



**ARTICLE 1. CERTIFIED LABORATORIES RESPONSIBILITIES**

- 1.1 CERTIFIED LABORATORIES of NY, Southern California, Northern California, Midwest, and Certified Food Safety Center, hereafter referred to as **CERTIFIED LABORATORIES INC (CLI)** shall perform testing services consistent with applicable standard practices, laws and regulations.
- 1.2 CLI shall submit reports of services performed indicating results of testing. CLI reserves the unconditional right to utilize external (non-CLI) laboratory resources to produce the results of testing as required. Such results and reports thereon will be based solely upon samples as provided by CLIENT. Such results are intended for use by persons having professional skill and training in the interpretation of such results. CLI assumes no responsibility, and CLIENT hereby waives all claims against CLI, for interpretation of such results.
- 1.3 CLI and its employees or agents, shall not use (except in the course of the services provided herein), in any form or manner, and shall not disclose, in whole or in part, to any other party, CLIENT'S confidential information.
- 1.4 CLI shall only be liable for any financial or business obligations. The amount of obligation will not exceed value of the analysis performed.

**ARTICLE 2. CLIENT RESPONSIBILITIES**

- 2.1 CLIENT shall designate in writing a person or entity to act as CLIENT's authorized representative with respect to CLI's services to be performed. Such person or entity shall have complete authority to transmit instructions, receive information and data, and to order, at CLIENT's expense, additional services.
- 2.2 CLIENT shall allow CLI's employees, agents and representatives reasonable access to CLIENT's facilities as necessary to perform the services hereunder. CLIENT shall be responsible for providing a safe work place and safe working conditions for CLI's employees, agents and representatives. Any hazardous or toxic materials to which CLI's agents or employees may be exposed during the performance of this Agreement shall be properly stored and labeled in accordance with applicable laws and regulations.
- 2.3 CLIENT hereby represents and warrants that it has the full right and authority to enter into this Agreement.
- 2.4 CLIENT shall not use, in any form or manner, and shall not disclose, in whole or in part, to any other party, CLI's confidential information.

**ARTICLE 3. REPORTS**

- 3.1 The report of results furnished by CLI as a Certificate of Analysis does not bear the accrediting bodies' symbol and is not produced in accordance with ISO/IEC 17025, Section 7.8.2.1. CLI does not represent the Certificate of Analysis as having been produced under the ISO/IEC 17025 accreditation guidelines. CLI may look to accrediting bodies as a reference but retains the full rights to shape CLI's Quality System as it relates to the generation of a Certificate of Analysis, and the disclosure of the internal and external resources utilized to produce the results of testing.
- 3.2 Any report of results furnished by CLI is furnished solely for the benefit of CLIENT and any of its authorized

representatives and shall be the confidential property of CLIENT. The measurement of uncertainty is not factored into the reported value or a statement of conformity. Such report may not be distributed or reproduced excepted in full. CLIENT shall not at any time misrepresent the content of any report of other information received from or relating to CLI or its work on behalf of CLIENT.

- 3.3 Unless otherwise required by law, CLI shall provide its report only to those persons or entities specifically designated in writing by CLIENT or its authorized representatives.
- 3.4 Any action taken by CLIENT based on results designated by CLI as **"preliminary"** or **"verbal"** or **"partial"** are at CLIENT's own risk. To the extent practicable, CLIENT shall give notice to, and consult with, CLI prior to implementing a withdrawal or recall of products based on any final test results. However, any decision to recall or withdraw product based on final test results is CLIENT's sole responsibility.
- 3.5 CLIENT shall not, without prior written consent of CLI, use CLI's name, trademark, logo or any results or report prepared by CLI in connection with any marketing or advertising. CLIENT shall not, under any circumstances, use CLI's name, trademark, logo or any results or report prepared by CLI in any manner which may cause harm to CLI's reputation and/or business.
- 3.6 CLIENTS that request a re-test agree to pay additional fee if CLI confirms original findings.

**ARTICLE 4. RETENTION**

- 4.1 After results have been reported to CLIENT, products will be retained by CLI as detailed in the Management Administrative Procedure Section 9 (MAP-09-Sample Management).
- 4.2 CLI shall retain all pertinent records as required by Federal regulations following submission of a report relating to the services performed, during which period the records will be made available to CLIENT upon written request, for which the request may result in additional costs.

**ARTICLE 5. PAYMENT**

CLIENT shall pay CLI for services and expenses in accordance with CLI's invoices which shall be paid within thirty (30) days of the date of invoice, unless otherwise communicated to CLIENT in writing. Any balances remaining unpaid after the due date will be subject to a service charge of 1.5% per month until paid, but in no event shall such charge exceed the rate permitted by applicable law. Failure to make payments within sixty (60) days of the date of invoice shall be deemed as an event of default under this Agreement. If legal action or collection proceedings are necessary to enforce payment, CLIENT shall be liable for CLI's costs of collection, including collection agency and attorney's fees. CLI reserves the right, prior to performing any services, to require from CLIENT satisfactory security for performance of CLIENT's obligations. If CLIENT fails to furnish satisfactory credit information, or if its account is in arrears, CLI may, at its option, defer further performance or terminate this Agreement.

**ARTICLE 6. LIMITATION OF LIABILITY**

- 6.1 ALL TERMS, CONDITIONS AND WARRANTIES (INCLUDING ANY WARRANTY AS TO MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE) IMPLIED BY COMMON LAW OR STATUTE ("IMPLIED WARRANTIES") AS TO THE MANNER, QUALITY AND

**East Coast:**  
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**Northern CA & CFSC:**  
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209-664-1100

**Midwest:**  
2505 Diehl Road  
Aurora, IL 60502  
855-CLMW-LAB  
630-783-8600

TIMING OF THE TESTING SERVICE ARE EXCLUDED UNLESS THE EXCLUSION OF ANY SUCH IMPLIED WARRANTIES WOULD CONTRAVENE APPLICABLE LAW OR CAUSE ANY PART OF THIS AGREEMENT TO BE VOID. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF CLI HEREUNDER ARE EXCLUSIVE.

- 6.2** CLI'S LIABILITY TO CLIENT FOR BREACH OF ANY TERM OF THIS AGREEMENT OF ANY IMPLIED WARRANTIES, OR FOR ANY NEGLIGENCE OR OTHER WRONGDOING IN THE PERFORMANCE OF TESTING SERVICES, IS LIMITED AT CLIENT'S OPTION, TO EITHER REPERFORMING THE TESTING SERVICE OR REFUNDING THE TOTAL FEE PAID IN RESPECT OF THAT PART OF THE TESTING SERVICE.
- 6.3** CLI WILL UNDER NO CIRCUMSTANCES BE LIABLE TO CLIENT FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGE SUFFERED BY CLIENT IN ANY WAY ARISING FROM THE TESTING SERVICE OR CLIENT'S USE OF THE TEST RESULTS.

#### **ARTICLE 7. DISPUTE RESOLUTION**

Any dispute between the parties relating to this Agreement or the breach thereof shall be resolved by binding arbitration before a single arbitrator in *Melville, NY* pursuant to the Commercial Arbitration Rules then obtaining of the American Arbitration Association. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall apply the substantive law of New York except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator shall not award either party punitive damages, and the parties shall be deemed to have waived any right to such damages. The proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard both parties' confidential information. The prevailing party in any proceeding brought hereunder shall be entitled to recover its costs and reasonable attorney's fees, except that the fees of the arbitrator shall be split equally between the parties.

#### **ARTICLE 8. GENERAL CONDITIONS**

- 8.1** CLIENT agrees to defend, indemnify and hold CLI harmless to the fullest extent permitted by law from and against any and all loss, liability, claims, damages, costs and expenses (including but not limited to attorney's fees and charges of employees of CLI involved in litigation) or other cause of action arising out of, or relating to, CLIENT's negligent acts and omissions, or arising out of any violation by CLIENT of its obligations set forth in this Agreement.
- 8.2 GENERAL CONDITIONS – IMPORTS**  
Whereas CLI is requested to perform analyses on imported goods placed on Detention by the Food and Drug Administration (FDA), CLIENT will grant CLI and its employees or agents, full access to the entire shipment as detailed on the FDA Notice of Action. CLIENT is solely responsible for supplying CLI with all required documentation to develop and execute sampling plans according to FDA guidelines. CERTIFIED LABORATORIES will not be held responsible if CLIENT supplies inaccurate documentation or neglects to provide requested documentation in its entirety.

If CLIENT decides to undertake sampling themselves or hire a third party sampler, CLI is indemnified against any issues or delays originating from improper sampling and/or sampling documentation provided by CLIENT or third party sampler.

While CLI shall make all reasonable attempts to meet "respond-by dates" issued by FDA as indicated on the Notice of Action, the CLIENT is solely responsible for requesting and obtaining extensions from FDA. CLI will, upon completion of analytical testing and written approval from CLIENT, supply FDA with complete analytical reports and all adjunct documentation.

If additional testing is required of CLI by FDA for CLIENT to obtain release of tested goods, CERTIFIED LABORATORIES may impose additional charges to CLIENT. CERTIFIED LABORATORIES will not be responsible for any costs exceeding the value of analyses performed

- 8.3** This Agreement may be terminated by CLI in the event of any default hereunder or any breach of any material term hereof. If this Agreement is terminated by either party for any reason, CLI shall be paid in full for all services performed through the termination date, and the CLIENT shall be provided with a report of services conducted prior to termination.
- 8.4** CLIENT may not delegate, assign or transfer obligations or interest in this Agreement without the prior written consent of CLI. CLI may assign or transfer some or all of its rights at any time to an affiliate provided such affiliate assumes CLI' obligations under this Agreement and CLI may, in its sole discretion, subcontract to other qualified laboratories certain services.
- 8.5** CLI shall not be liable for delays or other problems caused by unforeseen circumstance beyond its reasonable control, compliance with governmental requests, laws, regulations or breakage or failure of equipment or apparatus or any other event beyond the reasonable control of CLI.
- 8.6** The Agreement represents the entire agreement between CLIENT and CLI and supersedes all negotiations, representations or agreements, written or oral. Terms and conditions included in CLIENT's purchase order or any other document shall not be applicable. The obligations set forth in Sections 1.3, 2.4, 3.1, 3.2, 3.3, 3.4, 4.2, 8.1 and Articles 5, 6 and 7 shall survive the termination of this Agreement.
- 8.7** In the event that any of the provisions of this Agreement are or become null or void, such provisions shall be deemed to have been deleted from this Agreement and the remaining provisions hereof shall remain valid and enforceable.
- 8.8** The validity, interpretation and performance of this Agreement shall be governed by the laws (but not the conflict of law rules) of the State of New York (USA).
- 8.9** If for any reason this Agreement is not signed by CLIENT, any conduct by CLIENT which recognizes the existence of a contract pertaining to the subject matter hereof, including but not limited to CLIENT providing samples to CLI and/or performance of any service by CLI for the benefit of CLIENT shall constitute acceptance by CLIENT of this Agreement and all of its terms and conditions.

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## **ARTICLE 9. WEBSITE**

### **9.1 WEBSITE REPORT ACCESS**

CLI's *CertLabLINK* users are subject to CLI's standard terms and conditions. All results watermarked with a "preliminary" are subject to change after further review.

### **9.2 ELIGIBILITY AND REGISTRATION FOR MEMBERSHIP**

To use our Services, you must register with our Website to become a Member. Your Membership is not transferable or assignable and is void where prohibited. Our Website and Services are intended solely for Users who are at least (18) years of age or older. Any registration by, use of, or access to our Website by anyone under that age is unauthorized, unlicensed, and in violation of these Terms and Conditions. By using our Website and/or Services, you represent and warrant that you are (18) years of age or older and agree to abide by all the terms and conditions of this Agreement. CLI has sole right and discretion to determine whether to accept a Member and may reject a Member's registration with or without explanation.

When you complete the registration process, you will receive a password that will allow you to access our Services. You agree to maintain the confidentiality of your password and are fully responsible for all liability and damages resulting from your failure to maintain that confidentiality as well as all activities that occur through the use of your password.

You agree to immediately notify us of any unauthorized use of your password or any other breach of security. You agree that our Website cannot and will not be liable for any loss or damage arising from your failure to comply with password security as discussed herein.

## **ARTICLE 10. CHANGES TO OUR TERMS AND CONDITIONS**

10.1 We reserve the right to change these Terms and Conditions at any time by giving you advance notice of the changes by email or in writing. We will also post these changes on our website. These changes will become effective 30 days after receipt of the notice. To avoid doubt, no unilateral amendment will retroactively change agreed dispute-resolution provisions of these Terms and Conditions, if any, including, for example, arbitration provisions for then-pending disputes unless the parties expressly agree otherwise. Your continued use of our Website, Services, and Products after any change to these Terms and Conditions and our notifying you will constitute your acceptance of such change. If you do not agree with the changes to these Terms and Conditions, you can choose to discontinue the use of our Website, Services, and Products.

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