

TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are provided to you, for services to be provided by DONLEVY, INC. ("DonLevy"). Services provided by DonLevy are expressly limited to the following terms and conditions:

1. **Services.** DonLevy shall:
 - a. Perform services in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of profession and practicing in the geographical location of DonLevy Laboratories.
 - b. Perform all services in substantial accordance with the basic requirements of applicable regulations.
 - c. Submit reports of all services performed. Such reports shall be complete and factual based upon information provided by the Client.
 - d. Retain all pertinent records relating to the services performed by DonLevy for a period of three (3) years following submission of the report, during which period the records will be made available to the Client at all reasonable times, which may result in additional cost to the Client.
 - e. DonLevy, by the performance of services covered hereunder, does not in any way assume, abridge, or subordinate any of those duties, responsibilities, or authorities with regard to the Product, customarily or legally vested in the Client or its authorized representatives; which shall remain Client's sole and exclusive liability.
2. **Consulting Services.** Should DonLevy, or its designated agent, provide consulting services to Client as part of the Scope or Work/Proposal including advice and/or recommendations, Client is solely responsible for its managements' decisions as to whether it is in Client's best interests to implement or not implement any advice and/or recommendations given by DonLevy as a consultant. Under no circumstances shall DonLevy be liable for Client's decision to implement or failure to implement DonLevy recommendations.
3. **Sample Acceptance:** Sample Acceptance is defined as the point in time after which DonLevy has received and inspected the samples and received project guidance regarding the requested testing and any discrepancies in the chain of custody Forms and determined that it can proceed with the requested testing. DonLevy reserves the right to refuse or reject any sample that it deems to be: (i) of unsuitable volume; (ii) a health, safety, environmental or other risk; or (iii) a sample that will fail to meet holding times either due to the passage of more than 48 hours from the time of sampling or the passage of half the holding time for the requested test, whichever is less. **QAPPs:** Should Client want DonLevy to perform in accordance with a mutually agreed upon Quality Assurance Project Plan (QAPP), Client must seek agreement with DonLevy on such a plan before DonLevy receives the samples. Samples arriving prior to an agreement upon a QAPP will be analyzed under DonLevy's Quality Assurance Plan then in effect. DonLevy will not be responsible for resampling or other costs for work that must be completed in order to comply with a QAPP that is finalized subsequent to DonLevy receiving samples. **Challenge to Results:** Client shall pay DonLevy for all services performed on their behalf and for all results utilized by Client or customers of the Client, regardless of any allegation on the part of Client or Client's customer that the results issued by DonLevy did not conform to DonLevy's responsibilities as set forth in the Agreement. In every instance, DonLevy shall be given the opportunity to defend its data directly with any person or entity challenging its results. Should DonLevy be prohibited or hindered from directly defending its data, all sums owed to DonLevy by Client shall be immediately due and payable and no refund for sums paid by Client will be issued by DonLevy. **Choice of Laboratory:** Unless Client has specified, in a timely manner, a particular location where DonLevy is to perform its testing Services for Client, DonLevy may perform tests at any affiliated laboratory. DonLevy retains the right, at its discretion, to subcontract services ordered by Client to another laboratory or other laboratories.
4. **Sample Retention/Risk of Loss.** After the results have been reported, samples are routinely retained in our storage facilities according to the following schedule. A written agreement signed by both parties must be entered into if the Client desires that DonLevy retain samples longer than the following schedule. Except where DonLevy provides courier services, the entire risk of loss or damage to samples or other goods remains with Client. Client will be responsible and DonLevy will not have any responsibility for the action or inaction of any Client or carrier shipping or delivering any sample to or from DonLevy's premises or its network laboratories.

Sample Type	Retention Time
Quantitative/Qualitative Refrigerated	14 days
Quantitative/Qualitative Frozen	10-14 days
Quantitative/Qualitative Shelf Stable	10-14 days
Water (Potability)	Not Retained
Litigation Purposes	90 days
5. **Independent Contractor.** Nothing contained herein or any document executed in connection herewith, shall be construed to create a relationship of employer-employee, partnership or joint venture between the DonLevy and Client. DonLevy is an independent contractor and not an employee of Client or any of its subsidiaries or affiliates. Client will not withhold any amount for payment of federal or state taxes from the compensation of DonLevy hereunder. DonLevy will not represent to be or hold itself out as an employee of Client. DonLevy will have sole discretion over the means of performing its Services.
6. **Client Responsibilities.** Client or its authorized representatives shall:
 - a. Designate in writing a person or firm to act as Client representative with respect to DonLevy's services to be performed under this Agreement, such person or firm to have complete authority to transmit instructions, receive information and data, and to order, at Client's expense, additional services.
 - b. Designate in writing those representatives of Client who are authorized to receive copies of DonLevy reports or verbal results.
 - c. Allow DonLevy's employees, agents and representatives access to Client's facilities as deemed necessary by DonLevy to perform its legal services hereunder. Client shall provide a safe work place and safe working conditions for DonLevy's employees, agents and representatives. Any hazardous or toxic materials to which DonLevy's agents or employees may be exposed during the performance of this Agreement shall be disclosed to DonLevy prior to the performance of its services and shall be properly stored and labeled. Clients shall be liable for and shall pay all costs and damages resulting from Client's failure to disclose to DonLevy that a sample contained or was suspected to contain a hazardous substance or Client's failure to comply with any local, state or federal law regarding the sample. Client shall provide DonLevy with written notice, prior to sample submission, of all licenses and certifications that it will require DonLevy to hold during performance of services by DonLevy for Client. DonLevy will notify Client of any revocation of a required license or certification.
 - d. Client hereby represents and warrants that it has full right and title in and to the samples provided to DonLevy hereunder and has the full authority to enter into this Agreement.
7. **Indemnification.** Client agrees to indemnify and hold DonLevy harmless from and against all liability, claims, fines, demands, damages, costs and expenses arising from civil, state, federal or administrative actions, including but not limited to, attorney's fees and reasonably hourly charges of employee of DonLevy, whether for personal injuries or damages to property or otherwise, arising out of services performed by Client in accordance with this Agreement, or arising out of any violation by Client of its obligations set forth in the Agreement. DonLevy agrees to notify Client promptly of any such claims. Such indemnification shall not apply in any situation where the claim or demand, or alleged reliability or damage was caused by the sole negligence of DonLevy or its employees during the course of performing services under this Agreement.
8. **Legal Proceedings.** All costs and expenses associated with compliance with any request for documents, testimony or otherwise related to the work performed by DonLevy for Client shall be paid by Client. Such costs and expenses may include, but are not limited to, hourly rates for DonLevy employees or representatives who are involved in the response to the request; travel and accommodations, attorney's fees, and any other costs and expenses related to or arising out of DonLevy's response to such request. Client agrees that in the event it requests additional copies of test documentation, or in the event DonLevy Laboratories is required to search for and produce copies of test documentation by subpoena or otherwise, Client shall be responsible to reimburse DonLevy Laboratories its reasonable costs and expenses, including attorney's fees. Client further agrees to reimburse DonLevy Laboratories for any costs and expenses incurred, including attorney fees, in submitting to deposition or other testimony related to Client. Client's agreement to pay and/or reimburse DonLevy for the litigation services and costs referenced above shall remain in full force and effect for 10 years from the last date that DonLevy completes providing services for Client.
9. **Dispute.** Disputes arising out of the performance of the Services shall be resolved in a timely manner at the lowest possible level by those possessing authority to resolve such disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) business days. The initiating party shall have three (3) business days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) business days to negotiate in good faith to resolve the dispute, which will normally include

escalating the issue within each party's organization. If the dispute persists and the parties fail to resolve the dispute within three (3) business days, the matter is to be resolved by binding arbitration administered by Judicial Arbitration and Mediation Services, Inc. (JAMS) in accordance with its Arbitration Rules. Any arbitration will be conducted through the use of one arbitrator to which the parties shall share the costs of the arbitrator equally. The place of arbitration shall be Seattle, Washington with the arbitrator to be selected by mutual agreement of the parties.

10. **Warranty and Limits of Liability.** DONLEVY DOES NOT MAKE AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT ACKNOWLEDGES THAT COMPLEX SERVICES, SUCH AS THOSE DEVELOPED BY DONLEVY, ARE RARELY FREE OF DEFECTS OR ERRORS AND DONLEVY DOES NOT WARRANT THE SAME. DONLEVY SHALL NOT BE LIABLE FOR LOST PROFITS, DAMAGE TO GOODWILL OR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR PUNITIVE DAMAGE WHETHER RAISED IN CONTRACT, TORT OR OTHER LEGAL THEORY. The liability of DonLevy for any claim, loss, damage or expense arising out of, in connection with or resulting from the Services, or any breach of this Proposal, shall in no case exceed the total aggregate sum of the cost payable for the specific Services provided to Client giving rise to such claim. In no event shall DonLevy be held liable beyond the limits of its applicable insurance. DonLevy shall be discharged from all liability for all claims for loss, damage or other expense unless suit is brought within one year after the date of performance by DonLevy of the specific service which gives rise to the claim or in the event of any alleged non-performance within one year of the date when such service should have been completed and only in instances when written notice has been delivered to DonLevy. DonLevy assumes no responsibility for variations in quality or composition of products not sampled or for conditions beyond the control of DonLevy. DonLevy shall not be liable for delays or other problems caused by unforeseen circumstances or circumstances beyond its reasonable control, compliance with governmental requests, laws, regulations or orders, breakage or failure of machinery or apparatus or any other event beyond the reasonable control of DonLevy.
11. **Confidential Information.** DonLevy and Client acknowledge that in the course of performing under this Agreement, each party may be exposed to or acquire information which is proprietary to or confidential to the other party, its suppliers or customers. The parties agree to hold such information in strict confidence, to only permit use of such information by its employees and agents having a need to know in connection with performance under this Agreement, and not to copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose the confidential information for any purposes whatsoever, without the express written permission of the other party and to advise each of their employees, agents and representatives of their obligations to keep such information confidential. Both parties acknowledge, understand and agree that disclosure, distribution or use of Confidential Information may cause irreparable harm for which the remedies available at law for damages of any breach or threat of breach to the provisions of this Agreement will be inadequate.
12. **Use of Reports**
 - a. Client acknowledges that any report furnished by DonLevy is furnished solely for the benefit of Client. The report may be reproduced only in its entirety and disclosed only to individuals or entities having a need to know the contents of the report. Client shall not use the report for advertising or publicity nor for any other public disclosure without DonLevy's prior written consent.
 - b. DonLevy shall consider all reports to be the property of the Client and shall distribute reports and copies, except as may be required by law, only to those persons, organizations or agencies specifically designated in writing by Client or its authorized representative and approved by DonLevy. In the event DonLevy's counsel determines that reports or copies must be disclosed, pursuant to law or regulation, DonLevy shall notify Client.
 - c. Client will not, without prior written consent of DonLevy, use or publish DonLevy's name, trade names, trademarks or service marks, or any results or report prepared by DonLevy in connection with any marketing or advertising or in any publication concerning or relating to Client or Products or in any manner in which may cause harm to DonLevy's reputation and/or business.
 - d. Client will not, at any time, misrepresent the substance or effect of any material fact, conclusion or finding contained in any report or other information received from or relating to DonLevy or its work on behalf of Client.
 - e. The report format used by DonLevy is proprietary to DonLevy and shall remain DonLevy's sole and exclusive property. Additional charges may apply for customized reports that differ from the DonLevy format. DonLevy will retain exclusive ownership of any and all analytical methods, QA/QC protocols, and equipment developed by DonLevy for performance of work by DonLevy.
13. **Payment.**
 - a. Client will pay DonLevy for services and expenses in accordance with the payment terms set forth on the invoices within thirty (30) days of the date of the invoice. Any balances remaining unpaid at due date may be subject to service charges of 1.5% per month (or the maximum amount allowed by law) until paid. If legal action or collection proceedings are necessary for enforcement of payment, DonLevy shall be entitled to recover reasonable attorney's fees and other costs of collection incurred in that action.
 - b. All fees shall be billed directly to Client. DonLevy will not bill a third party without a statement, signed by the party to be bound, which must acknowledge and accept payment responsibility.
14. **Equal Opportunity.** DonLevy is an equal opportunity employer. The terms of 41 CFR 60 regarding equal opportunity are hereby incorporated by reference.
15. **Assignment.** Client may not delegate, assign, sublet or transfer its duties or interest in the Agreement without prior written consent of DonLevy. DonLevy may, in its sole responsible judgment, subcontract any of the services set forth herein.
16. **Termination.** Upon termination or expiration of the Agreement, DonLevy shall be paid in full for all services performed through the termination date and the Client shall be provided with a complete report of the results of tests and analysis conducted through such date.
17. **Governing Law.** This agreement shall be governed by the laws of the State of Indiana, without regard to its principals or conflicts of laws. Any dispute arising hereunder shall be resolved by a court of competent jurisdiction located in the State of Indiana.
18. **Entire Agreement.** The Agreement, including these terms and conditions, represents the entire agreement between Client and DonLevy for the services set for herein and supersedes all prior negotiations, representations or agreements, written or oral related thereto. The agreement may be amended only by written instruments signed by Client and DonLevy. In no event shall subsequent terms and conditions on Client's purchase order or other forms or correspondence have any force or effect and are hereby rejected and declared null and void and of no effect whatsoever.
19. **Severability.** In the event that any word, phrase, clause, sentence or other provisions of this Agreement shall be determined to be in violation of any applicable statute or rule of law in any jurisdiction in which it is interpreted, the parties agree that any such portion of provision of this Agreement shall be ineffective to extent of such violation without invalidating any other part or Agreement is unreasonable as to time and area, or both, by any court of competent jurisdiction, the Corporation shall be entitled to force this covenant for such a period of time and within such area as may be determined to be reasonable by any courts of competent jurisdiction.
20. **Miscellaneous, No Express or Implied License:** Nothing contained within this Agreement or any attachment thereof nor the delivery of information shall be construed as granting to Client any right or license to any real, personal or intellectual property including but not limited to, patents, patent applications, trademarks or secrets, any know-how or invention of DonLevy or other Confidential Information as defined herein. **Notices:** Any notices required or permitted shall be given to the appropriate party at the address in the Proposal or at such other address as the party shall specify in writing. Any notice shall be deemed given upon the personal delivery, or seven (7) business days after the date of mailing, when sent by certified, registered, or regular mail postage prepaid. **Successors and Assigns:** The parties' rights and obligations under this Agreement will bind and inure to the benefit of their respective successors and permitted assigns. **Industry Usage:** Words, phrases, or expressions which are not defined herein, but have an accepted meaning, usage or custom in the business and science of microbiology shall have that meaning. **Waiver:** A waiver by DonLevy of a breach of any provision of this Agreement by Client shall not operate or be construed as a waiver of any subsequent breach by Client. No waiver shall be valid unless in writing and signed by DonLevy. If DonLevy waives any term or provision of this Agreement at any time, that waiver will be effective only for the specific instance and specific purpose for which the waiver was given.