

TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS are provided to you, for services to be provided by DONLEVY LABORATORIES, (“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 subrogate 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. **Sample Retention.** 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.

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

3. **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.
 - 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.
4. **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.

5. **Legal Proceedings.**

- a. 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.
- b. 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 attorneys fees, in submitting to deposition or other testimony related to Client.

6. **Warranty and Limits of Liability.**

- a. DonLevy warrants that it will perform all services in a professional manner using that degree of care and skill ordinarily exercised by and consistent with the standard in the industry. DonLevy further warrants that reports will be accurate only for the specific sample(s) provided by Client to DonLevy for analysis and testing. DonLevy assumes no responsibility for variations in quality or composition of products not sampled or for conditions beyond the control of DonLevy. The foregoing express warranty is exclusive and is given in lieu of all other warranties, express or implied. **DONLEVY DISCLAIMS ANY OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING A WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** It is agreed that in the event of a breach of the express

warranties provided herein, the liability of DonLevy shall be limited to Client's actual compensatory damages, which shall not exceed the consideration, paid to DonLevy for the services in question. It is agreed that DonLevy shall not be liable for any other damages, of any nature whatsoever, including, without limitation, direct, indirect or consequential damages, however arising.

- b. 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.

7. **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

8. **Payment.**

- a. Client will pay DonLevy for services and expenses in accordance with the payment terms set forth on the invoices. 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.

9. **Equal Opportunity.** DonLevy is an equal opportunity employer. The terms of 41 CFR 60 regarding equal opportunity are hereby incorporated by reference.

10. **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.
11. **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.
12. **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.
13. **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.
14. **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

This instrument prepared by: Brian P. Popp, Attorney at Law
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