

NATIONAL CONFERENCE ON INTERSTATE MILK SHIPMENTS
VOLUNTARY INTERNATIONAL CERTIFICATION PROGRAM

MEMORANDUM OF AGREEMENT
BETWEEN A
THIRD PARTY CERTIFIER
AND
A MILK COMPANY

1.) **Introduction:** This Memorandum of Agreement (MOA) is entered into on {date} by and between {Third Party Certifier} with offices at {address} , and {Milk Company} with principal offices at {address}.

2.) **Retention and Description of Services:** During the term of this MOA, {Third Party Certifier} shall furnish regulatory, rating, laboratory, etc. services and activities related to the regulatory compliance of {Milk Company} with the National Conference on Interstate Milk Shipments (NCIMS) voluntary International Certification Program (ICP). These services and activities shall be within the area of their technical competence and shall include, but are not limited to, the following:

- All required regulatory inspections and related enforcement;
- All required pasteurization system equipment testing;
- All required sampling and analysis of Grade “A” raw, pasteurized, ultra-pasteurized, aseptically processed and packaged milk and/or milk products, and/or retort processed after packaging milk and/or milk products; and milk containers, if applicable;
- All ratings/listings of shippers of Grade “A” milk and/or milk products; and
- Laboratory certification/approval program activities required for compliance with all applicable NCIMS Grade “A” Milk Safety Program requirements.

For purposes of this NCIMS voluntary ICP, the Third Party Certifier (TPC) shall have similar authority and responsibilities as State Regulatory Agencies, State Rating Agencies, State Laboratory Control Agencies and/or Officially Designated Laboratories, if applicable, as identified in the NCIMS Grade “A” Milk Safety Program. A detailed explanation of each service and activity can be found in the NCIMS documents (Grade “A” Pasteurized Milk Ordinance (PMO), Methods of Making Sanitation Ratings of Milk Shippers (MMSR), Procedures Governing the Cooperative State Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments (Procedures), and Evaluation of Milk Laboratories (EML).

In addition, because Grade “A” milk and/or milk products will be imported into the United States, the TPC shall make the Milk Company (MC) aware of the requirements of the U. S. Federal Import Milk Act (FIMA) and help the MC determine which if any of their Grade “A” milk and/or milk products to be imported would be covered under FIMA.

During the term of this MOA, {Milk Company} shall comply with all applicable requirements of the NCIMS Grade “A” Milk Safety Program and the NCIMS voluntary ICP. They shall allow unannounced inspections, during reasonable working hours, of all facilities identified in Item 4. below. They shall provide access to the TPC of all required records relating to the provisions and requirements of the NCIMS Grade “A” Milk Safety Program and the NCIMS voluntary ICP. They shall provide access to the TPC for all required pasteurization equipment testing and the collection of all required milk and/or milk products and milk containers, if applicable, and the required sampling of all applicable water system(s), including recirculated water systems.

The MC shall provide written evidence acceptable to the TPC, the ICP Committee, and the U.S. Food and Drug Administration Milk Safety Team and Laboratory Proficiency Evaluation Team (FDA MST and LPET) that the milk and/or milk products used to produce Grade “A” milk and/or milk products for importation into the U.S. are from sources that comply with the provisions of Section 8 and Appendix A of the PMO and U.S. Department of Agriculture (USDA) regulations for tuberculosis and brucellosis testing and control.

In addition, the MC shall apply for a FIMA Permit for any Grade “A” milk and/or milk products covered under FIMA that they wish to import into the United States.

All documents that are utilized and exchanged within the NCIMS voluntary ICP shall be in English or translated into English by the MC. These documents include all forms, contracts and written communication between the TPC and the regulated MC. The MC shall provide an interpreter during all official inspections, ratings/listings, training and accreditation/certification activities.

3.) **Term of the Memorandum of Agreement (MOA)**: This formal written, signed and dated memorandum states the requirements and responsibilities of each party (TPC and MC) to participate and execute the NCIMS voluntary ICP. The MOA shall include, but is not limited to, the issues and concerns addressed in all documents involved in the NCIMS voluntary ICP and NCIMS documents. This agreement shall be considered the MC’s permit to operate in the context of the NCIMS Grade “A” Milk Safety Program and shall be renewed (signed and dated) on an annual basis.

This signed and dated MOA shall be submitted to the ICP Committee Chair and FDA MST and shall be reviewed by the NCIMS ICP Committee and FDA MST and LPET to determine that it contains all provisions set forth within the NCIMS voluntary ICP. There shall not be any ratings/listings/certifications conducted of any MC’s milk shipper or official laboratory or official designated laboratory, respectively, until the ICP Committee has indicated in writing that this MOA complies with the requirements of the Grade “A” Milk Safety Program and the NCIMS voluntary ICP.

Compliance with the requirements of the NCIMS voluntary ICP shall be determined by the FDA MST and LPET. Failure to adequately comply with the regulatory and enforcement provisions of the Grade “A” Milk Safety Program; the requirements of the NCIMS voluntary ICP; requirements for IMS listing; the required Code of Ethics; etc. may result in the removal of {Third Party Certifier} from the NCIMS voluntary ICP.

Reasons for the removal of TPCs or MCs from the NCIMS voluntary ICP and withdrawal of MCs from the Interstate Milk Shippers (IMS) List include, but are not limited to, the following:

- a. If a TPC is found to be in non-compliance with the requirements set forth in the documents of the NCIMS Grade “A” Milk Safety Program by PHS/FDA MST and/or LPET, the TPC shall be subject to procedures addressing their removal from the NCIMS voluntary ICP.
- b. If a TPC ceases to provide the required oversight of an IMS listed MC for purposes of the NCIMS voluntary ICP, both the TPC and the MC shall immediately notify the ICP Committee Chair and PHS/FDA MST and/or LPET. The MC, including all associated facilities, shall immediately be removed from the NCIMS voluntary ICP and the MC shall also immediately be withdrawn from the IMS List by PHS/FDA MST and/or LPET. Within fifteen (15) days of a TPC ceasing to provide this required MC oversight, the TPC shall transfer all existing records to PHS/FDA MST in a manner acceptable to PHS/FDA MST.
- c. If a TPC ceases to provide oversight of all of their IMS listed MCs for purposes of the NCIMS voluntary ICP, both the TPC and the MCs shall immediately notify the ICP Committee Chair and PHS/FDA MST and/or LPET. Both the TPC and MCs shall immediately be removed from the NCIMS voluntary ICP and the MCs shall immediately be withdrawn from the *IMS List* by PHS/FDA MST and/or LPET. Within fifteen (15) days of a TPC ceasing to provide this required MC oversight, the TPC shall transfer all existing records to PHS/FDA MST in a manner acceptable to PHS/FDA MST.
- d. When there is evidence, found during PHS/FDA check ratings or a triennial Regulatory/Rating Agency Program Evaluation, that the TPC is in non-compliance with the applicable requirements set forth in the documents of the NCIMS Grade “A” Milk Safety Program, the TPC shall be referred to the NCIMS Executive Board in accordance with Section IV, A. 3. b of the Procedures. The TPC and MC(s) listed by the TPC can be subject to withdrawal by PHS/FDA MST and/or LPET from the *IMS List*.
- e. If a MC’s IMS listed milk shipper changes status due to non-compliance or a change in the Sanitation Compliance Rating to less than ninety percent (90%), the TPC shall immediately notify the PHS/FDA MST and all known receiving Member States and/or TPCs. The MC’s IMS listed milk shipper shall immediately be withdrawn from the IMS List by PHS/FDA MST.
- f. When there is evidence that the MC or it’s servicing laboratory is not meeting the applicable requirements of the Grade “A” PMO and/or the EML, respectively, as determined by the TPC, or the ICP Committee, and/or PHS/FDA MST and/or LPET, the MC’s IMS listing(s) is subject to withdrawal from the IMS List. The TPC or the ICP Committee shall immediately notify PHS/FDA MST and/or LPET, respectively. In the case that PHS/FDA MST and/or LPET makes this determination based upon the results of a check rating or a laboratory evaluation, the MC is subject to suspension and/or removal from the NCIMS voluntary ICP until compliance, as determined by PHS/FDA

MST and/or LPET, is achieved. With this determination, PHS/FDA MST and/or LPET, respectively, shall notify all known receiving Member States.

- g. Violators of any of the required Code of Ethics' tenets by a TPC or their personnel shall be subject to removal from participation in the NCIMS voluntary ICP by the Executive Board.

4.) **Where Services Are To Be Performed:** {Third Party Certifiers} services and activities shall be performed at the {Milk Company's} facilities located at [address] and at such other locations that are appropriate and required to fulfill the requirements of the NCIMS voluntary ICP.

5.) **Third Party Certifier as an Independent Contractor:** {Third Party Certifier} shall furnish all required services and activities as an independent contractor and not as an employee of {Milk Company} or of any company affiliated with {Milk Company}. The TPC does not have any power to or authority to act for, represent, or bind the MC or any company affiliated with the MC in any manner.

6.) **Third Party Certifier is not to Engage in Conflicting Activities:** {Third Party Certifier} shall conduct all services and activities required under this MOA with integrity and impartiality. The TPC shall avoid all conflicts of interest or the appearance of a conflict of interest. During the term of this MOA, {Third Party Certifier} shall not enter into any activity, employment, or business arrangement that conflicts with the MC's interests or their own obligations to {Milk Company} under this MOA, except that the TPC may sign an MOA with and provide regulatory and rating services to another MC as allowed under the NCIMS voluntary ICP.

The MC shall have the option of terminating this MOA if, at any time, in the MC's sole judgment, a conflict of interest exists or is imminent. The TPC shall advise the MC of any activity, employment or business arrangement contemplated by the TPC that may be relevant to this Paragraph. Termination shall be in accordance with the notification requirements in Item 8. of this Agreement. The MC understands that if this MOA is terminated after they have been listed on the IMS List that their IMS Listings shall be immediately withdrawn from the IMS List and the MC shall be immediately removed from the NCIMS voluntary ICP.

7.) **Confidentiality:** {Third Party Certifier} shall treat all proprietary or privileged information obtained during the course of their services with the MC with strict confidentiality.

8.) **Termination of MOA by Notice:** Either party may terminate this MOA upon [number] days notice by registered or certified mail, return receipt requested, addressed to the other party. If either party terminates this MOA, both the TPC and the MC shall immediately notify the ICP Committee Chair and FDA MST. Upon the TPC ceasing to provide oversight of the MC, the MC shall be immediately withdrawn from the IMS List and immediately removed from the NCIMS voluntary ICP. Within fifteen (15) days of the TPC ceasing to provide oversight, they shall forward all related records, including, but not limited to: sample results, equipment tests, plant inspection notes and reports to FDA MST in a manner acceptable to FDA MST. FDA MST shall retain such records until such time as a suitable replacement TPC, within the criteria

