

## Section 1

### Food Safe Pro! Level 3 Agreement

**THIS FOOD SAFE PRO!® LEVEL 3 (L3) SUBSCRIPTION AGREEMENT ("L3 Agreement") is a legal agreement between you and DKM Integrated Software Solutions Incorporated, doing business as We R Food Safety™ ("WRFS™") that governs your use of, and subscription to, Food Safety Pro!® Level 3 provided by WRFS™. You agree to the following terms.**

**1. Definitions.** For purposes of this L3 Agreement, the following terms shall have the meanings set forth below.

- (a) "Consulting Agreement" means your consulting agreement found in section 2.
- (b) "FSP-L3" means the software and services provided to you by WRFS™ under this L3 Agreement.
- (c) "WRFS™ Materials" means any manuals and other documentation provided by WRFS™ to you that are related to FSP-L3.
- (d) "WRFS™ Mark" means the WRFS™ "Food Safe Pro!®" logo as set forth in Exhibit A.

Any other terms not defined in this Section 1 are defined at their first use.

**2. Food Safe Pro!® Level 3 services and features.** The following services and features are included in your subscription to FSP-L3.

(a) **Standard and Custom FSP system.** WRFS™ will deploy a standard food safety software program system (FSP™ L3) or a customized food safety software program system for your facility (the "Custom FSP System"). Either System may include, based on your needs, the following features that are included in the Sales Order provided to you by your WRFS™ representative (the "Sales Order").

- (i) Hardware. WRFS™ shall provide computers, tablets, Wi-Fi relays, or other hardware as specified in the Sales Order.
- (ii) Training. WRFS™ shall provide training for you and your employees on the functionality of the Custom FSP System as provided in the Sales Order.
- (iii) Technician. WRFS™ shall make a technician available to you as provided in the Sales Order.
- (iv) Integration. WRFS™ will cause the Custom FSP System to integrate with your work flow by collecting data on tablets or other hardware, send it to the WRFS™ SQL servers, and provide alerts and basic reports.
- (v) Consultation. You may have access to the food safety consultants as provided in your Sales Order. You will receive one hour of non-emergency consulting services for each month this L3 Agreement is in effect. (Please note that any consultation services in excess of the one hour per month period will be billed at the standard rate as posted on the web at [www.werfoodsafety.com](http://www.werfoodsafety.com).)
- (vi) Food Safety Audit. You will receive a comprehensive food safety audit (Desktop) of your plans annually in accordance with the We R Food Safety methodology (provided in section 4 for informational purposes only-it is subject to change based on most current audit and assessment methodologies).

(vii) Customized Software. Any specific customization that is specified in the Sales Order.

(b) **Website**. You are entitled to a monthly update of your online website hosted by WRFS™ as applicable. Your company will be listed on the WRFS™ Web Site as a client business and a direct link to your website shall be established.

(c) **Backup**. Under this L3 Agreement you will be able to retrieve a backup of your data hosted by WRFS™. Data retrieval is possible via the following means: (i) upload from WRFS™ to you, (ii) WRFS™ will print the data and express ship it to you, or (iii) WRFS™ will load the data in a new copy of WRFS™ Software governed by the EULA and ship it to you.

(d) **Discounts**. You will receive discounts from WRFS™ Affiliated Companies under terms provided by the Affiliated Companies.

(e) **Trademark license**. You may display the WRFS™ “Food Safe Pro!®” logo (“WRFS™ Mark”) on your product, website, and advertising in accordance with Section 3.

(f) **Custom features**. Custom features, if any, as described in the sales order.

### 3. WRFS™ Mark.

(a) **License**. WRFS™ grants to you a limited, world-wide, non-exclusive, non-transferable, right to use the WRFS™ Mark as set forth in Exhibit A and solely in conformance with this L3 Agreement and Exhibit A.

(b) **Ownership**. The WRFS™ Mark is solely and exclusively owned by WRFS™. Except for the license granted by this L3 Agreement, no rights are granted. You agree not to do anything inconsistent with WRFS™’s ownership of the WRFS™ Mark.

(c) **Indemnification**. You agree to defend and indemnify WRFS™ its Affiliated Companies, and Suppliers harmless from any and all claims, liability and expenses, including reasonable attorneys’ fees and costs, that arise from your use of the mark (other than claims that the mark itself infringes third party intellectual property rights). WRFS™ shall (a) promptly notify you in writing of any claim and give you the opportunity to defend or negotiate a settlement of any such claim at your expense, and (b) cooperate fully with you, at your expense, in defending or settling any such claim. WRFS™ shall be entitled to engage their own local counsel at WRFS™’s expense. WRFS™ reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any Claims

### 4. Fees.

(a) WRFS™ shall charge and you shall pay the fees established at execution of this L3 Agreement and included in the L3 Sales Order. At least 45 days before the renewal of any term WRFS™ shall send you a reminder that the L3 Agreement will renew and the current rates. You permit WRFS™ to take payment of any fees due under this L3 Agreement for renewal terms via the means you paid for the initial term or any updated payment information you have provided to WRFS™.

(b) During the term of this L3 Agreement, WRFS™ will review your data consumption every 6 months and adjust the fees required under this L3 Agreement and the L3 Contract or the then current rates as established by WRFS™ from time to time unless specified that your fees are locked at the same rate for the life of your sales order in said sales order.

**5. Term.** This L3 Agreement begins as soon as you accept its terms. This L3 Agreement shall have an initial term of two years and shall renew for additional two year terms (the initial term and each renewal term is referred to as a "Term").

**6. Termination** This L3 Agreement shall terminate under the following circumstances.

(a) Either party may terminate this L3 Agreement at the end of any Term with 30 days' prior notice to the other party.

(b) If FSP-L3 is provided under a Consulting Agreement and the Consulting Agreement is terminated (however, for avoidance of doubt, termination of this L3 Agreement does not terminate the Consulting Agreement).

(c) You provide notice to WRFS™ during a Term, pay the prorated amount for the term, and pay the early termination administration fee of 35% of your remaining monthly fees.

(d) WRFS™ may immediately and without notice terminate this L3 Agreement or suspend or terminate the license to FSP-L3 if, in WRFS™'s reasonable discretion, you fail to comply this L3 Agreement, with no liability to WRFS™.

**7 a. Effects of Termination-General.** Upon any termination you must immediately stop using and delete or destroy WRFS™ Materials, Confidential Information (as defined in Section 18) and software included in FSP-L3. Additionally, upon termination any outstanding payments become due. Termination of this L3 Agreement shall not affect WRFS™'s rights to any payments due to it. Other requirements regarding termination or cancellation of your license to other software or services offered by WRFS™ may apply based on the specific ordering or terms for the other software. You shall have 30 days after termination date to copy your data and other files to a local disk from our servers. All data and files left on our servers after the 30-day period may be locked, destroyed or otherwise become unavailable indefinitely.

**7 b. Effects of Termination-Cessation of Business Operations.** Upon termination of business operations of DKM Integrated Software Solutions Inc. you shall be provided with the SQL Data, necessary code, and other information to locally host Food Safe Pro!® at your location.

**8. Privacy.** The WRFS™'s privacy policy ("WRFS™ Privacy Policy") is incorporated into this L3 Agreement by reference and you agree to the terms of the WRFS™ Privacy Policy. A current version of the policy is available on WRFS™'s website. Additionally, you agree that WRFS™ may aggregate and use your non-personally identifiable data with that of other users of any WRFS™ software or service. For example, WRFS™ may use aggregated data to improve services, design promotions, or provide ways for you to compare business practices with other users. You also acknowledge that in accessing some WRFS™ services you may upload or enter data such as names, addresses and phone numbers, purchases, and other data to the Internet. You grant WRFS™ permission to use the information you provide so that WRFS™ can provide the WRFS™ services to you, monitor and analyze your use of the services, maintain and update your data, and address errors or service interruptions. WRFS™ may use this data to improve services, enhance future services, identify potentially relevant offers, and produce anonymous research data. You also grant WRFS™ permission to share or publish summary results relating to such research data and to distribute or license such data to third parties. You grant WRFS™ permission to use your logo and name in marketing materials. You further grant WRFS™ permission to use your logo as your web link on our client page.

**9. Feedback.** You agree that WRFS™ may use your feedback, suggestions, or ideas ("Feedback") in any way, including in future modifications of FSP-L3, other products or services, advertising or marketing materials. You grant WRFS™ a perpetual, worldwide, fully transferable, irrevocable, fully paid-up, royalty

free license with the right to sublicense through multiple tiers to use the Feedback you provide to WRFS™ in any way. WRFS™ will not sell, publish or share your Feedback in a way that could identify you without your explicit permission. WRFS™ is not required to identify you as the provider of the Feedback.

**10. Marketing.** You may be offered other services, features, products, applications, or promotions provided by WRFS™. If you decide to use any other products or services, additional terms and conditions and separate fees may apply.

**11. Third Party Products.** WRFS™ may offer products and services on behalf of third parties (“Third Party Products”) or software included in FSP-L3 may contain links to third party websites (“Third Party Sites”). You agree that WRFS™ may use your contact information, including your name, email address and postal address, for the purpose of offering these products to you. If you decide to use any Third Party Products or access any Third Party Sites, you are responsible for reviewing the third party’s separate product terms, website terms and privacy policies. You agree that the third parties, and not WRFS™, are responsible for their product’s performance and the content on their websites. WRFS™ is not affiliated with these Third Party Products or Third Party Sites and you agree that WRFS™ has no liability for them.

**12. Communications choices.** WRFS™ may be required by court order to communicate with you about FSP-L3 or other products or services provided by WRFS™ or third parties. You agree to provide an email address and update your email address as necessary so WRFS™ may send communications to you via email. WRFS™ may also send business communications such as confirmations or notices, which will be delivered to you via email or posted on our websites.

**13. Passwords.** You are responsible for securing your password(s) for access to FSP-L3. If you become aware of any unauthorized access to your account, theft or loss of your password, you agree to contact WRFS™ as soon as possible.

**14. Updates.** Software included in FSP-L3 may periodically be updated with tools, utilities, improvements, third party applications, or general updates to improve and enhance the features and performance of the software included in FSP-L3 at no additional cost to you. Updates are not customization of software specifically for your use; updates are defined as changes to the software that are global in nature and are provided to all customers of WRFS™.

#### **15. User Content.**

(a) You are responsible for all information, data, text, software, documentation, sound, photographs, graphics, messages, or other materials (“User Content”) created, uploaded, posted or stored through your use of FSP-L3. You grant WRFS™ a perpetual, worldwide, royalty-free, non-exclusive license to host and use any User Content provided through your use of FSP-L3. You are encouraged to archive your User Content regularly and frequently. You are responsible for any User Content that may be lost or unrecoverable through your use of FSP-L3. WRFS™ is not responsible for the User Content.

(b) You represent and warrant that you will not to use FSP-L3 to upload, post, distribute, link to, publish, reproduce, engage in or transmit any of the following or things similar to the following:

(i) illegal, fraudulent, libelous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, harassing, offensive, inappropriate or objectionable information, content, or communications of any kind, including without limitation conduct that would encourage or constitute an attack or “flaming” others, or criminal or civil liability under any local, state, federal or foreign law;

(ii) content or data that would impersonate someone else or falsely represent your identity or qualifications, or that constitutes a breach of any individual's privacy, including posting images about children or any third party without their consent (or a parent's consent in the case of a minor);

(iii) advertisements, solicitations, investment opportunities, chain letters, pyramid schemes, other unsolicited commercial communication or engage in spamming or flooding;

(iv) virus, Trojan horse, worm or other disruptive or harmful software or data; and

(v) any information, software or Content which is not legally yours and may be protected by copyright or other proprietary right, or derivative works, without permission from the copyright owner or intellectual property rights owner.

(c) If WRFS™ suspects in good faith that you have breached any of the representations in and warranties in Section 15(b), WRFS™ may terminate your account(s), erase your User Content, and may report you to law enforcement officials in the appropriate jurisdictions.

**16. No Professional Advice.** WRFS™ does not give professional advice as part of this agreement unless otherwise specified. All consulting services, if any, are governed by the Consulting Agreement.

**17. Audit.** WRFS™ may, or at its option may engage an independent third party to, review, inspect, and test your books, records, equipment, and facilities to the extent reasonably necessary to ascertain your compliance with this L3 Agreement (an "Audit"). WRFS™ may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to your systems to ensure that FSP-L3 is being used in accordance with this L3 Agreement. WRFS™ shall pay the costs it incurs, and the out-of-pocket costs you incur, as part of any Audit; you shall be liable, however, for all costs of any Audit that discloses that you have breached this L3 Agreement.

#### **18. Confidential Information.**

(a) Each party may disclose to the other party information that it designates as confidential or which should be reasonably understood to be confidential under the circumstances ("Confidential Information"). Each party agrees to hold such Confidential Information of the other party in confidence and to protect it with at least the same degree of care with which it protects its own similar confidential information, which in no event shall be less than reasonable care. WRFS™'s Confidential Information includes, without limitation, its technology, processes, specifications, developments and software programs, whether or not designated as Confidential Information. In addition, any third party software shall be included as Confidential Information, whether or not designated as Confidential Information.

(b) Nothing in this L3 Agreement shall prohibit or limit either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies)

(i) previously known to it without an obligation of confidence,

(ii) independently developed by or for it,

(iii) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, or

(iv) which is or becomes publicly available through no breach of this L3 Agreement.

(c) A party may disclose Confidential Information if law, court order, or regulation requires such disclosure; provided, however, that party makes commercially reasonable efforts to notify the other party in writing in advance of such disclosure.

(d) This Section 18 does not negate or supersede the terms of any other confidentiality agreement between you and WRFS™. Neither party may disclose the financial terms of FSP-L3 to any third party other than its counsel or accountants or as required by law.

**19. Limited Warranty.** If software included in FSP-L3 is acquired via CD or other media and the CD or other media on which the FSP-L3 is stored is defective, then return the CD or other media to WRFS™, Attn: Product Support, 2012 US HWY 12 W, Menomonie, WI 54751 within 30 days of shipment (or in the case of a vendor license purchase, within 30 days of purchase) with a dated receipt or packing slip, and a replacement CD or other media will be mailed to you. All warranties or guarantees given or made by WRFS™ with respect to the software FSP-L3 (a) are solely for the benefit of you as the registered user of FSP-L3 and are not transferable, and (b) shall be null and void if you breach any term or condition of this L3 Agreement.

**20. Disclaimer of Warranties.**

(a) YOUR USE OF FSP-L3 IS ENTIRELY AT YOUR OWN RISK. EXCEPT AS DESCRIBED IN THIS AGREEMENT, FSP-L3 IS PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WRFS™, COMPANIES OR PERSONS THAT ARE CONTRACTED AND/OR RECOMMENDED BY WRFS™ ("AFFILIATED COMPANIES"), AND ITS THIRD PARTY SERVICE OR DATA PROVIDERS, LICENSORS, DISTRIBUTORS OR SUPPLIERS ("SUPPLIERS") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT THE SOFTWARE AND SERVICES ARE FIT FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, DATA LOSS, NON-INTERFERENCE WITH OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, OR THE ACCURACY, RELIABILITY, QUALITY OR CONTENT IN OR LINKED TO THE SOFTWARE AND SERVICES, THE FOOD SAFETY PLAN AND ANY OTHER ASSOCIATED PROGRAMS, FORMS, OR OTHER OUTPUTS ARE STRICTLY BASED ON YOUR OWN CONTENT INPUT, AS SUCH WRFS™ IS NOT RESPONSIBLE FOR THEM IN ANY WAY. WRFS™, ITS AFFILIATED COMPANIES, AND SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE AND SERVICES ARE SECURE, FREE FROM BUGS, VIRUSES, CURRENT WITH ALL REGULATORY INTERPITATIONS, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION. FURTHER, WRFS™ DOES NOT WARRANT ACCESS TO THE INTERNET OR TO ANY OTHER SERVICE, CONTENT OR DATA TRANSMITTED THROUGH THE SOFTWARE. IF THE EXCLUSIONS FOR IMPLIED WARRANTIES DO NOT APPLY TO YOU, ANY IMPLIED WARRANTIES ARE LIMITED TO 90 DAYS FROM THE DATE OF PURCHASE OR DELIVERY OF THE SERVICES, WHICHEVER IS SOONER.

(b) WRFS™, AFFILIATED COMPANIES AND SUPPLIERS DISCLAIM ANY REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SOFTWARE AND SERVICES WILL SATISFY OR ENSURE COMPLIANCE WITH ANY LEGAL OBLIGATIONS OR LAWS OR REGULATIONS. YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE SOFTWARE IS IN ACCORDANCE WITH APPLICABLE LAW.

**21. Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF WRFS™, ITS AFFILIATED COMPANIES, AND SUPPLIERS FOR ALL MATTERS OR CLAIMS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID TO WRFS™ DURING THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIM. SUBJECT TO APPLICABLE

LAW, WRFS™, ITS AFFILIATED COMPANIES, AND SUPPLIERS ARE NOT LIABLE FOR ANY OF THE FOLLOWING: (A) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; (B) DAMAGES RELATING TO FAILURES OF TELECOMMUNICATIONS, THE INTERNET, ELECTRONIC COMMUNICATIONS, CORRUPTION, SECURITY, LOSS OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF BUSINESS, REVENUE, PROFITS OR INVESTMENT, OR USE OF SOFTWARE OR HARDWARE THAT DOES NOT MEET WRFS™ SYSTEMS REQUIREMENTS. THE ABOVE LIMITATIONS APPLY EVEN IF WRFS™, AFFILIATED COMPANIES, AND SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS AGREEMENT SETS FORTH THE ENTIRE LIABILITY OF WRFS™, ITS AFFILIATED COMPANIES, AND LICENSES AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE SOFTWARE AND ITS USE.

**22. Indemnification.** You agree to defend, indemnify, and hold WRFS™, its Affiliated Companies, and Suppliers harmless from any and all claims, liability and expenses, including reasonable attorneys' fees and costs, arising out of your use of FSP-3, or breach of this L3 Agreement (collectively referred to as "Claims"). WRFS™ shall (a) promptly notify you in writing of any claim and give you the opportunity to defend or negotiate a settlement of any such claim at your expense, and (b) cooperate fully with you, at your expense, in defending or settling any such claim. WRFS™ shall be entitled to engage their own local counsel at WRFS™'s expense. WRFS™ reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any Claims.

**23. Modifications to software included in FSP-L3.** WRFS™ may also change or discontinue the software included in FSP-L3, in whole or in part, including but not limited to, any feature or aspect of the FSP-L3, Internet based services, pricing, technical support options, and other product-related policies. If you continue to use FSP-L3 or WRFS™ Materials 30 days WRFS™ has made any changes, you will be deemed to have agreed to the changes.

**24. Dispute Resolution.**

(a) Any controversy or claim arising out of or relating to this L3 Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Hennepin County, Minnesota, except that it may be held by telephone where the Arbitration Rules expressly so permit. The arbitrator shall apply Minnesota law to all other matters.

(b) THE PARTIES AGREE THAT ANY AND ALL DISPUTES MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. BY AGREEING TO THE TERMS OF THIS L3 AGREEMENT AND AGREEING TO ARBITRATION, YOU AGREE THAT YOU AND WRFS™ ARE EACH WAIVING THE RIGHT TO FILE A LAWSUIT AND THE RIGHT TO A TRIAL BY JURY. IN ADDITION, YOU AGREE TO WAIVE THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR LITIGATE ON A CLASS-WIDE BASIS. YOU AGREE THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THESE RIGHTS.

(c) You agree to submit any disputes or claims under this L3 Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Dunn County, Wisconsin. In the event that litigation results from or arises out of this L3 Agreement or the performance thereof, the

parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by the court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

(d) To begin an arbitration proceeding, send notice to WRFS™ requesting arbitration and describing your claim.

## 25. General Terms

(a) Relationship of the Parties. The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of the other or have any authority to make any agreements or representations on the behalf of the other. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

(b) No waiver. No term or provision of this L3 Agreement will be deemed waived and no breach of this L3 Agreement will be deemed consented to or excused, unless such waiver, consent or excuse will be expressed in writing and signed by the party claimed to have so waived, consented or excused such term or provision.

(c) Entire L3 Agreement. This L3 Agreement constitutes the entire understanding between the parties with respect to the subject matter of this L3 Agreement and supersedes any and all other prior understandings, statements, warranties, representations and agreements, oral or written, relating to them, except that the terms of any earlier nondisclosure or confidentiality agreement shall remain in full force and effect. WRFS™ may amend this agreement by providing 30 days' advance notice of the amendment to you; if you continue to use the FSP-L3, WRFS™ Materials, or WRFS™ Subscription Services after the expiration of the 30-day notice period, you will be deemed to have agreed to the terms as amended.

(d) Severability. Should any part of this L3 Agreement be declared invalid, such order shall not affect the validity of any remaining portion, which shall remain in force and effect as if this L3 Agreement had been executed with the invalid portion eliminated.

(e) Use of Name. Except as specifically permitted in this L3 Agreement, neither Party shall use the names or trademarks of the other Party or of any of either Party's affiliated entities in any advertising, publicity, endorsement, or promotion unless either Party has provided prior written consent for the particular use contemplated.

(f) Notices. Notices delivered under the terms of this L3 Agreement will be in writing and sent by prepaid certified mail, return receipt requested, or by a nationally recognized overnight courier service to the respective addresses of the parties set forth in the recitals to this L3 Agreement. In the case of WRFS™, such notices will be directed to the attention of the General Counsel; and, in your case, such notices will be directed to the attention of the individual named above executing this L3 Agreement on your behalf. Notices will be effective on the date received.

(g) Assignment. Without the prior written consent of WRFS™, your rights to FSP-L3 and WRFS™ Materials under this L3 Agreement may not be assigned, sublicensed, or otherwise transferred, voluntarily or otherwise, by you, except to your affiliates.



(h) Effects of Headings. Headings to sections of this L3 Agreement are to facilitate reference only, and do not form a part of this L3 Agreement, and shall not in any way affect the interpretation of the L3 Agreement.

(i) Survival. Sections 1, 7 through 13, 15 through 22, and 24 through 25 shall survive termination of this L3 Agreement.

## Exhibit A – WRFS™ Mark and WRFS™ Mark display requirements

### 1. WRFS™ Mark:



### 2. WRFS™ Mark display requirements:

1. You may use the WRFS™ Mark only on your product labels, in the window of your retail establishment, your COAs, letters of guarantee, your website, checkout area of retail establishment or in online and print advertising (“Licensee Products”).
2. If at any time this L3 Agreement is terminated or suspended, you will immediately and thenceforth eliminate the WRFS™ Mark from, and refrain from using the WRFS™ Mark on any Licensee Products.
3. It is vitally important to the preservation of the WRFS™ Mark that the public consistently recognizes the WRFS™ Mark as identifiers of WRFS™ and WRFS™ as a source of WRFS™ Mark. To assure that the WRFS™ Mark are not used inadvertently and improperly, you may use the WRFS™ Mark only in a context in which they will be understood by the public to denote WRFS™ as the source of the WRFS™ Mark.
4. You must use the WRFS™ Mark in the exact style and form as provided by WRFS™. You shall not alter any of the WRFS™ Mark in any way during reproduction, except that you may alter the size of a WRFS™ Mark, provided the aspect ratio remains the same and each element of the Licensed Mark remains legible.
5. Without limiting the generality of the previous paragraph, you shall **never** make any of the following uses of the WRFS™ Mark:

- a. Redraw, round the corners, reshape, trace, tilt, intersect, photographically alter or otherwise distort the WRFS™ Mark.
  - b. Use any of the WRFS™ Mark as part of a company or individual name, or as any part of a domain name, URL, or web address.
  - c. Superimpose any of the WRFS™ Mark over any graphic pattern or design.
  - d. Combine any of the WRFS™ Mark with any other symbol or device.
  - e. Outline or frame any of the WRFS™ Mark.
6. You will not use the WRFS™ Mark (a) in any manner that suggests WRFS™'s endorsement or recommendation of you or Licensee Products or otherwise creates a false association with WRFS™; (b) on promotional merchandise (such as mugs, T-shirts, mouse pads or other merchandise) or in any way, other than in connection with the Licensee Products; (c) in any modified or changed format or appearance; (d) on or in connection with anything that is unlawful or encourages unlawful conduct; or (e) in any other way which disparages the WRFS™ Mark or WRFS™.
  7. You may not use any of the WRFS™ Mark or any portion of it as part of any domain name or web site name. You may not use any of the WRFS™ Mark as a hypertext link, as such a use can suggest an endorsement or recommendation of the linked site by WRFS™. The only exception is to establish a link to WRFS™'s web site.

## **SECTION 2 CONSULTING AGREEMENT**

This Consulting Agreement (“**Agreement**”) is entered into and is effective as of the Effective Date set forth upon registration of Food Safe Pro!® L3 and is between WRFS™, a Wisconsin Corporation (“**Consultant**”), and the purchaser of Food Safe Pro!® L3 (“**Company**”) to whom this copy of Food Safe Pro!® L3 is registered.

WHEREAS, the Company desires to engage the services of the Consultant to perform for the Company consulting services regarding the functions for the operation of as an independent contractor and not as an employee; and

WHEREAS, Consultant desires to consult with the officers of the Company, and the administrative staff, and to undertake for the Company consultation as to their business functions.

NOW, THEREFORE, it is agreed as follows:

**1. Term; termination.** This Agreement shall be effective from the date first set forth upon signing the Food Safe Pro!® L3 EULA until terminated as provided in this Section 1. This Agreement may be terminated: (a) by either party, in the event the other party has breached any covenant, obligation or warranty under this Agreement and such breach remains uncured for a period of seven days after notice thereof is sent to the breaching party; (b) by either party, if the other ceases to conduct business; (c) by either party, for convenience, on 30 days’ written notice

to the other party, provided Consultant shall complete any project for which it has been paid in advance, and Company shall compensate Consultant for any work undertaken during the term of this Agreement.

**2. Consultations.** Consultant shall be available to consult with the officers of the Company, and the heads of the administrative staff, at reasonable times, concerning matters pertaining to the Food Safety Programs, Regulatory Affairs, organization of the administrative staff, the fiscal policies of the Company, the relationship of the Company with its employees or with any organization representing its employees, and, in general, the important problems of concern in the business affairs of the Company. Consultant shall not represent the Company, its Board of Directors, its officers or any other members of the Company in any transactions or communications nor shall Consultant make claim to do so without express written consent of authorized agents of the company.

**3. Software and services.** In addition to the consultation provided under this agreement, Company shall receive the software and services listed in the Food Safe Pro!® L3 Sales Order, if any. Such software and services may be provided by a third party and be subject to separate terms and conditions. In the event this Agreement is terminated, access to such software and services shall terminate, and any agreements related to the software, consulting, and services shall also terminate.

**4. Liability.** With regard to the services to be performed by the Consultant pursuant to the terms of this agreement, the Consultant shall not be liable to the Company, or to anyone who may claim any right due to any relationship with the Corporation, for any acts or omissions in the performance of services on the part of the Consultant or on the part of the agents or employees of the Consultant, except when said acts or omissions of the Consultant are due to willful misconduct or gross negligence. The Company shall hold the Consultant free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from or growing out of the services rendered to the Company pursuant to the terms of this agreement or in any way connected with the rendering of services, except when the same shall arise due to the willful misconduct or gross negligence of the Consultant and the Consultant is adjudged to be guilty of willful misconduct or gross negligence by a court of competent jurisdiction.

**5. Compensation.** Company shall pay Consultant the fees set forth in more detail in the L3 Sales Agreement. Hours in excess of those specified in the L3 Sales Agreement shall be billed according to the WRFS™ standard fee Schedule that may be found on the web at [www.werfoodsafety.com](http://www.werfoodsafety.com). Consultant shall invoice Company each month that charges are accrued. Additionally, the Company shall reimburse the Consultant per diem for any reasonable out of pocket expenses incurred by the Consultant pursuant to the terms of this agreement such as travel costs, mailings, etc. The Consultant shall submit itemized statements of hours of services performed and expenses incurred during any particular month by the fifth (5th) day of the next succeeding month for all fees in excess of the retainer. The amount shall be paid to the Consultant by the fifteenth (15th) day of the latter month.

**6. Dispute Resolution.**

(a) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules, including the Expedited Procedures where applicable, the Optional Procedures for Large Complex Commercial Disputes where applicable, and the Optional Rules for Emergency Measures of Protection (collectively, the “Arbitration Rules”). Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Unless all parties to the dispute agree otherwise, any arbitration hearing or proceeding hereunder shall be held in Hennepin County, Minnesota, except that it may be held by telephone where the Arbitration Rules expressly so permit. The arbitrator shall apply Minnesota law to all other matters.

(b) Company agrees to submit any disputes or claims under this Agreement not subject to arbitration to the jurisdiction and venue of the state and federal courts sitting in Dunn County, Wisconsin. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by the court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

(c) To begin an arbitration proceeding, either party must send notice to the other requesting arbitration and describing its claim.

**7. Non disclosure.** Company agrees to execute the Standard Non-Disclosure Agreement (section 3 of this document), which shall survive this agreement as set forth in the Standard Non-Disclosure Agreement.

## **8. General terms.**

(a) **Relationship of the Parties.** The relationship of the parties hereunder is that of independent contractors. Neither party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee or employee of the other, and neither shall have any authority to make any agreements or representations on the other's behalf. Each party shall be solely responsible for the payment of compensation, insurance and taxes of its own employees and other contractors, and such employees are not entitled to the provisions of any employee benefits from the other party.

(b) **Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties, except that it may not be assigned by any means by Contractor without the prior written consent of Consultant. Any purported assignment in contravention of this Section shall be void.

(e) **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

(f) **Entire Agreement.** This Agreement and the agreements it references constitutes the complete and entire agreement of the parties and supersedes and merges all previous communications, oral or written, between the parties relating to the subject matter hereof. The parties have read this Agreement and agree to be bound by its terms.

### Section 3

#### WRFS™ INTEGRATED SOFTWARE SOLUTIONS INC. STANDARD MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "Agreement") is made and entered into and is effective on the Effective Date set forth upon registration of Food Safe Pro!® L3 and is between DKM Integrated Software Solutions Inc., a Wisconsin Corporation ("**Consultant**"), and the purchaser of Food Safe Pro!® L3 ("**Company**") to whom this copy of Food Safe Pro!® L3 is registered.

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED IN THIS AGREEMENT AND THE MUTUAL DISCLOSURE OF CONFIDENTIAL INFORMATION, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Definition of Confidential Information and Exclusions.

(a) Definition: "Confidential Information" means information that a party to this Agreement ("Disclosing Party") designates as being confidential to the party that receives such information ("Receiving Party") or which, under the circumstances surrounding disclosure, ought to be treated as confidential by the Receiving Party. "Confidential Information" includes, without limitation, information in tangible or intangible form relating to the technical and business information relating to proprietary ideas, patentable ideas and/or trade secrets, existing and/or contemplated products and services, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models of the Disclosing Party, Disclosing Party's business policies or practices, compilations of data and samples thereof, and information received from others that Disclosing Party is obligated to treat as confidential. Except as otherwise indicated in this Agreement, the term "Disclosing Party" also includes all Affiliates of Disclosing Party and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of Receiving Party. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a party.

(b) Exceptions: Confidential Information shall not include any information, however designated, that: (i) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed to Disclosing Party; (ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (iii) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party; or (iv) is independently developed by Receiving Party without reference to Confidential Information.

2. Obligations Regarding Confidential Information

(a) Disclosing Party warrants: that it has the right to disclose any Confidential Information it provides to Receiving Party.

(b) Receiving Party shall:

- (i) Refrain from disclosing any Confidential Information of Disclosing Party to third parties for two years following the date that Disclosing Party first discloses such Confidential Information to Receiving Party, except as expressly provided in Sections 2(c) and 2(d) of this Agreement;
- (ii) Take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party; and
- (iii) Refrain from using, disclosing, reproducing, summarizing and distributing Confidential Information of the Disclosing Party except in discussions, negotiations, and evaluation of Receiving Party's business relationship, or potential business relationship, with Disclosing Party, and otherwise only as provided hereunder.

(c) Required Disclosures: Receiving Party may disclose Confidential Information of Disclosing Party in accordance with a judicial or other governmental order, provided that Receiving Party either (i) gives Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection under applicable law or regulation.

(d) Permitted Disclosure: The undersigned Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis and only for the purposes set forth in Section 2(b)(iii) of this Agreement. Receiving Party shall execute written agreements containing confidentiality requirements at least as stringent as those contained herein with each employee and consultant to whom it will disclose Confidential Information before disclosing Confidential Information to them.

(e) Notice of Unauthorized Use: Receiving Party shall notify the undersigned Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any breach of this Agreement by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

(f) Return and Destruction of Copies: Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of and notes relating to Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same. The foregoing sentence notwithstanding, (i) Receiving Party may retain machine-readable archival copies of Confidential Information until destroyed in accordance with Receiving Party's document retention policies; and (ii) Receiving Party's legal counsel may retain one copy of Confidential Information for the sole purpose of establishing what Confidential Information Receiving Party has received.

### 3. Remedies

The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

### 4. General terms

(a) Intellectual Property Rights: All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein.

Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein.

(b) No Other Obligations: Other than the obligations expressly set forth herein, neither party shall have any further obligations to the other unless and until a definitive written agreement creating a business relationship between them is executed. Either party may withdraw from negotiations at any time, for any reason, without further obligation to the other. To the extent either party incurs costs or changed position as a result of any discussions between the parties, it does so entirely as its own risk. This Agreement does not create any agency or partnership relationship between the parties.

(c) Public Statements: Except as required by law, neither party shall make, deliver or publish any public statements or descriptions of the of the nature of discussions between the parties or of the fact that such discussions have taken, are taking, or will take place, without the prior written consent of the other party. Neither party shall use the name or marks of the other for advertising or any other purposes without the prior written consent of the other party.

(d) Export Limitations: The parties agree to comply with all applicable international and national laws that apply to (i) any Confidential Information, or (ii) any product (or any part thereof), process or service that is the direct product of the Confidential Information, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

(f) Integration and Modification: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any other agreements relating to the same subject matter between the parties whether oral or written. This Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, Receiving Party, or their agents or employees, but only by an instrument in writing signed by an authorized representative of each party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

(g) Disputes: If either Disclosing Party or Receiving Party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. This Agreement shall be construed and controlled by the laws of the State of Minnesota, without regard to the choice of law provisions thereof, and the parties further consent to exclusive jurisdiction and venue in the federal courts sitting in Hennepin County, Minnesota, unless no federal subject matter jurisdiction exists, in which case the parties consent to the exclusive jurisdiction and venue in the Wisconsin state courts in Dunn County, Wisconsin. Company waives all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule.

(h) Beneficiaries; Assignment: This Agreement shall be binding upon and inure to the benefit of each party's successors and lawful assigns; provided, however, that neither party may assign this Agreement (whether by operation of law, sale of securities or assets, merger or otherwise), in whole or in part, without the prior written approval of the other party. Any attempted assignment in violation of this Section 4(h) shall be null and void.

(i) Severability: If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.



(j) Termination: Either party may terminate this Agreement with or without cause upon ninety days' prior written notice to the other party. All sections of this Agreement relating to the rights and obligations of the parties concerning Confidential Information disclosed during the term of the Agreement shall survive any such termination.

## Section 4

### **FSP Audit Methodology (Provided for information purposes only)**

#### **Methodology:**

We R Food Safety!™ assess the validity of food safety systems in total utilizing our proprietary Food Safety Assessment Pro!™ system. This includes reviewing the design of the food safety system, (to include the support for decisions, programs, etc.), implementation at all levels, the facility (Onsite only) to include structural components, equipment, personnel, supporting programs, implementation, etc. Specific addendums may be used, for example the HIMP addendum for swine is used to determine if your HIMP operations meet or exceed traditional inspection results.

If critical issues arise or are noted they are immediately communicated to establishment management and recommendations for corrections will be given at that time as well as being documented in the summary section; we do not recommend sharing the Assessment worksheets as they will have trade secret as well as proprietary information documented in them. The summary section includes all deficiencies that were noted and that will have an impact of food safety or regulatory compliance.

#### **Management's responsibility for the presentation of records and facts.**

Management is responsible for the preparation and fair presentation of all related records and facts as well as free access to the facility and personnel as determined by the auditor. Record keeping systems will be maintained using record keeping requirements either required by appropriate regulatory authority or following those principles generally accepted in the United States; this includes the design, implementation, and maintenance of internal controls relevant to the preparation and fair presentation of records that are free from material misstatement, whether due to fraud or error.

#### **Auditor's responsibility.**

Our responsibility is to express an opinion concerning our findings to include those from records and observations during the onsite portion of the audit in accordance with the auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the records are free from material misstatement.

The audit involves performing procedures to obtain audit evidence about the compliance of the establishment with the baseline performance being audited against, in this case traditional swine inspection. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of records, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the establishments preparation and fair presentation of the records in order to design audit procedures that are

appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal controls unless specific to the audit.

### **Monthly Vulnerability Reports.**

Clients utilizing the Food Safe Pro!® L3 electronic record keeping system are assigned a consultant who reviews their programs and records. On a monthly basis the consultant reviews records input by establishment personnel and analyzes data for trends, for example higher temperatures noted on products, deviations from critical limits, etc. and they then submit a vulnerability report to the establishment for review. Utilizing a data management system allows the consultant to quickly and efficiently review the data collected, often times identifying negative trends before they become a concern allowing the client to make the necessary changes to their systems to preclude problems, and ultimately allowing them to maintain focus on food safety.

Monthly vulnerability reports are reviewed as part of both the Desktop and Onsite Audits however they are not to be confused with an audit. The vulnerability report is just that, it is a report on potential vulnerabilities as identified during data reviews. They are typically limited to a 1 month time period as such they don't give the total picture of the establishment.

### **We conduct two types of Audits, onsite and desktop.**

Desktop audits consists of reviewing your food safety programs, records that you are generating, and supporting documentation in the Food Safe Pro!® L3 system. We develop a comprehensive report based on our findings focusing on food safety and regulatory vulnerabilities. The Desktop audit is usually conducted within the first 90 days of implementation of a L3 system and annually thereafter.

Onsite audits are conducted as the name implies, onsite. These audits review all of your processes, records keeping, programs, implementation, regulatory compliance, food safety system implementation, etc. WRFS auditors complete the audit before leaving the establishment, providing the client with general findings. If critical issues arise they will be immediately communicated to establishment management and recommendations for corrections will be given to the Client. The Establishment size, number of Hazard Analysis and Critical Control Point (HACCP) processes employed, pre-requisite programs, physical layout, and complexity of the assessment will affect the time necessary to complete an Audit. Nonetheless, WRFS auditors should be able to complete the audit in 3 to 5 days. In the event that an extended amount of time will be needed to complete the audit, the auditor will explain the reasoning with the client and a decision will be made by the Client if they would like to proceed.

The audit is used to gather information associated with an array of food safety system components. The audit is arranged by components as they relate to the function of the process and include: demographics, facility (includes the physical building, equipment used, and the personnel in the facility), general sanitation, individual HACCP process, dual jurisdiction (If regulated by both USDA and FDA), specific program reviews (for example CGMP's, Military Contract Compliance, and other specific regulatory or customer specific programs as applicable), food defense, and the recommendations. The audit is intense and detail orientated however it is not a scored audit; what it is simply: the report on your food safety program in total. Please note that only those clients who have a food safety program that will consistently produce a safe product may be licensed to advertise that they have been audited using our methodology, please ask for details when you schedule your audit.

The purpose of the audit is to give a complete picture of the operation identifying regulatory, food safety, business practices, and program as well as facility and personnel weaknesses so that the operator can focus resources to improve the operation in the most efficient and cost effective manner.

Our goal is to give you an audit report that you can use to meet regulatory compliance as well as assist you in planning for the future. The recommendations contained in the audit are strictly that; we encourage each client to review the audit in detail and make those changes that they deem necessary to produce a safe and wholesome product and meet their regulatory and customer requirements.

In order to be found compliant your facility may not have any derogatory findings that the auditor determines may cause a food safety, regulatory, or customer requirement failure. In essence upon completion of the audit you will either pass or fail. The reason for this approach is simple, your end customers either have food poisoning or they don't, your regulator finds you compliant or they find you are not, and your direct customers either purchase from you or they don't. The real world doesn't give you a feel good score and neither do we.

The audits are performed by our staff and are not "farmed out" to other consulting or audit groups unless specifically requested by the client. The auditor will have extensive background and knowledge of the audit process, food safety, and best practices. The auditor has an extensive network of colleagues within our consulting group whom they can call on for assistance should they come across something unique to their experience. Our audit team includes Food Technologists, Veterinarians, former government regulators, etc. We are uniquely positioned to provide our clients with world class service; no other organization has the mix of talents and experience that we offer.

The audit findings are the property of the client and are not disclosed outside of our company or our clients company, and then only to those employees whom the client has authorized. We insist on utilizing a non-disclosure agreement prior to any work being accomplished, we are insured, and we require all clients to maintain the confidentiality of the Food Safety Assessment System Pro!<sup>TM</sup> process.