

TERMS AND CONDITIONS

1. **Acceptance & Description of Services.** These Terms and Conditions (“T&C”) govern the order for laboratory testing services placed with Global Laboratory Services, Inc. (“GLS”) by the client (the “Client”) as identified on a Submission Form. These T&C, together with a duly executed Submission Form, create a valid and binding agreement between GLS and Client. GLS shall perform the laboratory testing services described on the Submission Form and shall invoice Client in accordance with the fee schedule previously received by Client. Links to template Submission Forms can be found on GLS’ website.
2. **Sample Requirements.** Samples delivered to GLS shall be clearly identified with the information set forth on the Sample Submission Form or other information deemed reasonably necessary by GLS and shall be in the amount and condition specified in the applicable Detailed Proposal. Subject to the specific requirements found in the applicable Detailed Proposal, (i) if a tobacco sample is ground, then Client must provide GLS with at least 100 grams of a representative sample that has been ground to a one millimeter particle size and (ii) if a tobacco sample is not ground, then Client must provide GLS with at least 300 grams of sample. Client acknowledges that if a sample does not comply with the requirements found in the applicable Detailed Proposal and this paragraph, the services performed with respect to such sample, as well as the results and Work Product (as defined below) derived therefrom, may be compromised and GLS will not in any way be responsible or liable in any way for any services, results or work product so compromised.
3. **Delivery of Samples.** Unless otherwise arranged with, and approved by GLS, Client shall deliver, or cause to be delivered, each sample to GLS’ testing facilities. Upon delivery to GLS, GLS shall notify Client of any missing samples or samples that are received in a damaged and/or contaminated condition or any other discrepancy. Upon such notification, Client shall provide GLS with additional instructions regarding such missing, damaged and/or contaminated samples. GLS shall have the right to refuse acceptance of, or to return at Client’s expense, any sample that GLS deems, in its sole discretion, to present a hazard or an unreasonable risk with respect to its handling and/or analysis. Notwithstanding anything to the contrary herein, Client shall retain the risk of loss or damage to all samples during shipment to GLS.
4. **Retention of Samples.** GLS shall retain all samples following completion of GLS’ testing and analysis for at least seven (7) days depending on the nature of the testing. If Client desires for GLS to retain any samples for a longer period of time, Client shall request GLS to do so in the related Submission Form and GLS shall have the option, in its sole discretion, to accept or reject such request. GLS shall properly dispose of the sample in an appropriate manner. A Client may request in the related Submission Form that non-hazardous samples be returned and GLS will return such samples at Client’s expense.
5. **Invoicing and Payment for Testing Services.** GLS will submit invoices to Client after the respective testing results have been issued and will send a final bill to Client upon completion of services. In some instances, at the sole discretion of GLS, Client will be required to pay in advance up to 50% of a quoted project. All GLS invoices will be paid within thirty (30) days from the date of the invoice. A one percent (1%) per month (12% per annum) service charge will be added on all invoices unpaid thirty (30) days after the date of the invoice. A \$25.00 charge will apply to all returned checks. If Client is past due in payment of any amount owing to GLS, then GLS reserves the right, without liability and without prejudice, to suspend performance until GLS receives payment of all amounts owing to GLS.
6. **Force Majeure.** GLS shall not be responsible or liable for any delay in performance or failure to perform any of its obligations when such delay or failure is caused by unforeseen causes beyond its reasonable control and without its fault or negligence, including, without limitation, Acts of God, fire, explosion, war, riot, acts of terrorism, sabotage, strike or other labor dispute, shortage of materials, transportation difficulties or

compliance with any order, action or direction of any court, governmental officer, department, agency, authority or committee thereof which renders performance impracticable or impossible for GLS.

7. **Insurance.** GLS represents and warrants that it and its employees are protected by workers' compensation insurance and that GLS has such coverage under public liability and property damage insurance policies which GLS deems adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing.
8. **Standard of Care.** All services provided by GLS shall be performed in a manner consistent with that degree of care, skill and diligence as is ordinarily exercised by a professional laboratory testing contractor under similar conditions and circumstances, and GLS shall be responsible for the professional quality, technical accuracy, completeness and coordination of all tests, analyses and reports performed, conducted or prepared by GLS. Client must report to GLS any error or deficiency in the tests or related services in writing within seven (7) days of the delivery by GLS of a final report with respect to such services to Client in order to receive warranty remedy. THE WARRANTY SET FORTH ABOVE IN THIS SECTION 8 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED OR ARISING FROM ANY COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GLS assumes no responsibility for the purposes for which Client uses any GLS test results, reports and analyses, and Client hereby agrees to indemnify GLS and its directors, officers, employees, agents and affiliates against all losses, damages, claims and liabilities, including, without limitation, litigation or arbitration expenses and reasonable attorneys' fees, incurred by them arising directly or indirectly out of (a) Client's use of GLS' tests, reports and analyses or (b) any allegation of product defects, personal injury, illness, disease, death or other adverse health effect arising from or related to any of Client's products.
9. **Exclusive Remedy; Limitation of Liability.** If GLS is notified of any inaccuracy or error in its testing, analyses or reports, GLS shall, within a commercially reasonable period of time, make any and all corrections and revisions to such tests, analyses and corresponding reports as shall be reasonably necessary. SUCH CORRECTIONS OR REVISIONS SHALL BE CLIENT'S SOLE REMEDY FOR ANY SUCH INACCURACY OR ERROR OR ANY BREACH OF THE EXPRESS WARRANTY SET FORTH ABOVE IN SECTION 8. In the event that Client requests GLS to re-perform any test, or review the substance of any report or analysis, and such additional test or analysis confirms GLS' original results, Client shall be charged for GLS' additional work. Client shall not be charged for any additional work performed by GLS to correct any errors made in GLS' previous test or analyses. GLS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS OR BUSINESS OPPORTUNITIES.
10. **Ownership of Documents; Publication.**
 - a. All laboratory test data, calculations, estimates and other documents prepared by GLS (excluding any report and attachments delivered to Client) shall remain the property of GLS. GLS shall retain all pertinent records relating to the services performed by it for a period of at least two (2) years following completion of GLS' services and submission of a report and/or test results, and during such time such records will be made available at all reasonable times to Client upon its request. Subject to the provisions of this Section 10 and Section 14 herein, and Client having paid GLS in full for all services hereunder, Client will own and have all right and title in all work product related to such services and specifically produced or generated for, and delivered to, Client by GLS under these T&C during the term of these T&C (collectively, "Work Product"); provided that such Work Product is (i) based solely on Confidential Information of Client and/or (ii) developed directly and solely as a result of GLS' performance of the services. To the extent possible, all Work Product shall be considered a work made for hire for Client within the meaning of Title 17 of the United States Code (the Copyright Act); provided, however, that, notwithstanding anything to the contrary in these T&C, GLS reserves the right to utilize the Confidential Information of Client and Work Product for the Services and otherwise internally for the limited purposes of the conduct of its business, including training, research and education, and to use Confidential Information of Client and Work Product, in the aggregate, to determine trends in the industry for the express and limited purpose of establishing the best

practices for audits, inspections and testing in the industry, so long as no use of the Confidential Information of Client or Work Product, in the aggregate, for this purpose will allow the identification of Client or a third party subject to the Services or disclosure of particular Client-identifiable Confidential Information.

- b. The “Confidential Information” and “Work Product” which will belong to Client, to the extent provided in this Section 10, will not include any Background Technology or Preliminary Data and Materials of GLS, which at all times will remain the sole and exclusive property of GLS. For purposes of these T&C: (i) “Background Technology” means all intellectual property and other proprietary rights in and to: (1) all specifications, checklists, audit tools, scoring criteria, risk profiling tools, protocols, methods (analytical, testing and otherwise), ideas, know-how, concepts, plans, creations, work product, reports, writings, compilations, trade secrets, data, databases, software, files, programs, writings, models and devices, patents, processes (including, but not limited to, polymerase chain reaction and real-time polymerase chain reaction processes and technologies), policy developments, documents, equipment and other materials owned, possessed, developed or acquired by, or licensed or sublicensed to, GLS prior to the later of the date of these T&C or disclosure to Client; and (2) all general additions, accretions, improvements and enhancements to the same which are owned, possessed, developed or acquired by, or licensed or sublicensed to, GLS during the term of these T&C that are not developed or acquired expressly and exclusively for Client; and (ii) “Preliminary Data and Materials” means all laboratory test data, calculations, estimates, reports and other electronic or written communications describing the results of any services (or element thereof) and any memoranda and status summaries prepared by or on behalf of GLS in connection with the services performed hereunder (excluding any Work Product).
- c. Client hereby acknowledges and agrees that it may not and it will not make any Work Product available for external publication, or provide copies of any Work Product to any third parties without obtaining GLS’ prior written consent, except that no prior written consent will be required if disclosure of any Work Product is required to be disclosed by law or regulation; provided that Client promptly notified GLS of any such requirement.

11. Limitations on Scope and Use of Work Product. Client hereby acknowledges and agrees that:

- a. GLS is neither an insurer nor a guarantor, that GLS does not take the place or assume the responsibilities and obligations of Client or any designer, manufacturer, agent, buyer, distributor, transportation company or other third party, and that GLS disclaims any and all liability in such capacities;
- b. if Client requests GLS to perform certain services that are required or mandated by any regulatory authority, then (i) neither the performance of such services by GLS nor any use by Client or any third party of any portion of the sample(s) or Work Product related to such services will imply that GLS is subject to the jurisdiction of such regulatory authority and (ii) no privity or other relationship will be created between GLS and such regulatory authority as a result of the performance of such services;
- c. any Work Product produced by GLS as part of the services performed hereunder (x) will relate only to those specific samples actually tested by GLS as part of such services and (y), in no way, can be taken or relied upon as being representative of any other portion of the lot or batch from which such samples were taken;
- d. GLS assumes no responsibility for the purposes for which Client or any third party uses any Work Product; and
- e. Client may not and will not, under any circumstances, hold out or represent to any third party that GLS has in anyway whatsoever certified, guaranteed or otherwise passed judgment on the efficacy of any results

derived from the performance of the services hereunder, except to the extent GLS has certified that it has performed the Services in accordance with the provisions of an applicable Submission Form and/or proposal document.

12. **Relationship of Parties.** The parties hereto agree that the relationship among them is one between independent contractors. Nothing in these T&C shall be construed to create a partnership, joint venture or agency relationship between GLS and Client.
13. **Warranties.** EXCEPT TO THE EXTENT OF THE LIMITED WARRANTIES SET FORTH IN SECTION 8 OF THIS AGREEMENT, AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN OR IN ANY SUBMISSION FORM, REPORT OR OTHER STATEMENT OR INSTRUMENT, GLS MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
14. **Confidential Information.**
 - a. For purposes of these T&C, "Confidential Information" means all information or items (including information, data and materials relating to current or prospective products and processes) made available (whether intentionally or otherwise) to a party or its affiliates or subcontractors, or its or its affiliates' or its subcontractors' employees, agents and other representatives, by or on behalf of the other party and relating to the business, operations, affairs, technologies, plans and strategies of such other party, whether in written, graphic or electronic form, or in the form of samples, and whether or not marked, labeled or otherwise identified as "confidential," "secret" or "proprietary".
 - b. Each party hereby agrees that, with respect to Confidential Information (as defined above and below) of the disclosing party, the receiving party will: (i) maintain such Confidential Information in confidence using the same degree of care the receiving party uses to prevent disclosure, dissemination or publication of its own confidential, proprietary or secret information, data, materials and items (but in no event less than reasonable care); (ii) not disclose such Confidential Information publicly or to any third party in an unauthorized manner; (iii) use such Confidential Information only for purposes of its obligations under these T&C, and for no other purpose; and (iv) disclose such Confidential Information only to its affiliates, its subcontractors and, its affiliates' and its subcontractors' respective employees, agents and other representatives, who have a "need-to-know" and who agree to comply with the obligations imposed upon the receiving party by these T&C (with the receiving party bearing ultimate responsibility for any breach by such persons or entities of those obligations by a party to the other party).
 - c. Notwithstanding the foregoing, "Confidential Information" does not include any information or items that: (i) were generally available to the public, or otherwise part of the public domain, when received by the receiving party; (ii) become generally available to the public, or otherwise part of the public domain, other than through breach of these T&C; (iii) can be demonstrated by the receiving party to have already been in its possession, or otherwise known by it, prior to the time of receipt from the disclosing party; (iv) are received by the receiving party from a third party that is (1) in lawful possession thereof and (2) under no confidentiality obligation to the disclosing party; (v) are independently developed by the receiving party without use of the Confidential Information of the disclosing party; or (vi) are required to be disclosed by law or regulation.