

TESTING SERVICES TERMS AND CONDITIONS

(1.) **CONFIDENTIAL INFORMATION.** For purposes of these Terms and Conditions, confidential information includes all information or material that has or could have commercial value or other utility in the business in which OSMOLALITY LAB is engaged (“Confidential Information”). Confidential Information includes information disclosed by OSMOLALITY LAB, its employees, affiliates or agents and includes information which may be transmitted orally, in writing, electronically or by initiation of access to information as may be contained in files or a database. Confidential information specifically includes, but is not limited to, information pertaining to any OSMOLALITY LAB project including but not limited to therapeutics, animal health, food safety, nutraceutical, or skin care.

Confidential Information does not include information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the receiving party; (b) discovered or created by the receiving party before disclosure by OSMOLALITY LAB; (c) learned by the receiving party through legitimate means other than from OSMOLALITY LAB; or (d) is disclosed by receiving party without OSMOLALITY LAB's prior written approval.

Nothing herein shall prevent OSMOLALITY LAB from complying with legal obligations to disclose Confidential Information under obligation of a lawful court order or subpoena, so long as CLIENT (i) provides OSMOLALITY LAB immediate written notice of its intent to resist disclosure (ii) takes all reasonable steps to require an authorized recipient to preserve the confidential nature of the information once disclosed and (iii) affords CLIENT the opportunity to attempt to prevent the disclosure or obtain protection for the information disclosed. In all cases OSMOLALITY LAB shall put CLIENT on notice if any request is made for Confidential Information.

(2.) **PAYMENT OF FEES AND COSTS:** In consideration of the OSMOLALITY LAB'S performance hereunder, CLIENT agrees to pay OSMOLALITY LAB'S fees and costs incurred conducting the Project.

Payments shall be made by the CLIENT within thirty (30) days of CLIENT'S receipt of an invoice from OSMOLALITY LAB. Payment not received within thirty (30) days of invoice shall be deemed late and may be subject to past due payment penalty and interest (18%) in accordance with applicable law, as well as collections and attorneys' fees.

(3.) **DATA RIGHTS:** OSMOLALITY LAB shall deliver to the CLIENT the raw data generated by the analysis or testing activity performed (the “Results”) within ninety (90) days of completion of the Project. OSMOLALITY LAB and CLIENT understand and agree that the work to be performed pursuant to these Terms and Conditions does not include analyzing or interpreting data generated by performing the work specified. In the event that CLIENT desires further investigation or analysis of test results, CLIENT may initiate a separate sponsored research agreement.

OSMOLALITY LAB retains the right to utilize the protocol and test methods used or developed under this Agreement for future internal educational purposes.

(4.) **NO WARRANTY:** The very nature of testing is experimental and the OSMOLALITY LAB makes no warranties or guarantees, either expressed or implied, as to the outcome of any test, although all reasonable efforts, consistent with the standards of a research OSMOLALITY LAB, will be made to achieve a successful outcome.

(5.) **TERMINATION:** Performance under these Terms and Conditions may be terminated by either party upon sixty (60) days written notice. Upon termination by either party, OSMOLALITY LAB will be reimbursed for all costs and non-cancelable commitments incurred in performance of the Project prior to the date of termination in an amount not to exceed the total commitment set forth in Paragraph (3).

(6.) **LIABILITY:** The CLIENT will defend, indemnify and hold harmless OSMOLALITY LAB, its trustees, officers, employees and agents from and against all claims, demands, loss, liability, expense or damage, (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of a defect in the product tested under this Agreement or from CLIENT's use or possession of the results

produced hereunder.

(7.) **HAZARDOUS MATERIALS:** All Materials provided by CLIENT must be accompanied by the appropriate environmental and safety information for those Materials as required by law.

The responsibility for and costs of disposal of all CLIENT provided Materials remaining at the termination of the Project will rest with the CLIENT. CLIENT shall arrange for disposal or removal of any remaining MATERIALS prior to receipt of any final report of the Project. The OSMOLALITY LAB may decline to accept projects that impose undue risk.

OSMOLALITY LAB will observe all applicable safety precautions and governmental requirements concerning handling of test materials. CLIENT and OSMOLALITY LAB acknowledge that the selection of Project procedures, sites, and equipment, and the assignment and supervision of personnel to be used in the conduct of Project hereunder rest under the sole and exclusive direction of OSMOLALITY LAB.

(8.) **NON-ANALYSIS:** OSMOLALITY LAB agrees not to perform or permit others to perform any test, analysis, or other evaluation of MATERIALS for the purpose of determining the chemical character, components, or physical characteristics or the method of manufacture thereof, without the prior written consent of CLIENT. OSMOLALITY LAB will not share samples, or any portion thereof, with any third party, without the express permission of CLIENT.

(11.) **USE OF NAMES:** Neither party will use the name, marks, or symbols of the other for any commercial purpose without the express written permission of the other party.

(13.) **INDEPENDENT PARTIES:** The parties hereto shall be independent contractors and neither shall at any time be considered an agent or employee of the other. No joint venture, partnership, or like relationship is created between the parties by these Terms and Conditions.

(14.) **ASSIGNMENT:** These Terms and Conditions shall be binding upon and inure to the benefit of the parties hereto and may be assigned only to the successors of these parties. Any other assignment by either party without prior written consent of the other party shall be void.

(15.) **GOVERNING LAW:** These Terms and Conditions are acknowledged to have been made and shall be construed and interpreted in accordance with the laws of the State of Utah without regard to conflict of laws provisions.

(16.) **ENTIRE TERMS AND CONDITIONS:** Unless otherwise specified herein, these Terms and Conditions embody the entire understanding of the parties for this project and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to these Terms and Conditions including, without limitation, changes in the activities of the Project, total estimated cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of both parties. If any provisions stated in these Terms and Conditions, resulting purchase orders, and the project proposal are in conflict, the order of precedence, beginning with the first to last shall be (1) these Terms and Conditions, (2) the project proposal, and (3) the purchase order, it being understood and agreed that any purchase order or similar document issued by CLIENT will be for the sole purpose of establishing a mechanism for payment of any sums due and owing hereunder. Notwithstanding any terms and conditions contained in said purchase order, the purchase order will in no way modify, or add, or take precedence to these Terms and Conditions.