



INAB Terms and Conditions for Scheme Owners

TC-SO

1. Definitions

- 1.1 **“Scheme Approval”** means approval by INAB of to a scheme intended to be used by a conformity assessment body.
- 1.2 **“Scheme Approval Criteria”** means the criteria specified by INAB to be complied with by the Scheme Owner in order to qualify for the Scheme Approval sought or held including, without limitation, any relevant standards, guidelines or regulations.
- 1.3 **“Scheme Approval Guidelines”** means guidelines issued by INAB or any other body, including but not limited to, the International Scheme Approval Forum (IAF), the International Laboratory Scheme Approval Co-operation (ILAC) and the European co-operation for Scheme Approval (EA), setting out the recommended practices and procedures to be followed in order to comply with Scheme Approval Criteria.
- 1.4 **“Application”** means any application in relation to scheme review made by the Scheme Owner (scheme owner).
- 1.5 **“Conformity Assessment”** means a demonstration that specified requirements relating to a product, process, system, person or body are fulfilled. It includes activities such as testing, inspection, and certification.
- 1.6 **“Conformity Assessment Body - CAB”** means a body that performs conformity assessment services and that can be the object of Scheme Approval.
- 1.7 **“Contract”** means the agreement in place between INAB and the Scheme Owner as to scheme review comprised by the Application or Applications, these Terms and Conditions, any INAB regulations for the time being in force [currently INAB Regulations (R1)] and the documents, standards, guidelines, Scheme Approval Criteria, Scheme Approval Guidelines, and/or other materials imported into the agreement between the parties by the Application or Applications or by these Terms and Conditions.
- 1.8 **“Data Protection Legislation”** means the General Data Protection Regulation (Regulation (EU) 2016/679) and any implementing legislation, including the Data Protection Act 2018 (as amended or replaced from time to time) and all Irish and European Union laws and regulations (with direct effect) relating to the processing of personal data and privacy and applicable to INAB and/or the Scheme Owner.
- 1.9 **“INAB”** means the Irish National Accreditation Board, a division of the Health and Safety Authority.
- 1.10 **Scheme owner:** A scheme owner is an organisation responsible for developing and maintaining a specific CAS. The following are examples of SOs:
- Standardisation bodies;
 - CABs;
 - Organisations that use services provided by CABs;
 - Organisations that buy or sell products subject to conformity assessment activities;
 - Manufacturers or their associations that have established their own CAS.
- [National Accreditation Bodies cannot be SOs].

- 1.11 **“Terms and Conditions”** means the terms and conditions herein.
- 1.12 In these Terms and Conditions where the context so admits.
- (a) The singular includes the plural and vice versa
 - (b) Words referring to persons shall include firms, companies, and corporations and vice versa.
 - (c) Reference to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any instruments orders plans regulations permissions and directions or other subordinate legislation for the time being made issued or given under the relevant statute or statutory provision.
 - (d) Headings to clauses appearing in these Terms and Conditions are included for ease of reference only and shall not have any effect on the construction or the interpretation of these Terms and Conditions.
 - (e) Unless the context otherwise indicates, reference to clauses, sub-clauses, recitals or schedules, are to clauses and sub-clauses of, and recitals and schedules to, these Terms and Conditions.
2. **INAB functions**
- 2.1 In consideration of and subject to, payment of INAB’s fees by the Scheme Owner in accordance with clause 4 of these Terms and Conditions and subject to compliance by the Scheme Owner with the Contract, INAB will:
- (a) ascertain and specify the scheme approval criteria (see INAB PS18 – Evaluation of conformity assessment schemes);
 - (b) assess any application made against the scheme approval criteria;
 - (c) review schemes in accordance with published criteria;
 - (d) provide periodic reviews of schemes to ensure continued compliance to criteria.
- 2.2 INAB may amend the scheme approval criteria initially prescribed by it in any particular case at any time during the period of assessment or currency of the relevant Scheme Approval on the basis that the requirements of applicable national or international standards or guidelines or schemes or relevant sectorial practices have altered or that INAB for any other reason, in its absolute discretion considers a change in the Scheme Approval Criteria to be advisable. In such circumstances, INAB shall give due notice of the relevant changes and will accord the Scheme Owner a reasonable time to adjust to the relevant alterations.
- 2.3 INAB may, in its absolute discretion, but subject to the requirement to give reasonable notice to the Scheme Owner, make such changes to the provisions of the Contract as it deems appropriate and the Scheme Owner shall be bound by the Contract as amended.
- 2.4 INAB shall take all reasonable care to ensure that, in performing its obligations under this Contract, it does not disrupt the operations of, or save as may be reasonably unavoidable, inconvenience the Scheme Owner, its employees, agents or any other contractor or other person (including customers of the Scheme Owner).
- 2.5 From time to time, INAB enters into agreements with national authorities for the purposes of information exchange.

3. The Scheme Owner's obligations

- 3.1 The Scheme Owner shall comply with all of its obligations and responsibilities under the Contract scheme approval to commit to provide evidence of fulfilment. This includes agreement to adapt to changes in the requirements for scheme approval.
- 3.2 The Scheme Owner shall pay INAB's fees in accordance with its obligations in clause 4 of these Terms and Conditions.
- 3.3 The Scheme Owner shall afford INAB and/or its representatives, agents or subcontractors all such information, assistance and co-operation as INAB considers necessary to enable INAB to carry out its functions under the Contract and shall at its own expense, provide or arrange to have provided any tests, studies, evaluations or reports required by INAB and shall conduct or arrange to have conducted any additional tests, studies, evaluations or reports required by INAB and provide the results of same to INAB. In particular, but without limitation the Scheme Owner shall:
- (a) do everything necessary to enable INAB to assess the scheme;
 - (b) supply all information as required by INAB in the review of the scheme;
- 3.4 The Scheme Owner shall grant INAB all such access to the Scheme Owner's information (and where necessary shall use its best endeavours to facilitate access to those of a Related Body) as INAB may require for the purposes of carrying out its functions under the Contract.
- 3.5 The Scheme Owner acknowledges the importance of scheme approval guidelines in assisting the Scheme Owner in demonstrating its compliance with relevant scheme approval criteria and undertakes to keep itself informed of the scheme approval Guidelines and any changes thereto. INAB may, but shall not be obliged to notify the Scheme Owner of the relevant Scheme Approval Guidelines or any changes thereto and the decision of INAB in any particular case to draw the Scheme Owner's attention to any particular scheme approval guideline shall not affect the Scheme Owner's obligation to keep itself informed of, and, in so far as possible, to comply with the scheme approval guidelines or otherwise achieve the objective of the scheme approval guidelines in question in an equally effective manner.
- 3.6 The Scheme Owner must comply with the provisions of clause 6 of these Terms and Conditions in relation to claims of scheme approval.
- 3.7 In circumstances where the Scheme Owner is seeking approval for regulatory purposes, the Scheme Owner agrees that it shall keep the relevant regulatory / competent authority / national authority informed at all times of the scheme's status (and of any change in such status). The Scheme Owner shall provide evidence of such correspondence to INAB on request.

4. Fees and charges

- 4.1 The Scheme Owner shall pay INAB's fees within 30 days of receipt of each properly submitted and properly due invoice.
- 4.2 The Scheme Owner shall make its payment of fees to The Health & Safety Authority, Accounts Department, Metropolitan Building, James Joyce Street, Dublin 2.
- 4.3 INAB's fees are detailed in INAB's schedule of fees and are subject to review from time to time. The Scheme Owner's obligation will be to pay INAB's fees at the rate that is effective at the date the fee is incurred. A schedule of INAB's fees is available on the INAB website where INAB shall post any increase in INAB's fees three months before the coming into effect of any such increase.
- 4.4 INAB reserves the right to levy additional fees in respect of additional work necessitated by any failure of the Scheme Owner to comply with INAB requirements or with the Contract or

in respect of work that INAB considers to be in excess of the level usually required for the type of matter involved.

4.5 INAB reserves the right to cancel confirmed assessment events at any time prior to such visit in the event that any outstanding fees payable by the Scheme Owner remain unpaid.

4.6 INAB reserves the right to withhold scheme approval in the event of non-payment of invoices.

5. Record keeping

5.1 Without prejudice to the Scheme Owner's general legal obligations in relation to the maintenance and making available of its records, the Scheme Owner shall keep, for a minimum period of 5 years, and upon request, make readily available to INAB, records of all information, reports, original observations, calculations and derived data that are stipulated in any applicable scheme approval criteria or are otherwise required to be kept by INAB.

5.2 Such records as are required to be held by the Scheme Owner under this clause 5 shall be in a form which allows speedy and accurate checks to be made.

6. Claims of Scheme Approval and use of INAB Scheme Approval Symbol

6.1 The Scheme Owner shall not use the fact of scheme approval or the existence of an application in any way that could reasonably be considered to be misleading or bring the scheme into disrepute and, in particular, but without limitation, must not represent by any means to its clients that scheme approval implies that any particular product or service provided by the Scheme Owner is approved by INAB or any other body and shall expressly state in all contracts with its clients that scheme approval in no way implies that any particular product or service is approved by INAB or any other body.

6.2 The Scheme Owner shall, in its contractual arrangements with its clients, require such clients to refrain from any misrepresentations as to the scheme's approval status or any misleading acts or statements in relation to the significance of Scheme Approval.

6.3 The Scheme Owner shall not refer to its scheme approval as 'certification' and shall place a similar restriction on all its clients and shall ensure that its clients abide by their obligations in this respect.

6.4 The Scheme Owner shall not refer to and shall ensure that its clients do not refer to any activity carried out by the Scheme Owner as scheme approval.

6.5 INAB shall have the right in its absolute discretion to limit an Scheme Owner's use of the INAB scheme approval Symbol and/or reference to Scheme Approval by INAB on any materials during the currency of the Scheme Owner's scheme approval.

6.6 In the event scheme approval is withdrawn, this shall be made known, immediately, to all relevant parties.

(a) The Scheme Owner, when referencing Approval assessed by INAB shall refer only in the following terms; *the Scheme [title and version number] has been assessed by the Irish National Scheme Approval Board (INAB) and considered suitable for the purposes of scheme approval by conformity assessment bodies.*

6.7 The Scheme Owner shall monitor reference to scheme approval in communications/media.

7. Directory of Scheme Owners and Schemes

7.1 INAB may, but for the avoidance of doubt shall not be under any obligation to the Scheme Owner to, publish and maintain a directory or directories of Scheme Owners and approved in the form of a hard copy directory and/or in the form of an electronic directory to be made

available to the public on-line or otherwise. To the extent that INAB does make a directory available (the “directory”), the following provisions in this clause 7 apply.

- 7.2 INAB shall, in its absolute discretion, determine what information in relation to the Scheme Owner and its scheme approval status should be included in the directory from time to time and may, from time to time review the matter and require further information for the purposes of inclusion in the directory.
- 7.3 The Scheme Owner shall ensure that the information which it gives to INAB generally and in response to specific requests for information for the purposes of the directory is accurate and not misleading. The Scheme Owner further undertakes to immediately inform INAB of any inaccuracy which appears in the directory and of any change which occurs, which necessitates an amendment of the directory listing for the Scheme Owner, within three working days of the said inaccuracy coming to the Scheme Owner’s attention or of the change occurring, whichever is relevant.
- 7.4 In the event of the withdrawal of an Scheme Owner’s Scheme approval, either voluntarily or involuntarily, the listing in respect of that Scheme Owner shall be immediately removed or amended (as may be applicable) from the directory.
- 7.5 All details of the status and circumstances of the Scheme Owner’s Scheme approval (including but not limited to withdrawal of scheme approval) will be kept by INAB in whatever form INAB in its sole discretion deems appropriate and may be made available by INAB to any person on request.
- 7.6 INAB shall have sole control over the format, composition and distribution of the contents and the pages of the directory and the positioning of any entry relating to any Scheme Owner within the directory.
- 7.7 INAB will not be liable for any internet or telecommunications failure, computer virus, third party interference or effect of any third party software or hardware that may interrupt or delay access to any electronic directory or cause any other problems or losses.
- 7.8 INAB shall not be liable to the Scheme Owner for any loss or damage including injury to reputation suffered by the Scheme Owner as a result of the appearance or non-appearance for any reason whatsoever in the directory, the positioning of the Scheme Owner relative to any other Scheme Owner, or as a result of the use by the public or any person of the directory or of any information kept by INAB pursuant to the terms of clause 7.6 above.
- 7.9 INAB may at any time review the directory and may remove any listing or part of any listing for any Scheme Owner if it considers, in its absolute discretion, that it is appropriate to do so.
- 7.10 INAB may, in its sole discretion and without any liability to the Scheme Owner, decide against providing or cease to provide the directory.
- 7.11 INAB gives no representations or warranties express or implied in relation to the accuracy, reliability, up-to-date nature or completeness of the directory and excludes liability for any damage or loss suffered by the Scheme Owner because of any inaccuracies, errors or omissions in the directory.

8. Warranty, Representation and Indemnity by the Scheme Owner

- 8.1 The Scheme Owner warrants and represents that the information it provides to INAB will not infringe any intellectual property, publicity or privacy right of any other party or any other law or regulation including Data Protection Legislation.
- 8.2 The Scheme Owner shall indemnify INAB, its officers, employees and agents from any and all third party claims, liability, damages and/or costs (including but not limited to legal fees) arising from a breach of the warranty and representation at Clause 8.1 above.

9. Confidentiality

- 9.1 Information relating to the Scheme Owner's processes, plans or intentions, know how, trade secrets and business affairs gained by INAB in the course of performing its functions under the Contract will be treated by INAB as confidential and subject to clause 9 of these Terms and Conditions such information will not be disclosed by INAB to third parties without the consent of the Scheme Owner.
- 9.2 INAB may disclose the information referred in clause 9.1 above to the extent that:
- (a) such disclosure is required by the law of any relevant jurisdiction or for the purpose of any judicial proceeding;
 - (b) the information has come into the public domain through no fault of INAB;
 - (c) the circumstances are such that the Scheme Owner may reasonably be understood to have given permission for the disclosure;
 - (d) such disclosure (including, but not limited to disclosure to its employees, servants, agents or sub-contractors, government departments or other scheme approval bodies or associations) is necessary for the purposes of INAB's functions under the Contract or for INAB's internal procedures or obligations as a division of the Health & Safety Authority, government departments or other Scheme Approval bodies or associations.
- 9.3 INAB is subject to the Freedom of Information Act 2014 (the "FOI"). In the event that INAB receives a request for information under the FOI relating to the Scheme Owner, its application or its scheme approval, it may consult with the Scheme Owner before deciding what records are to be released in response to such a request pursuant to the FOI. This may include seeking submissions under the applicable section of the FOI where the records may contain confidential, commercially sensitive or personal information. INAB shall retain sole discretion in determining the disclosure required under the terms of the FOI.

10. INAB Website

- 10.1 INAB does not guarantee that its website will be fault free or that the information contained on the said website will be correct. INAB does not accept any liability for any damage or loss suffered by the Scheme Owner arising as a result of the said website or the information contained therein (including any errors, inaccuracies or omissions in such information or any faults, interruptions or delays in connection with the website).

11. Limitation of liability

- 11.1 With the exception of the Scheme Owner's obligations to indemnify INAB under clauses 8 and 12 of these Terms and Conditions and of the Scheme Owner's duty to pay INAB's fees and charges as specified in these Terms and Conditions to the extent that such fees and charges are owed in the Contract between INAB and the Scheme Owner (which obligations of indemnity and payment remain unaffected by this clause 11), and with the exception also of any liability of either party for death or personal injury, this clause 11 sets out the entire liability (including any liability for the acts and/or omissions of its employees, agents or sub-contractors) of each party to the other in respect of any and all breaches of its contractual obligations and any and all tortious acts or omissions including, but not limited to, negligence.
- 11.2 Subject to the exceptions provided for in clause 11.1 hereof, the entire liability of each party to the other will not exceed, in aggregate, the amount paid in fees pursuant to the Contract by the Scheme Owner to INAB in respect of INAB's fees in the twelve-month period preceding the applicable act, omission or breach.

- 11.3 Neither party shall be liable to the other for any special, consequential or indirect loss. In this clause “*special consequential or indirect loss*” shall include, without limitation, loss of profit, loss of business, loss of goodwill and loss of savings.
- 11.4 Nothing in clauses 11.1, 11.2 and 11.3 hereof shall confer any right or remedy upon either party to which it would not otherwise be entitled.
- 12. Indemnity**
- 12.1 The Scheme Owner acknowledges that the nature of Scheme Approval is confirmation that INAB considers the scheme suitable for accreditation of a CAB to implement the scheme. It is not an endorsement of a product or service and no INAB logo or symbol may be attached to the scheme. Accordingly, the Scheme Owner shall indemnify INAB against any and all damages, costs, charges and expenses (including legal expenses) incurred by INAB in dealing with, responding to, defending, or being otherwise involved in, any claim, action, enquiry, investigation, or prosecution, brought or conducted, by any third party, regulatory or other body, and which claim, action, enquiry, investigation or prosecution relates to any failure or claimed failure of the Scheme Owner to comply with the scheme approval criteria or with any provision of the Contract, or to any infringement or breach by the Scheme Owner of any third person’s contractual or other rights or any duty of care owed by the Scheme Owner to its customers or claimed infringement or breach of the aforesaid, or to any claim that the Scheme Owner has made false or misleading claims or representations in relation to its application or its scheme approval status.
- 12.2 For the avoidance of doubt, the indemnity at clause 12.1 hereof shall not apply to damages awarded against INAB to the extent that such damages relate to demonstrated breach by INAB of a duty of care owed to the public in respect of the scheme approval granted to the Scheme Owner or to the costs attributable to dealing with claims relating to any such breach.
- 12.3 In the event that INAB is entitled under any provision of these Terms and Conditions to indemnification by the Scheme Owner for some of the damages, costs, charges or expenses incurred by INAB but not for the total amount thereof, the Scheme Owner shall indemnify INAB for the portion thereof to which INAB is entitled.
- 13. Insurance**
- 13.1 The Scheme Owner shall have in place insurance policies that are sufficient to cover its obligations under these Terms and Conditions and shall comply with all the terms and conditions of such policies.
- 13.2 The Scheme Owner shall prior to the granting of scheme approval supply to INAB all information and/or documentation necessary to demonstrate that the insurances specified in Clause 13.1 are in. Without prejudice to the foregoing the Scheme Owner shall provide to INAB any information or documentation that INAB may reasonably request to evidence the said insurances.
- 14. Change in scheme approval status, suspension, resignation and termination of scheme approval**
- 14.1 Without prejudice to INAB’s powers of these Terms and Conditions, INAB may immediately impose involuntary suspension of the Scheme Owner’s Scheme Approval in the event:
- (a) the Scheme Owner, being an individual is declared bankrupt or enters into a composition with his creditors; or
 - (b) the Scheme Owner being a company has a receiver, examiner or administrator appointed over the whole or any part of its assets or the Scheme Owner is struck off the register of companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up of the Scheme Owner (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of

- the Scheme Owner as a solvent corporation and the resulting corporation, if a different legal entity, undertakes to be bound by the scheme approval Criteria and the Contract); or
- (c) of any change in structure, personnel, staff responsibility, equipment, premises or scope of activity of the Scheme Owner that INAB considers, in its sole discretion, affects the Scheme Owner's ability to comply fully or at all with the scheme approval Criteria; or
 - (d) of any change in the scheme approval Criteria applicable to the Scheme Owner which the Scheme Owner is not in a position to comply with fully, or at all, by the date designated by INAB; or
 - (e) that the Scheme Owner breaches any scheme approval Criterion or the Contract
 - (f) that INAB considers that scheme approval has been or is likely to be brought into disrepute by the Scheme Owner, its Related Bodies or its clients either as a result of accredited or non-accredited activities; or
 - (g) the Scheme Owner has engaged in any fraudulent or dishonest conduct or fails in any respect to comply with the laws of Ireland.
- 14.2 INAB may decide to terminate the Scheme Owner's approval immediately on written notice (such termination to be effective as and from the date of that notice) in any of the events set out at sub-clauses (a) through (g) of clause 14.1 or where it otherwise considers in its sole discretion that termination is warranted.
- 14.3 In the event that during the currency of its scheme approval, the Scheme Owner is unable for any reason to comply with the scheme approval Criteria and/or the Contract, the Scheme Owner shall immediately apply to INAB for voluntary suspension or resignation of its Scheme Approval PROVIDED THAT in the event of there being no objectively justifiable cause to consider the inability to comply as being temporary the Scheme Owner shall apply for resignation of its scheme approval.
- 14.4 INAB may in its sole discretion refuse voluntary suspension or resignation and impose involuntary suspension or termination of the Scheme Owner's scheme approval.
15. **Data Protection Notice**
- 15.1 INAB may collect information, including personal data (within the meaning of the Data Protection Legislation) from the Scheme Owner in connection with the Application. Such information may include details in relation to the Scheme Owner's employees, including details of qualifications, training records and contracts of employment. This information may be used by INAB for the purposes of assessing the application and for all purposes which are reasonably incidental to the administration of the scheme approval and/or for the purposes of INAB's functions including exercising its rights and performing its obligations under the Contract including, without limitation, any granting, renewal, withdrawal or suspension of the scheme approval. Such information may also be used for INAB's internal procedures or obligations to, including as a division of the Health and Safety Authority, or for its obligations to government departments/public authorities or other Scheme Approval bodies or associations. INAB will retain such information, in accordance with its record retention policy, only for as long as required for the purposes described above.
- 15.2 INAB reserves the right to disclose your information to such third parties acting on its behalf as may be reasonably necessary in connection with the purposes described at clause 20.1 above, including to its employees, agents, or sub-contractors or government departments/public authorities or other scheme approval bodies or associations. INAB will only disclose information to such third parties as strictly necessary in connection with the purposes described at clause 20.1 above.

- 15.3 To the extent that the information the Scheme Owner provides to INAB is comprised of personal data relating to identifiable living individuals, the Scheme Owner warrants that it is entitled to provide such personal data to INAB and shall further ensure that such identifiable living individuals are provided with details of the uses and disclosures of the personal data. The Scheme Owner agrees to inform such individuals of their data subject rights under Data Protection Legislation and to inform them that they are entitled to exercise any such rights by writing to INAB at: *INAB administration, Metropolitan Building, James Joyce Street, Dublin 1.*

16. Complaints

- 16.1 If the Scheme Owner has a complaint in respect of any matter relating to INAB's performance of its functions under the Contract, other than a decision by INAB not to grant scheme approval to the Scheme Owner or an extension to the scope of the Scheme Owner's scheme approval or to grant a more limited scope of Scheme Approval than that applied for by the Scheme Owner or to suspend or terminate the Scheme Owner's approval or not to renew or re-instate the Scheme Owner's approval, the Scheme Owner may address a complaint to INAB which will be dealt with in accordance with its then current procedures in relation to complaints which are available on INAB's website, or will be furnished by INAB in hard copy upon request.

17. Nature and limits of scheme approval

- 17.1 The fact of scheme approval does not relieve the Scheme Owner of the necessity of obtaining any regulatory approval that may be necessary to carry out the accredited activities or of satisfying any legal obligation that may be on the Scheme Owner in respect of the accredited activities.

18. Notices

- 18.1 Any notice served under the Contract shall be sufficiently served if sent by recorded post or fax to the last known place of business of the addressee. Proof of recorded dispatch in the case of recorded post and receipt of a successful transmission report in the case of a facsimile transmission shall be conclusive evidence of receipt of the notice by the addressee.

19. Governing law & jurisdiction

- 19.1 The Contract shall be governed by and construed in accordance with the laws of Ireland and, without prejudice to clause 19 hereof, the parties hereto submit to the jurisdiction of the Irish courts for the resolution of disputes hereunder.

20. Unenforceability

- 20.1 In the event of any clause of the Contract or any part thereof being rendered void or unenforceable by any rule of law or any decision of an administrative body or court of competent jurisdiction, or in the event of any such clause or part of a clause being rendered or deemed to be a breach of any obligation owed by INAB to any statutory body, government department or international Scheme Approval body, the clause or relevant part thereof shall be void or unenforceable to the extent only that it breaches the relevant law, decision, rule or regulation and no further. In such circumstances, the infringing clause or part thereof shall apply with such modification as would be necessary to make it valid and effective.

21. Waiver

- 21.1 No relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract the granting of time by either party to the other shall prejudice, affect, or restrict the rights and powers of that party under the Contract nor shall any waiver by either party of any breach of the Contract operate as a waiver of or in relation to any subsequent or any continuing breach of the Contract.