Postal Service, as the case may be.