



**American Certification Body, Inc.**

# Certification Agreement Terms and Conditions A1

# CERTIFICATION AGREEMENT

## TERMS AND CONDITIONS

In consideration of the mutual covenants in this Agreement, American Certification Body, Inc (ACB, Inc.) or its subcontractors will perform certification inspection services to determine if Client's device(s) are in compliance with the laws, regulations and technical standards under the Scope of Accreditation of ACB, Inc.

### General

ACB, Inc retains full discretion to determine if the Devices are compliant with the Certification Regulations of the Countries. In the event that certification is not issued for the aforementioned Devices, ACB, Inc agrees to advise Client in writing of the reasons therefore. This Agreement may not be assigned to or acquired by any other person, firm, or corporation without ACB, Inc's written authorization. In this agreement, "Client" and "Applicant" shall have the same meaning.

### 1. Scope of Performance

- 1.1. The scope of performance is delineated in the Quotation and/or Invoicing rendered to the Client. Submittal to the ACB, Inc website is considered acceptance of the scope of performance.
- 1.2. ACB, Inc may agree to accept test data from ISO/IEC Guide 17025 accredited Recognizing or Regulatory Authority (RRA) and evaluate the Devices on the basis of this data. ACB, Inc may also choose to accept test data from ISO/IEC Guide 17025 accredited laboratories owned by Client.
- 1.3. Per ISO17065 §7.9, FCC KDB 641163, FCC KDB 610077 and Industry Canada RSP-100 Section 6.2, Client shall supply ACB, Inc, at no charge, with at least one test sample of each Device, including the necessary peripherals, connecting cables, accessories or other hardware or software (hereinafter collectively referred to as "support equipment") Client or ACB, Inc. determines is required for testing, evaluation, assessment, and audit surveillance of products certified by ACB, Inc. If client requests that test sample be returned, client shall supply ACB, Inc with shipping account number. ACB, Inc disposes of any samples for which shipping account numbers are not provided.
- 1.4. Client shall supply ACB, Inc, at no charge, with all technical documentation and materials required for the testing, evaluation, and/or assessment of such Devices and support equipment. Client recognizes that Device samples, including support equipment, may be damaged or completely destroyed when subjected to ACB, Inc's testing and evaluation process. Client shall hold ACB, Inc harmless for any such damage or destruction to its equipment. Client agrees that all or part of any evaluation may be subcontracted in accordance with ISO17065, §7.9, §7.4 & §7.5.
- 1.5. ACB, Inc shall review and assess Client's equipment in accordance with its good engineering judgment, with the degree of skill and care associated with applicable, generally accepted industry standards, and in conformance with the applicable technical standards and procedures. ACB, Inc shall comply, and cause its subcontractors to comply, with all applicable laws, regulations and orders in performing under this Agreement, and that it shall hold and comply with, all licenses, permits and approvals as may be required by applicable laws, regulations and orders in performing hereunder. If any defect or nonconformity appears in ACB, Inc's work within thirty (30) days from the date of acceptance of such work, Client shall notify ACB, Inc and ACB, Inc will promptly correct the nonconformity.
- 1.6. Where assessment results in certification, ACB, Inc will certify Client's equipment as compliant with the applicable laws, regulations and/or standards within 30 business days from the date

testing, evaluation, and assessment is completed. This performance may be dependent upon a timely response by the RRA.

- 1.7. In the event of product certification, Client may request that ACB, Inc return or destroy Client's Device sample(s), equipment support, and technical documentation. Client shall bear all costs associated with the return or destruction of such equipment test sample(s) and support equipment.
- 1.8. The Applicant agrees (per ISO17065 §4.1.2):
  - 1.8.1. The client always fulfils the certification requirements including implementing appropriate changes when they are communicated by ACB, Inc.;
  - 1.8.2. If the certification applies to ongoing production, the certified product continues to fulfil the product requirements (*FCC/IC regulations, standards and technical specifications related to certified product(s)*);
  - 1.8.3. The client makes all necessary arrangements for a) the conduct of the evaluation and surveillance(if required), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel and clients subcontractors; b) investigation of complaints; c) the participation of observers, if applicable
  - 1.8.4. The client makes claims regarding certification consistent with the scope of certification
  - 1.8.5. The client does not use its product certification in such a manner as to bring the certification body, ACB, Inc., into disrepute and does not make any statement regarding its product certification that ACB, Inc. may consider misleading or unauthorized.
  - 1.8.6. Upon suspension, withdrawal, or termination of certification, the client discontinues its use of all advertising matter that contains any reference thereto and takes action as required by the certification scheme (e.g. the return of certification documents) and takes any other required measure to notify potentially affected parties or personnel ;
  - 1.8.7. If the client provides copies of the certification documents to others, the documents shall be reproduced in their entirety or as specified in the certification scheme;
  - 1.8.8. In making reference to its product certification in communication media such as documents, brochures or advertising, the client complies with the requirements of ACB, Inc. or as specified by the certification scheme;
  - 1.8.9. The client complies with any requirements that may be prescribed in the certification scheme relating to the use of marks of conformity, and on information related to the product;
  - 1.8.10. The client keeps a record of all complaints made known to it relating to compliance with certification requirements and makes these records available to ACB, Inc. when requested, and takes appropriate remedial, corrective or necessary action with respect to such complaints and any deficiencies found in products that affect compliance with the requirements of certification; documents the actions taken;
  - 1.8.11. The client informs ACB, Inc. without delay, of changes that may affect its ability to conform with the certification requirements. Examples of changes can include the following: The legal, commercial, organizational status or ownership. Organization and management (e.g. key managerial, decision-making or technical staff). Modifications to the product or the production method. Contact address and productions sites. Major changes to the quality management system.
  - 1.8.12. This Agreement contains the entire agreement of the parties with respect to the subject matter of the Agreement. The agreement supersedes any prior agreements, understandings, or negotiations, whether written or oral. This Agreement can only be amended through a written document formally executed by all parties.
- 1.9. ACB, Inc. agrees to the following (per ISO17065 §4.2, §4.4, §4.6, §6.1 & §8.1.2)
  - 1.9.1. ACB, Inc. shall be responsible for the impartiality of its certification activities and shall not allow commercial, financial or other pressures to compromise impartiality;

- 1.9.2.ACB, Inc. shall ensure that activities of separate legal entities, with which the certification body or the legal entity of which it forms a part has relationships, do not compromise the impartiality of its certification activities;
- 1.9.3.ACB, Inc. ensures all policies and procedures under which ACB, Inc. operates and the administration of them, shall be non-discriminatory. Procedures shall not be used to impede or inhibit access by applicants;
- 1.9.4.ACB, Inc. shall maintain (through publications, electronic media or other means), and make available upon request the following: a) information about (or reference to) the certification scheme(s), including evaluation procedures, rules and procedures for granting, for maintaining, for extending or reducing the scope of, for suspending, for withdrawing or for refusing certification; b) a description of the means by which ACB, Inc. obtains financial support and general information on the fees charged to clients; c) a description of the rights and duties of applicants/clients, including requirements, restrictions or limitations on the use of ACB, Inc.'s name and certification mark and on the ways of referring to the certification granted; d) information about procedures for handling complaints and appeals;
- 1.9.5.ACB, Inc. shall employ, or have access to, a sufficient number of personnel to cover its operations related to the certification schemes and to the applicable standards and other normative documents;
- 1.9.6.ACB, Inc. personnel shall be competent for the functions we perform, including making required technical judgments, defining policies and implementing them;
- 1.9.7.ACB, Inc. personnel, including any committee members, personnel of external bodies, or personnel acting on ACB, Inc.'s behalf, shall keep confidential all information obtained or created during the performance of the certification activities, except as required by law or by the certification scheme.;
- 1.9.8.ACB, Inc. shall establish and maintain a management system that is capable of achieving the consistent fulfilment of the requirements of ISO17065 §8.1.2

1.10. Client's certification is revocable for the following reasons:

- 1.10.1. ACB, Inc is directed to revoke certification by the RRA.
- 1.10.2. Client instructs ACB, Inc in writing to revoke certification for a Device. For Devices certified under the FCC, this can only be performed within 30 days of the original certification. ACB, Inc shall follow the guidelines of all RRA's in regards to revocation of certifications.
- 1.10.3. Client fails to pay any fees required by this Agreement.
- 1.10.4. Client breaches any of the terms, conditions or specifications listed hereof.

1.11. ACB, Inc shall close applications 60 days after an applicant receives the last request for Technical Information, or if additional required files are not received for the certification effort, RT's or surveillance audits. No refunds shall be given if ACB, Inc has begun the certification.

1.12. ACB, Inc provides, upon request by the client, an up-to-date detailed description of the evaluation and certification procedures, appropriate to each certification scheme, and the documents containing the requirements for certification, and the applicants' right and duties. Per IAF Guidance G.12.2 Any information on which a decision is based which comes from any source other than the evaluation process are made known to the client along with information on the evaluation process. The client is given the opportunity to comment on it through contact with ACB.

## 2. Confidentiality

2.1. ACB, Inc shall not disclose to third parties any proprietary technical or financial information marked by Client as confidential without prior written consent, provided that ACB, Inc may disclose any information or data, confidential, proprietary or otherwise, to the RRA.

- 2.2. Any documents, reports, drawings, test data, etc., made available to, produced at the request of or by ACB, Inc may be copied and retained by ACB, Inc if necessary to the performance of this Agreement or in compliance with the applicable Certification Regulations of the Countries. Client retains all title to any intellectual property rights in the Devices, support equipment, and technical documentation including patent, trademark, copyright and trade secret rights.
  - 2.3. Client agrees that submission of this agreement warrants that provisional test data would not imply any favors that may compromise ACB's Certification Body independence. ACB demonstrates how ACB manages the certification business and any other activities so as to eliminate actual conflict of interest and minimize any identified risk to impartiality. The demonstration will cover all potential sources of conflict of interest, whether they arise from within the certification body or from the activities of related bodies. Client and ACB understand that accreditation bodies will expect certification bodies to open up these processes for audit by the RRA's.
3. Invoicing
  - 3.1. All payments are due in advance of the Certification effort, unless other arrangements are made with the Billing department directly and are in writing.
4. Term and Termination
  - 4.1. This Agreement shall remain in force until either party terminates this agreement in writing, or upon completion of the scope hereof. Any terms relating to payments due ACB, Inc. shall survive termination hereof.
5. Liability
  - 5.1. Client shall hold ACB, Inc harmless and defend and indemnify ACB, Inc against any loss, expense, liability, or damage, including reasonable attorney's fees, arising out of any personal injury or damage to property, or other action arising from Client's failure to comply with any United States or foreign laws or regulations, or which may result from the performance, failure of performance, or operation of any equipment tested by ACB, Inc or produced by Client in any facility inspected by ACB, Inc. ACB, Inc shall hold Client harmless and defend and indemnify Client against any loss, expense, liability, or damage, including reasonable attorney's fees, arising out of any personal injury or damage to property, or other action arising from ACB, Inc's failure to comply with any United States or foreign laws or regulations, or which may result from the performance or failure of performance of ACB, Inc under this Agreement. In no event shall ACB, Inc's liability under this Agreement exceed the cost of its billed services to Client.
6. Disputes, Appeals and Complaints
  - 6.1. This Agreement shall be governed by, construed and enforced in accordance with the laws of the United States and the State of Virginia, without regard to conflict of law principles. The Parties waive trial by jury, and agree to submit to the personal jurisdiction and venue of a court of competent jurisdiction in the State of Virginia, County of Fairfax. In the event litigation results from or arises out of this Agreement, the losing party shall reimburse the prevailing party with reasonable attorney's fees, court costs, and other associated expenses, in addition to any relief to which the prevailing party may be entitled.
  - 6.2. Clients are encouraged to provide feedback to ACB, Inc regarding any positive experiences, as well as any disputes, appeals or complaints that affect the client's experience with ACB, Inc. The ACB, Inc website provides contact information links and an online survey that are accessible to the public.
7. Rights and Responsibilities

ACB, Inc employees and assignees involved in the certification process have the right to information required to make certification decisions and the responsibility to follow the requirements specified by the RRAs.

For the Client:

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Company Name

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Typed Name

Title

Date

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Signature