

## **Terms & Conditions of Agreement between Berkeley Analytical Associates, LLC and Client**

Acceptance and Modifications: This document contains all terms and conditions of the parties' agreement concerning services provided by Berkeley Analytical Associates, LLC (BAA) to the "Client" (person, firm or company to whom a quotation is addressed or for whom any test or service is performed) 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 The document may not be modified, amended, superseded or waived except in writing by a BAA authorized representative. Client may accept this document by specifically acknowledging or confirming it, or by accepting any performance of this agreement by BAA, partial or complete.

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

Responsibilities of BAA: BAA shall perform its work in accordance with accepted standards and methods within the industry, accepted standard operating procedures, and BAA's Quality Assurance/Quality Control Plan in effect at the time services are rendered. BAA reserves the right to deviate from standard methods where this, in BAA's sole discretion, is necessary or advisable based on current scientific literature.

BAA 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 CLIENT, EXPRESS OR IMPLIED, AND NO WARRANTY OF RESULTS ARE INCLUDED OR INTENDED IN ANY REPORT, OPINION, OR DOCUMENT PREPARED BY BAA IN CONNECTION HEREWITH OR OTHERWISE.

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

Sample Custody: Samples accepted by BAA shall remain the property of Client while in the custody of BAA. BAA shall retain samples for a period of thirty (30) days following the date of submission of its report to Client. BAA shall extend the retention period if Client requests and agrees to pay for additional storage. Following the retention period, BAA will dispose of most samples unless otherwise directed by Client. BAA reserves the right to charge for disposal of samples it considers difficult or hazardous to handle or, at the option of BAA, to return samples to Client in lieu of disposal. All such samples returned shall be accepted by Client.

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

Reports and Records: Unless otherwise agreed by BAA in writing, Client shall use reports prepared by BAA only for the purposes disclosed to BAA at the time of contracting. BAA shall maintain records and supporting documents for work for a period of five (5) years after completion of said work. BAA shall be the owner of all such documents; provided, however, that copies may be supplied to Client upon request.

User Names, Passwords and Online Security: BAA may offer Client online access to client's reports and other client records. Online access requires a unique user name and a unique user password that are assigned by BAA. Client 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. BAA will not be liable for any loss that may occur as the result of someone else using Client's codes, either with or without Client's knowledge. Client may request a change in user name and password or the termination of online access privileges at any time during normal business hours.

BAA takes reasonable, industry standard precautions to protect the security of client reports and records posted online and the physical and electronic security of user names and passwords. However, BAA 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. BAA reserves the right to refuse online access, terminate accounts, remove or edit content, or cancel online transactions at its sole discretion.

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

Payment Terms: Client shall pay in full the net amount of each invoice submitted by BAA 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: Client shall have the right to cancel orders placed with BAA 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 Client to change an analysis request may be regarded by BAA as an order to suspend work until agreement is reached on the effect of such change on the compensation payable to BAA and other relevant issues raised by the change.

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

Alternative Dispute Resolution: All disputes between BAA and Client shall be submitted to alternative dispute resolution (ADR) as a condition precedent to litigation and other remedies provided by law. BAA and Client each agree to exercise good faith efforts to resolve disputes through mediation unless both parties agree to another ADR procedure.

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, the prevailing party shall be entitled to recover its reasonable expenses of litigation, including reasonable attorneys' fees. If BAA brings a lawsuit against Client to collect the invoiced fees and expenses of BAA, Client agrees to pay the reasonable collection expenses, including attorneys' fees, incurred by BAA.

Time Limit for Making Claims: BAA 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 BAA of its services, whichever is earlier. In no event shall BAA be liable for damages unless it has been notified by Client of the discovery of any claimed negligent act, error, omission or breach within thirty (30) days of the date of its discovery and unless Client has given BAA an opportunity to investigate and to recommend ways Client may mitigate its damages.

Limitation of Liability: BAA will use its best efforts to comply with storage, processing and analytical holding time limits required by government regulations, standard methods and practices, or Client. Neither these time limits nor test/analytical hold times are guaranteed by BAA. Samples received outside of specified time limits will not be tested/analyzed unless specifically agreed to in writing between BAA and Client.

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

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

the money paid for such work. The foregoing limitation on BAA's liability does not apply to losses arising from the gross negligence of BAA or intentional breaches of contract.

Indemnification: Subject to the limitation on liability set forth above, BAA agrees to indemnify and hold Client harmless from and against demands, damages and expenses caused by BAA's negligent acts and omissions and breach of contract and by the negligent acts and omissions and breach of contract of persons for who BAA is legally responsible. Client shall indemnify and hold BAA harmless from and against demands, damages and expenses caused by Client's negligent acts and omissions and breach of contract and by the negligent acts and omissions and breach of contract of persons for whom Client is legally responsible.

Response to Legal Process: Client shall compensate BAA for its services and expenses if BAA is required to respond to legal process related to its services for Client. Compensable services shall include hourly charges for all BAA 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: BAA shall, while performing its work for Client, 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 BAA 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 BAA nor Client 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, BAA's time for completion of this agreement shall be extended accordingly. Any such delays shall in no event excuse Client from paying amounts owed for services performed prior to the occurrence of the delay.

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: BAA shall perform work for Client as an independent contractor.

Entire Agreement and Governing Law: Unless modified by a written agreement signed by Client and BAA, 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. The agreement between BAA and Client shall be governed by California law.

**Berkeley Analytical Associates, LLC can be contacted at:**

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