

## **CERTIFICATION AGREEMENT**

This Certification Agreement (the "**Agreement**") is effective as of \_\_\_\_\_, by and between the **FOOD SAFETY & QUALITY PROFESSIONALS (FSQP)**, an Illinois limited liability company, with an address at 212 West Van Buren Street, Suite 6N, Chicago, IL, USA, and the Applicant, with the address at \_\_\_\_\_.

**WHEREAS** FSQP is a certifying organization, conforming to the requirements under the International Standards Organization/International Electrotechnical Commission ("**ISO/IEC**") standard ISO/IEC 17065 - Conformity assessment — Requirements for bodies certifying products, processes, and services

**WHEREAS** Applicant desires to receive certification to specific food safety schemes and desires to retain FSQP to supply auditing and certification services (the "**Services**") to Applicant; and

**WHEREAS** FSQP desires to supply the Services subject to the following terms and conditions:

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **THE CERTIFICATION PROCESS**

- A. APPLICATION PROCESS:** Applicant completes a Request for Quotation Form and receives an Estimated Cost Quotation from FSQP for a specific scope of coverage. The Applicant returns the Authorization to Proceed along with Application Fee.

- B. PROVIDE INFORMATION:** Applicant supplies information on its process along with other attachments as requested. Payment for the Desktop Review Process must also be sent at this time.
- C. DESKTOP REVIEW PROCESS:** The applicant’s process information and Quality Manual are reviewed against the certification requirements to determine completeness and Applicant’s preparedness for certification. A Desktop Review Report is provided to the Applicant on completion of this review. FSQP may use contracted staff who are under the direct control of FSQP to conduct evaluations. However, FSQP does not outsource (subcontract) any of the evaluation functions to another company. In some situations, a document review is conducted during the Audit and a separate Desktop review is not required.
- D. AUDIT PROCESS:** FSQP and the Applicant communicate to plan and arrange the Audit onsite audit. The Applicant will be required to sign-off (email acceptable) on the Audit Schedule and pay the initial Certification Audit costs prior to proceeding with the on-site audit. In certain situations, a remote audit can be conducted instead of an on-site audit.
- E. EXECUTION OF THE AUDIT:** Unless otherwise indicated in an Audit Schedule, Applicant headquarters will always be the first location audited followed by other locations identified in the Audit Schedule.
- F. AUDIT REPORT:** As a result of the audit, an Audit Report is prepared by the Audit team and submitted to FSQP. The Final Audit Report is approved by FSQP management prior to being sent to the Applicant. If the audit report identifies any non-conformities (NCRs), the applicant is expected to conduct a root cause analysis and implement an effective corrective action plan within 60 days of the audit.
- G. CERTIFICATION:** When the auditor designated by FSQP as the “Lead Auditor” is satisfied that Applicant’s quality system documentation and implementation meet the requirements of the applicable Scheme, a recommendation will be made to FSQP by the Lead Auditor to issue a Certificate of Compliance (a “**Certificate**”). On approval by the Managing Director of FSQP, FSQP will issue a Certificate (or Certificates if multiple locations involved) with respect to the applicable Scheme, and the certification Directory of Certified Companies (the “**Directory**”) on the FSQP website will be updated with Applicant’s name and the certified scope of work. All certification decisions made by FSQP shall be at its sole discretion.

The certificate shall contain the following information:

- i. The certificate number
- ii. Title of the scheme under which the certificate is issued
- iii. Name and address of the Certification Body (FSQP)
- iv. Name and address of the certified company
- v. Statement of Conformity

- vi. Date of certificate issuance
- vii. Date of certificate expiry
- viii. Authorized signature of the certification body or seal

- H. FIRST AND SECOND SURVEILLANCE AUDITS:** Certification is valid for either one (1) or three (3) years subject to ongoing surveillance audits, which occur in approximately twelve (12) month intervals. Surveillance audits may be either announced or unannounced.
- I. RE-CERTIFICATION AUDIT:** Prior to the end of the certification cycle, FSQP will perform a re-certification audit of the certified company's quality system. A successful reassessment will result in renewal of Applicant's Certificate for an additional term. Where FSQP cannot conduct or complete the re-certification audit prior to the expiration of the Applicant's Certificate, FSQP may grant a reasonable extension until FSQP can complete the re-certification audit.
- J. MODIFICATIONS TO CERTIFICATION:** Applicant may reduce or expand its certification at any time by written request to FSQP. In response to such request, FSQP may schedule an audit if FSQP deems it necessary.

- K. CHANGES to the CERTIFICATION PROCESS** – Any changes to the certification process by either the Scheme Owner or FSQP will be communicated showing the impact on the applicant’s existing certification. Such change notices will show a future effective date by which time all certifications must meet the new requirements.

**2. SUSPENSION OR WITHDRAWAL OF CERTIFICATION**

- A. Applicant acknowledges that the requirements for certification are determined by FSQP and may be changed from time to time. In the event of any such change that occurs after FSQP’s certification of Applicant, FSQP shall be entitled to withdraw certification and or re-certify the certified company pursuant to the current requirements, have no liability to the certified company due to such change, withdrawal, or re-certification; and the certified company shall be responsible for all costs, including payment of FSQP’s fees to re-certify.
- B. FSQP reserves the right to suspend or withdraw certification if FSQP determines that the Applicant has failed to comply with any of the terms and conditions of this Agreement, the FSQP Quality Manual or other direction or requirement of FSQP or the applicable scheme in the certification process or the use or maintenance of the certification, including but not limited to:
- Failure to complete corrective actions within an agreed timeframe; or
  - Misuse the Certification Mark(s) (as defined in Annex A); or
  - A material breach of the terms and conditions of this Agreement, including the failure to pay any amounts due FSQP on time; or
  - Bringing FSQP or Scheme into disrepute in any way.

The certified company agrees to take proper remedial action following suspension of certification, but if certified company fails to take remedial actions within a reasonable amount of time, FSQP may withdraw certification. The certified company may also request withdrawal of certification at any time.

- C. Where withdrawal of certification occurs, FSQP will update its Directory to reflect such withdrawal. Upon withdrawal of certification, company agrees to:
- return to FSQP the Certificate(s).
  - discontinue the use of the Certification Mark(s) in any way.

**3. COMPLAINTS AND APPEALS PROCEDURE**

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Applicants may appeal to FSQP any certification-related decision or send a written complaint to FSQP regarding the FSQP staff or activities related to the auditing or certification process. In addition, companies and individuals may file complaints with FSQP regarding other FSQP certified companies claims. All complaints and appeals shall be handled following the procedures in the FSQP Quality Manual.

**4. TERM AND TERMINATION**

This Agreement shall begin on the Agreement Effective Date and continue for so long as Applicant uses the Services or maintaining certification from FSQP.

**5. APPLICANT AND CERTIFIED COMPANY REPRESENTATIONS**

- A. Applicant hereby represents and warrants that all documents and information supplied to FSQP for the purposes of this Agreement and/or FSQP's delivery of the Services, including, without limitation, the Application, Desktop Review information and Applicant's quality system documentation, are complete and accurate and do not omit any material fact. Applicant or certified company also agrees to notify the Managing Director of FSQP in writing of any conditions that could negatively affect FSQP's decision to issue or maintain the company's certification (including, without limitation, substantial customer complaints, recalled products, material litigation, or government investigations). FSQP shall also be given access to all relevant materials in relation to such negative conditions.
- B. Applicant agrees that it will at all times during the term of this Agreement comply with all reasonable requirements (the "**Rules and Requirements**") in connection with Applicant'/certified company use of the Services, including without limitation, whatever is necessary with respect to the issuance and maintenance of the Certificate. For purposes herein, the Rules and Requirements, include but are not limited to, all statutes, rules, regulations issued by any government authority; all requirements, codes or similar matters issued by the Scheme; or such other reasonable requirements as are necessary to enable Certification to be issued and maintained.
- C. Applicant shall provide FSQP with all documents, information, and facilities as necessary to enable FSQP to provide the Services.
- D. Applicant must notify FSQP in advance to discuss the consequences of any changes to its quality system, a move, restructure, or change in ownership, or change to any process that affects the Scope of Coverage. If the change occurs after certification has been granted, it may be necessary to modify the surveillance schedule and/or to change the Scope of Coverage.

**6. INTELLECTUAL PROPERTY**

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- A. All information and documentation obtained from or provided by Applicant during the audit and certification process ("**Applicant Confidential Information**") shall be treated as confidential by FSQP, and its employees and contractors and shall not be disclosed to any third party without the Applicant's written consent. Unless authorized by Applicant in writing, details of applications for certification are treated as confidential; provided, however, that upon certification, FSQP will make the scope of certification public in its Directory.
- B. Any information or documentation obtained from or provided by FSQP that is designated as "confidential" by FSQP ("**FSQP Confidential Information**," and together with Applicant Confidential Information, "**Confidential Information**") shall be treated by Applicant, and its employees and agents, as confidential and shall not be disclosed to any third party without FSQP's written consent.
- C. Information that is known or becomes publicly known shall not constitute Confidential Information. FSQP shall be permitted to disclose Confidential Information pursuant to statutory or governmental regulations or requirements and/or subpoenas or other legal process; provided that FSQP provides the certified company with prior written notice, to the extent permitted by applicable law.
- D. Upon certification, the certified company's name and the Scope of Coverage will be included in the Directory located on the FSQP internet site. If Applicant is unsuccessful in its application for certification, the fact of such attempt will not be made available by FSQP.
- E. Upon termination or expiration of this Agreement, Applicant acknowledges that FSQP may retain any and all information received from Applicant, including Applicant Confidential Information, for its official records. All such Confidential Information retained by FSQP shall be kept and maintained as Confidential Information for a minimum of seven (7) years.

**7. FSQP WARRANTIES, DISCLAIMER, LIMITATION OF LIABILITY AND INDEMNIFICATION**

- A. FSQP represents and warrants to Applicant that FSQP is a certifying organization, conforming to the requirements for bodies operating certification product and service systems (ISO/IEC 17065).
- B. The issuance of a Certificate or the license of any Certification Mark(s) for use by Applicant by FSQP in no way suggests or implies that any certified activity, process, product, or service is endorsed by FSQP.

- C. Other than the representation and warranty set forth in this section, the applicant receives, no representation or warranties of any kind, express, implied, or statutory, relating to or arising in any way out of any certification audit, any FSQP certification program, or this agreement.
- D. Except for either party's indemnification obligations, in no event shall either party be liable for indirect, consequential, or incidental damages (including damages for loss of profits, revenue, data or use) arising out of this Agreement, any FSQP certification program, or incurred by any party, whether in contract or tort, even if it has been advised of the possibility of such damages.
- E. FSQP's liability for damages relating to any certification assessment, any FSQP certification program, or this Agreement shall in no event exceed the amount of charges and fees actually paid to FSQP by Applicant
- F. Applicant shall indemnify and hold harmless FSQP and its officers, agents, employees and subcontractors against all damages, fines, penalties, and costs incurred in connection with third-party claims arising from
  - (i) the Applicant's use of the Services, (including of any Certificate) or Certification Mark provided by FSQP pursuant to this Agreement except to the extent such claims are caused by FSQP's willful misconduct or breach of its representation; or
  - (ii) any breach by Applicant of this Agreement.

**8. USE OF CERTIFICATION MARK**

Subject to the terms of this Agreement, FSQP grants to Applicant a non-exclusive and non-transferable license to use the Certification Mark(s) relating to the certifications that Applicant has earned, copies of such Certification Marks are included hereto as Annex A (the "**Certification Mark**"), in accordance with the requirements described in Annex A. Applicant may not use any Certification Mark until FSQP has notified Applicant in writing that Applicant has achieved a Certificate in accordance with the applicable Standard(s). In the event Applicant no longer is eligible for a Certificate in accordance with the applicable Scheme, it must immediately cease use of the Certification Mark.

**9. ASSIGNMENT, SURVIVAL AND SERVICEABILITY**



Neither party shall assign or transfer this Agreement or any of its rights or obligations or to a successor in interest of FSQP or the certified company whether by merger, consolidation, sale of all or substantially all assets or otherwise.

10. **FEES**

A. Applicant shall pay:

- i. All fees and charges described on the most recent Estimated Cost Quotation to achieve Applicant's first certification, and
- ii. All fees and charges for subsequent surveillance and re-certification audits and management fees at FSQP's standard rates then in effect. The applicable fees may include an application fee, Desktop Review and 2 audit fee, travel time fee, certification fee and annual management fee. All fees and charges are non-refundable.

B. Audit fees for the initial certification audit as well as any surveillance or re-certification audits are based on the actual number of auditor days required to conduct and complete the audit. The Estimated Cost Quotation provides only FSQP's reasonable estimation, based upon several factors, of the number of auditor days that will be required to conduct and complete the audit. FSQP will notify Applicant in advance if FSQP determines that the actual number of audit days required to conduct and complete the audit is likely to be greater than the estimated number of audit days. Applicant shall pay audit fees based on the actual number of audit days required to conduct and complete the audit.

C. Applicant shall only incur certificate fees if FSQP issues a Certificate to Applicant.

D. FSQP will charge management fees annually on the anniversary of the issuance of the Certificate; provided, however, that management fees will only be charged if Applicant continues to pursue or maintain certification from FSQP.

E. Applicant shall pay fees as follows:

- Fees incurred in connection with the Desktop Review audit preparation phase
- Fees incurred in connection with the Audit phase, including the audit fee, travel time fee and report writing fee shall be due:
  - 50% prior to scheduled commencement of the audit (based on the estimated number of audit days); and

- 50% within 14 days of delivery of the audit report to Applicant (with adjustment based on the actual number of audit days and including travel expenses)
  - Certification fees shall be due prior to issuance of the Certificate
  - Fees incurred in connection with subsequent surveillance and with re-certification audit shall be due:
    - 100% prior to scheduled commencement of the surveillance or re-certification audit (based on the estimated number of audit days, as applicable)
- F. In no event shall FSQP perform any services or issue any Certificate unless and until Applicant has fully paid all fees due and payable for the prior phase(s) of services.
- G. Should Applicant postpone or cancel an arranged Audit, Applicant may pay all unavoidable expenses of FSQP and for any completed audit days.

**11. MISCELLANEOUS**

- A. Any FSQP notice shall be in writing and delivered through the U.S. Postal Service or e-mail or overnight courier service, to the address of record, or such other address or as either party may designate. Notices shall be considered received at the earlier of actual receipt, three business days following mailing, one business day after e-mail transmission or one business day after deposit with an overnight courier service.
- B. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Any waiver in a particular instance shall not constitute a general waiver of the same or different rights or breaches in any other instance.
- C. If and to the extent that the performance by FSQP pursuant to this Agreement is prevented, hindered, or delayed directly by any natural disaster, catastrophic weather event, terrorism, war, riot, biohazard or other similar event beyond the reasonable control of FSQP (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been prevented by FSQP through the use of reasonable precautions, then FSQP shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and FSQP continues to use reasonable efforts to recommence performance whenever and to whatever extent reasonably possible without delay. FSQP shall immediately notify Applicant of the occurrence of the Force

Majeure Event and describe in reasonable detail the nature of the Force Majeure Event and actions to be taken. Notwithstanding the foregoing, if the Force Majeure Event continues to prevent, hinder, or delay performance by FSQP beyond 60 days, Applicant may terminate this Agreement immediately upon notice to FSQP; provided, however, that all fees and expenses incurred by FSQP up to and including the date of termination shall be payable by Applicant.

- D. This Agreement (including any exhibits, schedules or statements of work attached hereto) sets forth the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may only be amended by a writing signed by both parties.
  
- E. This Agreement will be interpreted and construed in accordance with the laws of the State of Illinois, without giving effect to conflicts of law principles. The parties hereby consent to the exclusive jurisdiction of federal and state courts sitting in the State of Illinois in any action or claim arising out of, under or in connection with this Agreement.
  
- F. The provisions of this Agreement that by their terms and purpose would ordinarily govern and have application to matters occurring after expiration or termination of this Agreement shall survive the expiration or earlier termination of this Agreement.
  
- G. FSQP shall not be liable should FSQP be prevented from discharging its obligations because of Applicant's delay or failure to cooperate in a timely and complete manner in the certification process, including in providing complete and accurate information to FSQP and making its facilities and personnel available to FSQP auditors, accreditation bodies and scheme owners.
  
- H. FSQP shall require its auditors to observe safety, security, and other lawful instruction when on Applicant's premises. Before each audit, the auditor signs an attestation that they do not have affiliations that would create a potential conflict of interest.

*[signature page follows]*

**IN WITNESS WHEREOF**, the authorized representatives of both parties have executed this Certification Agreement effective as of the Effective Date.

**FSQP, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Initials: \_\_\_\_\_

**Applicant:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Initials: \_\_\_\_\_

## Annex A

### Certification Marks

FSQP Certification Marks for use by companies certified to the applicable schemes:



FSQP Certification Mark:

#### Terms of Use for FSQP Certification Marks

FSQP, LLC. ("FSQP") has established these Terms to allow for the use of the FSQP Certification Mark in a professional and legal manner by FSQP-certified companies in their written and electronic literature and advertising. These Terms define the limitations of use by the various schemes.

1. Only companies who have received a Certificate of Compliance from FSQP are permitted to use the FSQP Certification Mark for the appropriate scheme.
2. The FSQP Certification Mark will be delivered to the certified company electronically for website and print use.
3. Certification and use of the Certification Mark is limited to the scope of coverage which is determined by FSQP and detailed on the Certificate of Compliance. Companies who have achieved certification will use the Certification Mark only in such a way so as not to create confusion as to the certified scope of coverage. The FSQP name and Certification Mark may

not be used in any way suggesting product approval. The Certification Mark applies only to certification according to the established scope.

4. The use of the FSQP Certification Mark following initial certification is subject to annual review based on the successful result of subsequent annual surveillance audits or the re-certification audit.
5. FSQP reserves the right to suspend or withdraw a company's certification and its use of the FSQP Certification Mark based on failure to comply with the relevant Scheme.
6. The FSQP name and Certification Mark are registered trademarks. We reserve the right to require that you remove them from your site and stop use of them should it be determined there is a breach of any conditions laid out in these Terms.