

TERMS AND CONDITIONS – LABORATORY SERVICES

These Terms and Conditions are the terms and conditions pursuant to which CMS Technology, Inc. (“Prevenio”) provides third party laboratory analytical services (the “Laboratory Services”) to a client (“Client”). These Terms and Conditions (this “Agreement”) supersede all previous communications, representations, or agreements, either verbal or written, between the parties. Prevenio affirmatively and explicitly rejects all additional, conflicting, or inconsistent terms, whether printed or otherwise set forth in any purchase order or other communication from Client to Prevenio. By submitting any samples for analysis or requesting any Laboratory Services, Client agrees to be bound by this Agreement.

If you are reviewing this document online, you should print a copy for future reference.

1. SCOPE

a. Reports. Prevenio agrees to provide Client with its standard form of report containing the results of the Laboratory Services performed. (The generation of the report and the report itself is deemed part of the Laboratory Services for purposes of this Agreement.) Client agrees and acknowledges that samples tested by Prevenio are representative of the sample received and may not be indicative of the entire manufactured batch or lot. The reports provided by Prevenio are intended for use by persons having professional skill and training in the interpretation of such results. Any report furnished by Prevenio to Client is solely for the benefit of Client and its authorized representatives and is deemed Client’s Confidential Information hereunder. Client agrees not to reproduce any report or data furnished by Prevenio except in full and agrees not to misrepresent the content of any report or other information received from Prevenio relating to Prevenio, this Agreement, or the Laboratory Services performed. Prevenio will only perform Laboratory Services for United States persons and legal entities. Prevenio may choose not to provide Laboratory Services to any person or entity or with respect to any sample in its sole discretion.

b. Responsibility for Selection of Laboratory Services. Client is responsible for determining whether the Laboratory Services ordered by it from Prevenio complies with or satisfies any and all applicable federal, state, and local laws, rules, and regulations governing Client’s business and/or products. Client agrees to hold Prevenio harmless from and against any claim, demand, cause of action, judgment, liability, damage, cost or expense (including attorneys’ fees) incurred by Client, Prevenio, or a third party to the extent arising out of or related to the selection of Laboratory Services by Client and the performance of Laboratory Services by Prevenio. Prevenio makes no representation or warranty that the Laboratory Services selected are effective or suitable for the purpose for which the Laboratory Services will be

performed, and Prevenio takes no responsibility for Client’s regulatory compliance and reporting.

c. Pricing. Pricing for Laboratory Services shall be as quoted by Prevenio to Client (or, if not quoted by Prevenio to Client, shall be as provided on Prevenio’s standard price list) and do not include any applicable sales, use, or other taxes, which will be added to invoice prices when required. Prevenio’s pricing is periodically adjusted and Prevenio reserves the right to update prices in its sole discretion at any time by providing notice. Unless specified otherwise in writing, quotations for pricing are valid for thirty (30) calendar days.

d. Payment. Payment of fees for the Laboratory Services are due within thirty (30) calendar days of the date of Prevenio’s invoice. Prevenio may impose an interest charge of 1½% per month on all unpaid balances. If Client cancels all or part of any Laboratory Services after testing commences, Client will be responsible for all fees and expenses for such Laboratory Services.

e. Use of Third Parties. Unless otherwise specified, all Laboratory Services will be performed by Prevenio. With prior notification and approval of Client, Laboratory Services may be subcontracted to a third party laboratory that meets Prevenio and Client qualification requirements.

2. SAMPLES

a. Submissions. Client will submit samples for analysis in accordance with Prevenio’s instructions. By submitting a sample to Prevenio, Client agrees to be bound by the terms and conditions of this Agreement. It is Client’s responsibility to ensure that samples are properly labeled, packaged, and shipped in accordance with all applicable laws and regulations. Samples classified as Hazardous, DEA regulated, FDA or USDA Controlled, or any other classification or status that requires special precautions when handling must be properly identified, pre-approved in writing by Prevenio for submittal, and Prevenio reserves the right to charge additional fees for handling and disposal. Prevenio may refuse or return samples submitted for analysis that are

unsuitable due to damage, leakage, improper temperature, incorrect or insufficient labeling, or that may be considered hazardous to Prevenio's personnel or facility.

b. Sampling Responsibility. It is Client's responsibility to ensure that samples are collected according to any appropriate method or regulations governing sampling. Client, as the user of a sampling device, agrees that it retains sole responsibility to select the appropriate sampler, media, and conditions to ensure that a valid sample has been collected. Prevenio disclaims any responsibility for the improper selection of sampling devices even if Prevenio supplied such sampling devices.

c. Sample Handling. Risk of loss or damage to samples remains with Client until acceptance by Prevenio. Samples are accepted when receipt is acknowledged on chain of custody documentation. In no event will Prevenio have any responsibility for the action or inaction of any shipper or carrier involved in the shipment of samples to or from a Prevenio facility.

d. Retention of Samples. After performance of the Laboratory Services and generation of a report with respect to a sample, such sample will be retained in Prevenio's facilities for three days after completion of testing for non-shelf stable samples, or two weeks for shelf-stable samples, after which the samples will be destroyed. Client must inform Prevenio in writing prior to such date of destruction if it wishes to have the samples held for a longer period of time or returned to Client. (Prevenio may charge Client a fee for return shipment or longer-term storage of any samples.)

3. DISCLAIMER; WARRANTY; LIMITATION OF LIABILITY; INDEMNITY

a. Warranty. Prevenio warrants that it will perform the Laboratory Services consistent with its laboratory quality assurance standard operating procedures and generally accepted analytical laboratory principles and practices at the time of performance. Prevenio makes no other warranties, express or implied.

b. Disclaimer. THE PARTIES AGREE AND ACKNOWLEDGE THAT IT IS POSSIBLE FOR A TEST KIT TO PRODUCE AN INACCURATE RESULT EVEN IF ALL PROCEDURES ARE PROPERLY FOLLOWED; THEREFORE, PREVENIO DOES NOT WARRANT THAT THE LABORATORY SERVICES WILL PRODUCE ACCURATE RESULTS, EVEN WHEN ALL PROCEDURES ARE PROPERLY FOLLOWED. OTHER THAN AS SET FORTH IN THE

WARRANTY IN SECTION 3(a) OF THIS AGREEMENT, PREVENIO MAKES NO REPRESENTATION OR GUARANTEE CONCERNING THE LABORATORY SERVICES OR THE QUALITY, ACCURACY, OR FITNESS OF THE LABORATORY SERVICES, OR THAT THE LABORATORY SERVICES WILL ENSURE THE SAFETY OF ANY PRODUCT ASSOCIATED WITH THE LABORATORY SERVICES. NOTHING IN ANY REPORT PRODUCED BY PREVENIO IN CONNECTION WITH THE LABORATORY SERVICES SHALL BE CONSTRUED AS A RECOMMENDATION FOR USE OR DISTRIBUTION OF THE SAMPLES OR PRODUCTS TESTED. PREVENIO DOES NOT ACCEPT, AND AFFIRMATIVELY DISCLAIMS, ANY LEGAL RESPONSIBILITY FOR THE PURPOSES FOR WHICH CLIENT USES THE LABORATORY SERVICES.

c. Product Recall. Any action taken by Client based on the results of the Laboratory Services are at Client's own risk. Any decision to recall or withdraw product based on the Laboratory Services is the sole decision and responsibility of Client, and Client acknowledges and agrees that it accepts sole responsibility for, and agrees to hold Prevenio harmless from and against, any claims (whether direct or from any third party) or liabilities arising from a product recall or market withdrawal of products based on performance of the Laboratory Services by Prevenio.

d. Limitation of Liability. In the event of any error, omission, breach of warranty, or other professional negligence, Prevenio's sole and exclusive responsibility shall be to re-perform the Laboratory Services at its own expense and Prevenio shall have no other liability whatsoever. In no event shall Prevenio be liable, whether in contract or in tort (negligence or strict liability), directly or under any indemnity, for lost profits, loss of goodwill or opportunity or for any indirect, special, incidental, or consequential damages arising out of or related to this Agreement, including but not limited to loss of use, business interruption or delay of production. Prevenio's total cumulative liability to Client in connection with the Laboratory Services for any and all losses, expenses, claims, demands, or damages whatsoever arising out of or in any way related to the Laboratory Services or this Agreement shall not exceed the total amount paid by Client to Prevenio for the Laboratory Services under this Agreement.

e. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other

party from and against any out-of-pocket loss, liability, claim, or action paid to a third party, including attorneys' fees ("Loss") to the extent that such Loss was caused by the indemnifying party or its employees, agents, subcontractors, or affiliates.

4. CONFIDENTIALITY

a. Confidential Information. "Confidential Information" means any proprietary or non-public records, data, reports, materials, or other information. Confidential Information does not include information that: (i) is publicly known at the time of its disclosure; (ii) is lawfully received by the receiving party from a third party having a lawful right to possess it and not under an obligation of confidentiality to the disclosing party; (iii) is published or otherwise made known to the public by the disclosing party; or (iv) was developed by employees of the receiving party who did not have access to, and did not reference or use, the disclosing party's Confidential Information.

b. Obligations. A receiving party will refrain from using the disclosing party's Confidential Information except to the extent necessary to perform its obligations under this Agreement or to exercise its rights set forth in this Agreement. A receiving party will likewise restrict its disclosure of the disclosing party's Confidential Information to those employees of it or its affiliates who have a need to know such Confidential Information in order for the receiving party to perform its obligations under this Agreement. Such employees must be subject to obligations of confidentiality with respect to the Confidential Information that are substantially equivalent to those in this Section 4, and the receiving party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. A receiving party will protect and keep confidential the disclosing party's Confidential Information using the same degree of care that such receiving party uses to protect its own confidential information of similar importance, but in no event less than a reasonable degree of care. A receiving party may disclose such Confidential Information if required or requested to do so by a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder. If so requested or required, the receiving party shall (i) first notify the disclosing party of such request, requirement or proposal for use in defense; (ii) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is required to disclose; and (iii) cooperate with the

disclosing party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon the termination of this Agreement, a receiving party shall return or destroy all Confidential Information of the disclosing party which is in its possession or under its control except for one copy which may be retained by a receiving party's legal department for recordkeeping purposes (and which shall be maintained as confidential by the receiving party for so long as such Confidential Information is retained).

c. Breach. If any receiving party or any of its affiliates violates or threatens to violate the provisions of this Section 4, or if any third party obtains any Confidential Information through a receiving party's breach of its obligations under this Section 4, then such receiving party shall take, at its own expense, all actions that may be required to remedy such violation, recover such Confidential Information and to prevent further dissemination or use of such Confidential Information, including legal actions for seizure and injunctive relief, to the extent available under applicable law. If the receiving party fails to take such actions in a timely and adequate manner, then the disclosing party or its designee may take such actions in its own name or in the receiving party's name and at receiving party's expense. Each party acknowledges that the other party's Confidential Information contains valuable trade secrets and proprietary information, that any actual or threatened breach of this Section 4 may cause immediate, irreparable harm to such party for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

5. MISCELLANEOUS

a. Termination. The Laboratory Services and this Agreement may be terminated by either party upon written notice to the other. If the Laboratory Services and/or this Agreement is terminated by either party for any reason, Client will pay Prevenio in full for all Laboratory Services that have been fully or partially performed though the termination date, and Prevenio will provide Client with a report of any Laboratory Services conducted prior to termination.

b. Force Majeure. Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to causes beyond such party's reasonable control including, but not limited to: acts of God; power failures or blackouts; acts or orders of any

government authority; accidents; wars or armed conflicts; civil disturbances; epidemics or pandemics; shortage of labor or materials; labor disputes, strikes or other concerted acts of workers; embargoes; acts of terrorism; or difficulties or delays in transportation, mail, or delivery services.

c. Governing Law and Dispute Resolution. This Agreement is governed by the laws of the State of Georgia without regard to its conflicts of laws provisions. The parties agree that the exclusive venue for any dispute between the parties under this Agreement shall be the state or federal courts located in Athens, Georgia and the

parties agree to submit to the personal jurisdiction of such courts.

d. Entire Agreement; Amendment. This Agreement is the entire agreement between Prevenio and Client regarding the subject matter hereof and supersedes all prior negotiations and agreements. This Agreement may be amended only by a written agreement signed by an authorized representative of each party.

e. Severability. If any provision of this Agreement is found to be invalid or enforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.