

Standard Terms and Conditions:

These Standard Terms & Conditions are between Berkeley Analytical Associates, LLC, (“Berkeley Analytical”) located at 815 Harbour Way South Suite 6, Richmond California 94804 and

_____ located at _____
_____ (“Customer”) and are effective as of _____, 20_____

(the “Effective Date”). The parties agree as follows:

Acceptance & Modifications: This document contains all terms and conditions of the parties’ agreement concerning services provided by Berkeley Analytical to the person, firm or company to whom a quotation is addressed or for whom any test or service is performed (Customer) and can be accepted only upon the provisions expressed herein. The document may not be modified, amended, superseded or waived except in writing by a Berkeley Analytical authorized representative. Customer may accept this document by specifically acknowledging, confirming or executing it, or by delivering samples to Berkeley Analytical and/or by accepting any performance of this agreement by Berkeley Analytical, partial or complete.

Analysis Requests: Before performing any work, Berkeley Analytical shall examine and review Customer’s test/analysis request, which shall outline the scope and timing of work to be performed. If such request is incomplete or unclear, Berkeley Analytical shall consult Customer before proceeding with the work. Customer shall provide such additional information requested by Berkeley Analytical as may be necessary for the satisfactory performance of the work covered by each request.

Responsibilities of Berkeley Analytical: Berkeley Analytical shall perform its work in accordance with accepted standards and methods within the industry, accepted standard operating procedures, and Berkeley Analytical’s quality standards in effect at the time services are rendered. Berkeley Analytical reserves the right to deviate from standard methods and procedures where this, in Berkeley Analytical’s

sole discretion, is necessary or advisable based on current scientific literature and/or industry practice.

Berkeley Analytical represents that its services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by other professionals providing services under similar circumstances. NO OTHER REPRESENTATIONS TO CUSTOMER, EXPRESS OR IMPLIED, AND NO WARRANTY OF RESULTS ARE INCLUDED OR INTENDED IN ANY REPORT, OPINION, OR DOCUMENT PREPARED BY BERKELEY ANALYTICAL IN CONNECTION HEREWITH OR OTHERWISE.

Berkeley Analytical shall furnish all supervision, labor, facilities, equipment, materials, supplies and certifications necessary or desirable to perform its work. If Customer directs a manner of making tests/analyses that varies from standard or recommended procedures, Customer shall hold Berkeley Analytical harmless from all claims, damages and expenses arising out of such direction.

Sample Custody: Samples accepted by Berkeley Analytical shall remain the property of Customer while in the custody of Berkeley Analytical and shall be retained by Berkeley Analytical for a period of thirty (30) days following the date of submission of its report to Customer. Berkeley Analytical shall extend the retention period if Customer requests and agrees to pay for additional storage. Following the retention period, Berkeley Analytical shall dispose of samples unless otherwise directed by Customer. Usable samples, such as furniture, may at Berkeley Analytical’s discretion become the property of Berkeley Analytical and either will be donated to a charity of Berkeley Analytical’s choosing, used at

its discretion, or destroyed. If Customer directs that samples be returned or otherwise disposed of by specified means, Customer shall be responsible or paying packaging, transportation and reasonable labor costs. Berkeley Analytical shall provide a cost estimate for such disposal upon request. Additionally, Berkeley Analytical reserves the right to charge Customer for all reasonable costs associated with the disposal of samples it considers difficult or hazardous to handle, or at the option of Berkeley Analytical, to return difficult to handle or hazardous samples to Customer at Customer's expense in lieu of disposal.

Safety: Customer shall provide Berkeley Analytical with all information required to enable Berkeley Analytical to perform its services in a safe manner. All hazardous characteristics shall be clearly identified by submitting associated hazard documentation. All shipments to Berkeley Analytical shall comply with federal and state regulation including U.S. DOT. Berkeley Analytical may refuse acceptance or revoke acceptance of samples if it determines they present a risk to health, safety or the environment or that Berkeley Analytical is not authorized to accept them. Customer shall promptly remove from Berkeley Analytical's facilities at their expense any and all samples for which Berkeley Analytical revokes its acceptance.

Reports and Records: Unless otherwise agreed by Berkeley Analytical in writing, Customer shall use reports prepared by Berkeley Analytical only for the purposes disclosed to Berkeley Analytical at the time of contracting. Reports shall not be copied except in their entirety unless authorized by Berkeley Analytical. Berkeley Analytical shall maintain records and supporting documents for work for a period of seven (7) years after completion of said work. Berkeley Analytical shall be the owner of all such records and supporting documents; provided, however, document copies may be supplied to Customer upon request. Unless otherwise agreed by Berkeley Analytical in writing, any and all analytical methods and procedures, QA/QC protocols, and equipment developed by Berkeley Analytical for the performance of any work or service shall be retained by Berkeley Analytical and shall be

Berkeley Analytical's exclusive property. Berkeley Analytical is not responsible for any and all claims made by Customer or third parties based on testing or other work performed by Berkeley Analytical.

User Names, Passwords and Online Security:

Berkeley Analytical may offer the Customer online access to Customer's reports and other Customer records. Online access requires a unique user name and a unique user password that are assigned by Berkeley Analytical. Customer shall be entirely responsible for maintaining the confidentiality of their assigned user name and password and for restricting unauthorized access to computers containing these codes. Berkeley Analytical shall not be liable for any loss that may occur as the result of someone else using Customer's codes, either with or without Customer's knowledge. Customer may request a change in user name and password or the termination of online access privileges at any time during normal business hours. Berkeley Analytical takes reasonable, industry standard precautions to protect the security of Customer reports and records posted online and the physical and electronic security of user names and passwords. However, Berkeley Analytical does not warrant that its website is free of viruses and other harmful components or that the security of the website will not be breached by malicious attacks. Berkeley Analytical reserves the right to refuse online access, terminate accounts, remove or edit content, or cancel online transactions at its sole discretion.

Confidentiality: Berkeley Analytical shall not provide analytical results or information on Customer work to any party other than Customer, unless Customer, in writing, specifically authorizes information to be provided to a third party or unless disclosure by Berkeley Analytical is required by law.

Payment Terms: Customer shall pay in full the net amount of each invoice submitted by Berkeley Analytical within thirty (30) days of the date thereof. Amounts not paid when due shall bear interest at the rate of 1.5% per month, or the maximum rate permitted by law, whichever is less, from the date due until the date of payment.

Termination or Suspension: Customer shall have the right to cancel orders placed with Berkeley Analytical or suspend work on orders, but shall be obligated to pay for all work completed and expenses incurred during the period of time prior to cancellation or suspension. A proposal by Customer to change an analysis request shall be regarded at Berkeley Analytical's discretion as an order to suspend work until agreement is reached on the effect of such change on the compensation payable to Berkeley Analytical and other relevant issues raised by the change.

Right to Stop Work: In the event Customer fails to pay for services rendered within thirty (30) days after the date of any invoice from Berkeley Analytical, then, in addition to any other rights or remedies provided by law, Berkeley Analytical shall have the right to suspend any further work for Customer and to retain any and all of its work product not yet delivered to Customer. Customer shall have no right to use the work of Berkeley Analytical for any purpose until the same has been paid for in full.

Attorneys' Fees: If either party to this agreement makes a claim against the other as to issues arising out of the performance of this agreement or enforcement of its terms, the prevailing party shall be entitled to recover its reasonable expenses of litigation, including reasonable attorneys' fees.

Time Limit for Making Claims: Berkeley Analytical shall not be liable for damages unless suit is commenced within two (2) years of the date of injury or loss or within two (2) years of the date of completion by Berkeley Analytical of its services, which-ever is earlier. In no event shall Berkeley Analytical be liable for damages unless it has been notified by Customer of the discovery of any claimed negligent act, error, omission or breach within thirty (30) days of the date of its discovery and unless Customer has given Berkeley Analytical an opportunity to investigate and to recommend ways Customer may mitigate its damages.

Limitation of Liability: Berkeley Analytical shall not be responsible for any nonperformance or delay in work caused by Customer, Customer's employees, agents or contractors. Berkeley Analytical will use its best efforts to comply with storage, processing and analytical holding time limits required by

government regulations, standard methods and practices, or Customer. However, these time limits and test/analytical hold times are not guaranteed by Berkeley Analytical.

To the fullest extent permissible by law, Berkeley Analytical disclaims all warranties, express or implied, as to the operation and content of Berkeley Analytical's website (both public and Customer access areas), including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. Berkeley Analytical will not be liable for damages of any kind arising from the use of Berkeley Analytical's website by Customer and other parties.

In no event shall Berkeley Analytical be liable for any incidental or consequential damages of any kind including without limitation business interruption, loss of use, or loss of profits incurred by Customer, whether or not arising out of negligence. The aggregate liability of Berkeley Analytical for its negligent acts and omissions and for its non-intentional breach of the agreement with Customer shall not exceed the fee paid to Berkeley Analytical for its services. Customer agrees to indemnify Berkeley Analytical from all liabilities to others in excess of that amount. The remedy shall be limited to Berkeley Analytical promptly re-performing the deficient work at its own expense or at Berkeley Analytical's option, refunding the money paid for such work. The foregoing limitation on Berkeley Analytical's liability does not apply to losses arising from the gross negligence of Berkeley Analytical or intentional breaches of contract.

Response to Legal Process: Customer shall compensate Berkeley Analytical for its services and expenses if Berkeley Analytical is required to respond to legal process related to its services for Customer, including responding to subpoenas for Berkeley Analytical to appear as a witness. Compensable services shall include hourly charges for all Berkeley Analytical personnel involved in the response and attorneys' fees reasonably incurred in obtaining advice concerning the response, the preparation of the testifier and appearances related to the legal process.

Insurance: Berkeley Analytical shall, while performing its work for Customer, maintain in

force workers compensation insurance in the amount required by law and general liability insurance in the amount of not less than One Million Dollars (\$1,000,000).

Employment Practices: It is the policy of Berkeley Analytical not to discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age or for any reason prohibited by law.

Force Majeure: Neither Berkeley Analytical nor Customer shall have any liability for nonperformance caused in whole or in part by causes beyond their reasonable control. Such causes include, but are not limited to, unusual weather, fires, floods, earthquakes, civil unrest and war, acts of authorities, failure of subcontractors, and delays or damage during shipments. In the event of any of these circumstances, Berkeley Analytical's time for completion of this agreement shall be extended accordingly. Any such delays shall in no event excuse Customer from paying amounts owed for services performed prior to the occurrence of the delay.

Authorized Signature and Acceptance:

Executed by the parties on the date and at the place(s) set forth below

Berkeley Analytical Associates, LLC

Dated:

Place:

Signed: _____

Printed Name/Title: _____

For **Berkeley Analytical Associates, LLC**

Berkeley Analytical Associates, LLC
815 Harbour Way South, Unit 6
Richmond, CA 94804-3612, USA

baalab@berkeleyanalytical.com

(+1) 510-236-2326

Customer

Dated:

Place:

Signed: _____

Printed Name/Title: _____

For (Company name/address):

Severability: In the event that any provision of this agreement shall be held to be invalid or unenforceable, the other provisions of this agreement shall be binding on the parties hereto.

Relationship of the Parties: Berkeley Analytical shall perform work for Customer as an independent contractor and is not an employee of Customer.

Entire Agreement and Governing Law: Unless modified by a written agreement signed by Berkeley Analytical and Customer, these terms and conditions shall constitute the entire agreement between the parties as to the matters herein addressed, any prior course of dealing or trade custom notwithstanding. This agreement between Berkeley Analytical and Customer shall be governed by laws of the State of California and the parties agree to submit to the exclusive jurisdiction of the State of California to determine any issues of enforcement and interpretation of this agreement.

Customer Credit Application

Legal Name of Business: _____

Please indicate business form: Sole Proprietorship Partnership Corporation, State of _____

Address: _____

Billing address (if different): _____

Phone: _____ Fax: _____ Federal Employer ID # (FEIN): _____

Billing Contact: _____ Email: _____ Phone: _____

Information required for payment authorization: PO# Project# Contract# Other: _____

Amount of credit requested: \$_____ (Standard limit is \$10,000)

Business Banking References

Bank: _____ Phone: _____ Fax: _____

Address: _____

Account #: _____ Type of account: Checking Loan Other _____

Trade References

Company: _____ Phone: _____ Fax: _____

Address: _____

Company: _____ Phone: _____ Fax: _____

Address: _____

Company: _____ Phone: _____ Fax: _____

Address: _____

Owner/Principal Information

Name: _____ Title: _____

Home Address: _____

Home Phone: _____ Social Security # _____ (required if not incorporated)

Name of other owners/principals: _____

I certify that the preceding information is a true representation of the facts, any person or institution to furnish Berkeley Analytical with any information requested in connection with this application.

Authorized signature: _____ **Date:** _____

Print Name: _____ **Title:** _____