



C. Terms and Conditions

1.0 Terminology

- 1.1 When used in this Agreement the following terms have the following meanings, respectively:
- 1.1.1 **Affiliate:** Any legal person (“Entity”) that, directly or indirectly, is in control of, is controlled by, or is under common control with, another Entity. The term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any Entity, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Entity, whether through the ownership of securities, by contract or otherwise.
 - 1.1.2 **AILIA:** Association De L'Industrie De La Langue / Language Industry Association.
 - 1.1.3 **Certificate:** Document issued upon Certification to recognize that the Management System that has been audited by Orion has been found to meet the requirements of the designated Standard or Program.
 - 1.1.4 **Certification:** The decision by Orion that the Client’s Management System meets the requirements for certification, accreditation or registration under the designated Standard or Program. For greater certainty, when used in these Terms and Conditions, “Certification” shall be read to mean “accreditation” or “registration”, respectively, if the latter is the terminology used in the particular Standard or Program.
 - 1.1.5 **Certification Assessment:** Review of the Management System to determine whether it meets the requirements of the designated Standard or Program. Includes a re-certification assessment.
 - 1.1.6 **Certification Mark:** Any trademark, brand, word or design intended for use to signify Certification under a particular Standard or Program.
 - 1.1.7 **Claims:** All actions, claims, demands, and proceedings of any nature.
 - 1.1.8 **Client:** The Applicant for Certification and services from Orion as named in the accompanying Application.
 - 1.1.9 **Damages:** All damages, including damages for bodily injury and/or death, losses, payments, awards, costs and expenses, including reasonable legal fees on a solicitor-and-client basis.
 - 1.1.10 **GFCP:** Gluten Free Certification Program.

- 1.1.11 **Indemnified Parties:** Orion and its directors, officers, employees, contractors, sub-contractors and agents from time to time.
- 1.1.12 **LC:** Languages Canada.
- 1.1.13 **LCQAS:** Languages Canada Quality Assurance Scheme.
- 1.1.14 **LICS:** Language Industry Certification Scheme.
- 1.1.15 **Management System:** The documented, implemented, and maintained actions that fulfill the requirements of the designated Standard or Program.
- 1.1.16 **Orion:** Orion Assessment Services of Canada Inc.
- 1.1.17 **Pre-Assessment:** A review of the Management System to identify its strengths and weaknesses. Such a review does not result in Certification. A Pre-Assessment is optional.
- 1.1.18 **Program:** A set of requirements or principles that is not recognized as a Standard.
- 1.1.19 **Standard:** The recognized commercial, national, or international standard governing the CGSB 131-10 / ISO 17100 / GFCP / LCQAS / NSGCIS.
- 1.1.20 **Surveillance Assessment:** Assessment that is normally carried out to confirm that the Management System continues to meet the requirements of the designated Standard or Program, in order to maintain Certification status.

2.0 Scope of this Agreement

- 2.1 Upon acceptance of the accompanying Application by Orion, the Client engages Orion to provide its services in connection with the Standards and/or Programs selected in the Application, in accordance with these Terms and Conditions.

A Client whose Management System is assessed by Orion and found to meet the requirements of the applicable Standard or Program is entitled to hold a Certificate. A minimum of one Surveillance Assessment every 2 years is required to maintain your Certification status to ISO 17100 / LCQAS / NSGCIS / CGSB 131.10 and annually for GFCP. All Certificates are for a specific scope, facility/location and duration.

3.0 Responsibilities of the Parties

- 3.1 With regard to each facility/location within the scope of the Application for Certification and each facility/location in respect of which a Certificate has been issued, the Client shall:

- 3.1.1 Document and maintain a Management System in accordance with the Standard or Program.
 - 3.1.2 Allow Orion access during normal working hours at any facilities or locations in respect of which a Certificate has been issued, in order to perform assessments of the Management System to determine its continuing appropriate implementation and maintenance. Such access is to be permitted by Client with or without advance notice (or with at least such minimum notice as the audit procedures in respect of the applicable Standard or Program may require). The Client shall provide all reasonable assistance to Orion in the conduct of the assessment, including by making available to Orion on a timely basis appropriate books, records and personnel.
 - 3.1.3 Cooperate with Orion in the scheduling of all assessments to ensure timely Certification and re-Certification. The Client should verify the required lead times with Orion. The Client acknowledges that delay or failure in scheduling and completing a timely Certification Assessment may result in expiry of Certification.
 - 3.1.4 Inform Orion in writing of major changes to the Management System (e.g., ownership of the Client, management structure, production capability changes, change of location, and major changes to the documentation.)
 - 3.1.5 Not use Certification as evidence of certification, endorsement or approval of a product or service. For greater certainty, any marketing may represent that the Management System in respect of the institution, program, facility or location that holds a valid Certificate, has Certification.
 - 3.1.6 Use the Certification Mark in accordance with Orion / AILIA / GFCP / LICS / LCQAS requirements. The original Certificate is the property of Orion.
 - 3.1.7 Upon termination of Certification, discontinue reference to the Certification in all advertising material, product packaging and labeling and other documents including hardcopy and electronic/softcopy. The Client shall immediately notify its customers and others that rely on or are affected by the Client's non-Certification status that the Certification has been terminated.
 - 3.1.8 Comply with all requirements under the applicable Standard or Program.
 - 3.1.9 Allow accreditation bodies and regulatory agencies access for witness assessment of Orion and oversight programs of Orion.
- 3.2 Orion shall:
- 3.2.1 Perform Certification Assessments and Surveillance Assessments as applicable to the requirements of the audit procedures in respect of the

AILIA / GFCP / LCQAS or LICS Standards or Programs as applicable. Orion may also perform such other services from time to time as may be agreed to with the Client, such as Pre-assessments or gap assessments.

- 3.2.2 Maintain and make available a listing of accredited programs that, once the Client's Management System is certified, identify the company name, location, accreditation and date of Certification expiration. This information may also be sent to listing agencies.
- 3.2.3 Maintain the confidentiality of all information pertaining to the Client and not release any such information without written permission of the Client except: (i) as described in section 3.2.2; and (ii) as required by Standard or Program requirements and/or as required by law. The Client hereby expressly consents to Orion disclosing to the administrators and delivery agents of the Standards and Programs applied for, and licensors of Orion as a certification authority for such Standards and Programs, any and all assessment reports and results, Client self-declarations and self-assessment checklists, corrective action reports, certificates, and all other Client data obtained in connection with the services provided under this Agreement, for the purposes of confidential data tracking, trend analysis and the ongoing assessment and establishment of industry standards.
- 3.2.4 Have the right in its sole discretion to suspend or revoke any Certificate or Certification in the event of Client's breach of any provision of section 3.1 or Client's breach of any indemnification obligations set out in section 5.

4.0 Financial Provisions

- 4.1 Orion shall invoice the Client from time to time for all services and activities performed, based on Orion's fixed quotes to Client or the accompanying Fees & Expenses schedule which is hereby incorporated into this Agreement and which may be modified by Orion from time to time.

The Client agrees to pay each invoice within 15 days of the billing date.

Any invoice not paid within 60 days after the billing date will be cause for revocation of any Certificate and Certification without further notice to the Client, and in Orion's sole discretion, termination of this Agreement. The Client agrees to reimburse Orion for all expenses incurred by Orion in pursuing collection of any past-due account of Client, including all reasonable attorneys' fees. The Client also agrees to pay Orion interest on all past-due amounts at the rate of 1.75% per month compounded monthly (effective annual rate of 23.14%) from the respective due dates until payment in full whether before or after judgment.

- 4.2 Certificates will not be released to Client until payment in full has been received by Orion for the Certification Assessment.
- 4.3 If a scheduled activity is cancelled or postponed by Client within 15 to 30 calendar days before the activity, a cancellation fee of 25% of the fees applicable to the scheduled activity will apply and be payable by Client. A cancellation fee of 50% will apply if the scheduled activity is cancelled or postponed by Client

within 14 days of the scheduled activity. In both cases, any travel cancellation costs incurred will also be payable by Client.

5.0 Other Provisions

- 5.1 Except for any obligation to make payments, neither Client nor Orion shall be responsible or liable for delay or failure to perform their respective obligations under this Agreement if and to the extent such delay or failure is due to any earthquake, fire, flood, or other act of God, action by any governmental authority (whether valid or invalid), court order or injunction, labour problems (including lock-out, strike and slow down, except for any labour problem of the party claiming this *force majeure* event), bombing, invasion, insurrection or other act of war or terrorism, actual inability to obtain materials or personnel to perform services, or other event or condition beyond the reasonable control of Client or Orion whether of the kind or nature specified herein or otherwise.
- 5.2 It is recognized that Orion's services are performed to assess compliance with a particular Standard or Program, in accordance with audit processes set by the Standard or Program. Such compliance is evaluated using sampling techniques, at a point in time. Orion does not act as an insurer if there is non-compliance that is not discovered in an assessment or occurs subsequent to an assessment, and Orion hereby disclaims all responsibility and liability for any such non-compliance. As well, Orion disclaims all responsibility and liability as to whether the Client carries out any or all recommendations or opportunities for improvement noted in any review or assessment that are not required for compliance with the applicable Standard or Program.

Without limiting the generality of the preceding, the Client hereby agrees to indemnify and hold harmless the Indemnified Parties from and against all Claims against any of the Indemnified Parties, and all Damages incurred, made or suffered by the Indemnified Parties, as a result of or in connection with any claim or allegation that at any time any facility, location, management system, process, ingredient, product or service of the Client, or any supplier to or Affiliate of the Client, is or was not in full compliance with the particular Standard or Program for which the Client has applied or for which the Client has been awarded Certification or a Certificate.

If this Agreement relates to services in connection with the GFCP, then without limiting the generality of the foregoing, the above indemnity shall include all Claims as a result of or in connection with any claim or allegation that at any time one or more personal injuries or deaths were caused or contributed to by, or otherwise relate to, any facility or location of the Client (or any supplier to or Affiliate of the Client) that is or was not gluten-free, or the Client (or any supplier to or Affiliate of the Client) producing or distributing one or more ingredients or products that are or were not gluten-free.

- 5.3 The Client hereby agrees to indemnify and hold harmless the Indemnified Parties from and against all Claims against any of the Indemnified Parties, and all Damages incurred, made or suffered by the Indemnified Parties, as a result of or in connection with any claim or allegation of any liability to Client arising out of or connected with any of the assessment processes, the Certification process,

Certification, the issuance or denial of Certification or a Certificate, the suspension, revocation or cancellation of Certification or a Certificate, or any delay or failure in scheduling and completion of a Certification Assessment that results in a delay or expiry of Certification. This provision is to be construed broadly, and applies whether or not there is an allegation or finding that any Damage was occasioned, caused or contributed to by the sole, ordinary or gross negligence of any of the Indemnified Parties, or any fundamental breach of this Agreement.

- 5.4 In no event will Orion be liable to the Client for any incidental, indirect, consequential, punitive, exemplary or special damages of any kind whatsoever, whether arising in contract (whether or not a fundamental breach), tort (including negligence or strict liability), strict liability, products liability, negligence or otherwise, including but not limited to lost revenue, lost profit or loss or disruption of business, even if advised in advance of such possibility or such damages are reasonably foreseeable.

In respect of any Claims by the Client against Orion, the Client's sole and exclusive remedy (subject to any other limitations in this Agreement) shall be to receive from Orion payment for the Client's actual and direct damages to a maximum aggregate amount equal to: (i) the amount of fees, in respect of the particular certification program in connection with which the Claim is made, paid to Orion pursuant to this Agreement in the six-month period immediately preceding the date that the cause of action accrued to the Client; less (ii) the amount of any damages already paid or payable under any other Claim by the Client that was arbitrated to final award, litigated to final order or judgment, settled or otherwise finalized or resolved in that six-month period.

- 5.5 If Client is aggrieved by any ruling, determination or action of Orion in any manner relating to Certification (including its suspension, revocation, cancellation or termination) or denial of Certification pursuant to the provisions of this Agreement, Client may within sixty (60) days thereafter notify the President of Orion and request a review or reconsideration. Any further right of appeal will be set out in the applicable Standard or Program.
- 5.6 Any statutes of limitation notwithstanding, Client expressly agrees that its right to bring or assert against Orion any claims, demands, or proceedings whether in litigation, arbitration or otherwise shall be waived unless: (a) notice from the Client of the possibility of such claims, demands, or proceedings is received by Orion within thirty (30) days after the Client has notice of or should reasonably have been expected to have had notice of the basis for such claims; and (b) litigation based on such claims and demands is commenced within one (1) year after the notice to Orion.
- 5.7 Upon acceptance by Orion of the accompanying Application, this Agreement (consisting of these Terms and Conditions, the accompanying Fees and Expenses schedule, and the Application) shall become a contract between Client and Orion effective as at the date of such acceptance. The term of this Agreement will be one year beginning on the effective date, and will automatically be renewed for successive one-year periods on the anniversary of the effective date unless the Agreement is terminated earlier in accordance with

these Terms and Conditions. This Agreement contains all, and the only agreements between Orion and Client pertaining to the subject matter of this Agreement, and supersedes all prior agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, between the parties in connection with the subject matter of this Agreement. The Client confirms that no broker or agent or representative of Orion has made any statement, representation or agreement, orally or in writing, modifying, contradicting, or adding to this Agreement. All modifications to this Agreement shall be in writing and signed by the Client and Orion.

- 5.8 Except as otherwise noted in this Agreement, either Orion or Client may terminate this Agreement at any time, without cause, upon written notice to the other party at least thirty (30) days prior to the effective date of such termination.
- 5.9 Upon termination of this Agreement for any reason, any Certificate and Certification shall automatically terminate without notice as at the effective date of termination of this Agreement. All accrued fees (with a minimum of fifty percent of the deposit amount), expenses and applicable taxes to the effective date of termination shall be paid by the Client in accordance with the terms of this Agreement.
- 5.10 The following provisions shall survive any termination of this Agreement and/or any Certificate or Certification under any Standard or Program: sections 3.1.7, 3.2.3, 4.1, 5.2, 5.3, 5.4, 5.6, 5.9, 5.10 and 5.17 and any other provisions necessary to their interpretation.
- 5.11 This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Despite the preceding sentence, Orion may assign this Agreement on notice to and without the need for the consent of the Client, to a purchaser of all or substantially all of the assets of Orion's business, or to a third party with which Orion is merging or amalgamating.
- 5.12 This Agreement shall enure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.
- 5.13 No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver. Except as expressly provided in these Terms and Conditions, no failure on the part of a party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.
- 5.14 In this Agreement, words importing the singular number include the plural and vice versa and words importing any gender include all genders.
- 5.15 If any provision (or any portion of any provision) of this Agreement or its application to any party or circumstance is determined by an arbitrator or court of competent jurisdiction to be unreasonable as to duration, scope, or otherwise, it

shall be construed with regard to that particular jurisdiction, party or circumstance by limiting or reducing it so as to be enforceable under applicable law. If, despite the foregoing, any provision (or any portion of any provision) of this Agreement or its application to any party or circumstance is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal or unenforceable, such provision (or portion of provision) shall with regard to that particular jurisdiction be deemed to be severed from this Agreement only to the extent of such invalidity, illegality, or unenforceability, and without invalidating or otherwise affecting the remaining provisions of this Agreement as to such jurisdiction, or the application of such provision to other parties, circumstances or jurisdictions, and all other provisions of this Agreement shall nevertheless continue in full force and effect.

- 5.16 Applicable to Clients in the Province of Québec only: It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. *Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.*
- 5.17 This Agreement shall be governed by and interpreted in accordance with the law of the Province of Ontario, Canada (excluding any conflict of laws rule or principle which might refer its construction to the laws of another jurisdiction). The parties agree to submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and waive any objection relating to improper venue or *forum non conveniens* to the conduct of any proceeding in any such court.