

# TERMS AND CONDITIONS

**Conduct of Services:** New Jersey Laboratories (“NJ Labs”) will perform testing and prepare all reports in accordance with generally prevailing industry standards of professional conduct, and all applicable laws, regulations, and rules of the relevant governmental regulatory authorities. All work will be conducted under cGMP conditions.

**Test Material:** Client will provide NJ Labs (at no cost to NJ Labs) sufficient amounts of all compounds, materials, or other substances (“Test Material”) with which to perform each test, as well as such data and other information as may be necessary or useful for NJ Labs to perform the testing and to apprise NJ Labs of the stability, proper storage and safe handling requirements with respect to the Test Material, including a Material Safety Data Sheet (MSDS) or equivalent documentation, if applicable.

**Sample Submittal:** Client will complete and submit a “Sample Submittal” form or its equivalent when submitting samples for testing. Failure to submit an acceptable form that includes all sample identification and test requests will result in samples being placed on “HOLD”. No testing will be initiated without appropriate paperwork.

**Sample Disposal:** NJ Labs will discard any remaining Test Materials after thirty (30) days following testing. Controlled substances and other hazardous materials will be returned to the client for disposal.

**Cancellation of Testing:** NJ Labs reserves the right to charge a cancellation fee for any testing cancelled by the Client after a sample has been logged in of \$20 per cancelled test. Any analysis completed will be invoiced at customary rate. Any analysis started but not completed will also be invoiced.

**Turn Around Time (TAT):** Normal lab TAT is 10 business days. Turnaround time is calculated from the day after receipt of the sample. For example, if a sample was received on Monday, day one would begin on Tuesday.

**Rush Testing:** A surcharge will be added to the fees if a rush status is requested. Due to limited capacity for rush TAT, rush testing is available only with the preapproval of NJ Labs.

**Personnel:** NJ Labs does not employ anyone that: (a) has been debarred or (b) is under consideration to be debarred by the Food and Drug Administration from working in or providing services to any pharmaceutical or biotechnology company under the Generic Drug Enforcement Act of 1992, as amended.

**Audits:** Every two years upon reasonable advance notice, NJ Labs will permit Client and/or its designated representative access to NJ Labs, during normal business hours and at mutually agreeable times, to visit the NJ Labs facilities where testing is taking place. Audit teams are limited to two representatives.

Agreed Addendum to Audits at client request: Audits can be facilitated sooner than every 2 years, but are not typically necessary unless there is a dispute that needs to be settled. We ask for at least 2 weeks’ prior notice to schedule an audit.

**Test Records and Reports:** NJ Labs will keep complete and accurate records of each test for at least five (5) years. All raw data generated by routine testing can be submitted to client for an administrative fee of \$20 for each test upon completion except for ICP-MS data, which in that case will be \$50.

**Fees:** Client agrees to pay all invoices within Forty-Five (45) days of receipt of the relevant invoice. All amounts not paid when due shall bear interest from the applicable due date until paid at one and one half percent (1.5%) per month. In addition, NJ Labs may elect to suspend any testing that may be in progress, delay the start of new testing, and/or withhold required reports or other deliverables if the Client does not make any required payment within the sixty (60) day period referenced above and additionally, NJ Labs shall be entitled to reimbursement of reasonable costs of collection, including reasonable attorney’s fees. All payments are in US Dollars.

**Subcontractors:** NJ Labs will only outsource with the preauthorization of client.

**Confidentiality:** NJ Labs maintains strict confidentiality with its customers. Formal confidentiality agreements may be initiated by the customer.

**Validation:** NJ Labs uses compendia methods when available. USP methods do not require validation. NJ Labs recommends that clients request validation of other methods and/or method suitability for microbial testing where appropriate. Additional fees are charged for these services.

**Warranties:** NJ Labs warrants that it shall perform the services requested to the best of its ability and use all reasonable skill, care and diligence as reasonably required to produce relevant results that the client requests. In the event of any breach of the foregoing warranty and the Conduct of services, in addition to any other remedies at law or in equity, NJ Lab’s obligation will be to: (1) repair any defect in the work to Client’s satisfaction or (2) refund relevant amounts paid by Client upon mutual agreement of the parties.

**Termination:**  
Either party may terminate this agreement if the other party is in default of any of its material obligations and such fault is not cured within

thirty (30) days after written notice to the breaching party. Client may terminate this agreement at any time for any reason upon written notice to NJ Labs but Client must pay NJ Labs for all finished and work-in-progress up until termination date.

**Choice of Law**  
The Quote, the Terms and Conditions and this Addendum shall be interpreted and construed in accordance with the laws of the state of New Jersey, without the application of its choice of law provisions to the contrary. Any dispute or controversy arising out of Quote, the Terms and Conditions and this Addendum shall be governed by the courts of New Jersey.

**Force Majeure:** NJ Labs shall not be liable for any delay or failure of performance, including without limitation failure to perform a service, where such delay or failure arises or results from any cause beyond NJ Labs reasonable control, including, but not limited to, flood, fire, explosion, natural catastrophe, military operations, war, computer or other equipment failure, unusually severe weather, or other act of God, power loss or reduction, embargo, governmental regulation, or an inability or delay in obtaining materials. In the event of any such delay or failure of performance, NJ Labs shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances.

**Financial Information:** Payment in advance is required for customers whose credit has not been established with NJ Labs. Credit is extended 30 days after submittal and acceptance of a completed credit application.

**Limitation of Liability:** Neither party shall be liable to the other party for lost profit, indirect, consequential, punitive, special and incidental damages of any kind.

Each party’s total liability to the other for any breach of this Agreement or any matter arising out of or in connection with the services to be provided in accordance with this Agreement shall not exceed 2 times (2X) the total fees paid to NJ Lab for the services rendered in the last twelve (12) months prior to the claim. The limitations of liability set forth above shall not apply with respect to: (i) damages occasioned by the willful misconduct or gross negligence of a party; (ii) claims that are the subject of indemnification set forth above; and/or (iii) NJ Lab’s breach or alleged breach of its confidentiality obligations under the Non-Disclosure and Confidentiality Agreement between the parties.



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<p><b><u>Works for Hire</u></b></p> <p>(a) All deliverables and other work product (including, without limitation, all inventions, discoveries, reports, recommendations, analyses, documentation, data and content) created, developed and/or performed by NJ Labs for Client pursuant to this agreement (collectively, “Work Product”) will be deemed to be "works made for hire" and/or the sole and exclusive property of Client and Client shall own all of the “Proprietary Rights” (i.e., all rights of patent, copyright, trademark, trade secret and other proprietary rights and comparable rights of any type under the laws of any local or international regulatory requirements) therein.</p> <p>(b) To the extent that any such Work Product is not deemed to be a "work made for hire" and/or the property of Client (with all Proprietary Rights therein owned by Client) by operation of law, NJ Labs hereby irrevocably assigns, transfers and conveys to Client for no additional consideration, and shall cause its personnel to irrevocably assign, transfer and convey all of its right, title and interest in such Work Product, including but not limited to all rights of patent, copyright, and other proprietary rights in such Work Product. NJ Labs agrees to execute such documents or take such actions as Client may reasonably request to perfect Client’s ownership of any such Work Product.</p> <p>(c) NJ Labs shall retain all intellectual property rights in and to all of NJ Labs pre-existing materials, products, software or other property and any of the foregoing that are developed independently of the services without use of Client’s or its affiliates’ confidential information or intellectual property rights.</p>	<p><b><u>Indemnification</u></b></p> <p>Each Party (the “Indemnifying Party”) agrees to defend at its expense and indemnify and hold harmless the other Party and its officers, directors, employees, partners, affiliates, agents, successors and assigns (the “Indemnified Parties”), from any and all third-party losses, costs, damages, liabilities and expenses (including, without limitation, reasonable legal fees and expenses) arising from or in connection with: (i) the negligence, gross negligence or willful misconduct of the Indemnifying Party or its officers, directors, employees, partners, affiliates, agents, successors and assigns in connection with this Agreement; and/or (ii) any breach or violation of any of the representations, warranties or covenants made by the Indemnifying Party in this Agreement; and/or (iii) claims for personal injury (including death) to any person(s) or damage to property due to the negligence, gross negligence, or willful misconduct of the Indemnifying Party or its officers, directors, employees, partners, affiliates, agents, successors and assigns.</p> <p><b><u>Insurance</u></b></p> <p>Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, Commercial General Liability, product/completed operations liability, professional liability, personal injury and property insurance. Client acknowledges that although NJ Labs maintains worker’s compensation, such insurance does not cover any employees of Client.</p>	<p><b><u>Choice of Law</u></b></p> <p>The Quote, the Terms and Conditions and this Addendum shall be interpreted and construed in accordance with the laws of the state of New Jersey, without the application of its choice of law provisions to the contrary. Any dispute or controversy arising out of Quote, the Terms and Conditions and this Addendum shall be governed by the courts of New Jersey.</p> <p><b><u>Entire Agreement</u></b></p> <p>The Quote, the Terms and Conditions and this Addendum constitute the entire agreement with respect to the services to be provided under the Quote and represent a mutual understanding between the parties, superseding all previous communications, representations or agreements. No purchase order, acknowledgement or other standard term or condition of either party shall be of any force or effect, it being the intent of the parties that the services be performed pursuant to the terms of the Quote, the terms and conditions and this Addendum.</p>
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**APPROVAL**

CLIENT:	NEW JERSEY LABORATORIES
PRINT NAME:	PRINT NAME:
TITLE:	TITLE:
SIGNATURE:	SIGNATURE:
DATE:	DATE: