

**STATE OF NORTH CAROLINA**

**Contract Identification # \_\_\_\_\_**

**COUNTY OF WAKE**

**MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between, Pace Analytical® Services, LLC, a Limited Liability Company registered to conduct business in North Carolina, with its principal business offices located at 1800 Elm Street SE, Minneapolis, MN 55414-2500 (the "Contractor"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town"). Town and Contractor may collectively be referred to as "Parties" hereinafter.

**WITNESSETH:**

WHEREAS, Town, is engaged in the operation of water and sewer utilities, including pipes, drains, facilities, and associated equipment, which from time to time require maintenance, repair, installation, removal, testing, and inspection as well as other projects related to wastewater treatment and soil and erosion control; and

WHEREAS, the professional services of outside firms or consultants and/or others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, Contractor provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, the Parties contemplate that the services of the Contractor will be performed in various stages in accordance with separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Services Agreement rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties acknowledge and agree that this Agreement shall act as a base agreement under which the Parties can enter into multiple specific transactions by executing a Purchase Order and written confirmation to proceed pursuant to a Scope of Services and/or rate sheet; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Contractor to being available to perform services until a Scope of Services is submitted, and does not preclude the Town from hiring other vendors or contractors to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

## **1. SCOPE OF SERVICES.**

The Contractor agrees to perform for the Town the following general services when requested by the Town: chemical testing for collected water samples.

When service is requested by the Town, Contractor shall provide a cost estimate based on the attached rate sheet and a detailed Scope of Services that shall be governed by the terms of this Agreement. The Scope of Services shall reference this Agreement and this Agreement shall be incorporated into and made a part of the scope of services whether or not expressly incorporated by reference in the Scope of Services.

In the event of a conflict between the terms of a Scope of Services, quote, or estimate and this Agreement, this Agreement shall control.

## **2. SPECIFICATIONS.**

Upon request by the Town, Contractor will provide plans and specifications prior to engaging in any services under this Agreement. Contractor hereby acknowledges that it is fully licensed to perform the work contemplated by this Agreement. In the event of a conflict between the provided plans and specifications and this Agreement, this Agreement shall control.

## **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2024 unless terminated sooner in accordance with the terms of this Agreement. Contractor shall commence and complete the work required by this Agreement in accordance with the dates provided in the Scope of Services as agreed upon by the Parties. Contractor shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Contractor shall not begin any work pursuant to this Agreement or a Scope of Services until written confirmation has been provided by the Town. The Parties hereby agree that written confirmation may be provided through electronic communication from the Town. If Contractor has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Scope of Services must be agreed to in writing by the Town and the Contractor.

## **4. CONSIDERATION AND PAYMENT OF SERVICES.**

In consideration of the above services, the Town will pay the Contractor the amount authorized by the issued Purchase Order corresponding to the agreed upon Scope of Services and the attached rate sheet. As services are agreed upon pursuant to this Agreement and the associated Scopes of Service, Contractor will invoice the Town for work performed. Town has the right to require the Contractor to produce for inspection all of Contractor's records and charges to verify the accuracy of all invoices. Town shall pay Contractor's invoices within thirty (30) days of

receipt unless a bona fide dispute exists between Town and Contractor concerning the accuracy of said invoice or the services covered thereby.

#### **5. INDEMNIFICATION.**

To the extent permitted by law, the Contractor agrees to defend, pay on behalf of, indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof resulting from the negligence of the Contractor.

#### **6. APPLICABILITY OF LAWS AND REGULATIONS.**

The Contractor shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **7. E-VERIFY COMPLIANCE.**

The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Contractor shall require all of the Contractor's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **8. QUALITY AND WORKMANSHIP.**

All work shall be performed to the satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Contractor shall provide services in accordance with all federal, state and local law and in accordance with all governing agency regulations and shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina.

#### **9. INSURANCE.**

The Contractor shall maintain valid general liability insurance in the minimum amount of \$1,000,000, and provide a certificate of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policy. If the policy has a blanket additional insured

provision, the contractor's insurance shall be primary and non-contributory to other insurance. Additionally, the contractor shall maintain and show proof applicable professional liability coverage in the minimum amount of \$1,000,000. The Contractor shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Contractor to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

#### **10. PRE-PROJECT SAFETY REVIEW MEETING.**

If requested by the Town, the Contractor shall attend a pre-project safety review meeting with the contacting Department Head and Supervisors and Safety and Risk Manager prior to the start of work.

#### **11. DEFAULT.**

In the event of substantial failure by Contractor to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Contractor upon seven (7) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this Agreement.

#### **12. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Contractor. Contractor shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Contractor for all services satisfactorily performed.

#### **13. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO CONTRACTOR: Pace Analytical® Services, LLC  
Attn: Felicia Grogan  
9800 Kincey Avenue, Suite 100  
Huntersville, NC 28078  
felicia.grogan@pacelabs.com

TO TOWN:                   Town of Apex  
                                  Attention: Michael Deaton  
                                  PO Box 250  
                                  Apex, NC 27502

**14. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Contractor nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**15. NONWAIVER FOR BREACH.**

No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

**16. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**17. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

**18. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the

remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

**19. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

**20. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

**21. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

**22. ASSIGNMENT.**

Contractor shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Contractor from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Contractor in the performance of services rendered.

**23. INDEPENDENT CONTRACTOR.**

Contractor is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Contractor shall be wholly responsible for the methods, means and techniques of performance.

**24. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town are from appropriations and monies from the Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**25. IRAN DIVESTMENT ACT CERTIFICATION.**

N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North

Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement the Contractor hereby certifies that the Contractor is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Contractor will not utilize any subcontractors found on the Final Divestment List.

**26. ANTI-HUMAN TRAFFICKING.**

The Contractor warrants and agrees that no labor supplied by the Contractor or the Contractor's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

**27. ELECTRONIC SIGNATURE.**

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures in accordance with the Town's Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Contractor**

**Town of Apex**

Name: Felicia Grogan

\_\_\_\_\_

Town Manager

By: Felicia Grogan  
(Signature)

Title: General Manager

Attest: Burton Gaud  
(Secretary, if a corporation)

Attest: \_\_\_\_\_  
Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Director



**Pace Analytical Services, LLC**  
 9800 Kinsey Ave., Suite 100  
 Huntersville, NC 28078  
 Phone: 704-875-9092  
 Fax: 704-875-9091

**Contact Information**

Contact Name	Jessica Sloan	Prepared By	Kelly Wallace
Account Name	Town of Apex	Phone	(919) 618-1498
Phone	(919) 372-7478	Email	kelly.wallace@pacelabs.com
Email	jessica.sloan@apexnc.org	Pace Project Manager	Sarah Graham

**Project Information**

Quote Name	00093244 - Apex_2021 DW Pricing_041921	Created Date	4/19/2021
Quote Number	00093244	Expiration Date	4/19/2022
Project Start Date	4/19/2021	MINIMUM LABORATORY FEE	Waived
Project Location	NC	Report Level	Level 2
Turn Around Time	10 working days, standard For Expedited return on results, use these rush multipliers: 1 day: 200% 2 day: 150% 3 day: 100% 4 day: 75% 5 day: 50%	Certification Requirements	NC
		Trip Blank Required?	<input type="checkbox"/>

Special Instructions Please notify your Account Executive or Project Manager if specific reporting limits/compound lists are required as this can affect the pricing.

Shipping and handling fees may apply to orders not exceeding \$250.

Pace will cover shipping costs of containers by Fed Ex Ground. Priority Overnight shipments are \$45 per cooler and Standard Overnight shipments are \$35. Weekend rates will be higher.

Additional shipping charges may apply to samples subbed outside of Pace.

**Address Information**

Quote To Name	Jessica Sloan	Ship To Name	Town of Apex
Bill To Name	Town of Apex	Ship To	105-A Upchurch Street Apex, NC 27502
Bill To	PO Box250 Apex, NC 27502		

**Quote Details**

Quantity	Method	Product	Line Item Description	Sales Price	Sub-Total	Total Price
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Pace Analytical Services, LLC  
 9800 Kinsey Ave., Suite 100  
 Huntersville, NC 28078  
 Phone: 704-875-9092  
 Fax: 704-875-9091

1.00		Environmental Impact Fee (Per Invoice)		\$12.00	\$12.00	\$12.00
1.00	EPA 552.3	Haloacetic Acids (HAA5) (Disinfection Byproducts)		\$140.00	\$140.00	\$140.00
1.00	EPA 200.8	Lead & Copper (only)	Includes \$5 metals digestion fee	\$35.00	\$35.00	\$35.00
1.00	EPA 1631E	Mercury (Hg), Low Level (Water)	\$85 for sample + \$85 for blank	\$85.00	\$85.00	\$85.00
1.00	EPA 6010C/7470	Target Analyte List (TAL) Metals (23)		\$400.00	\$400.00	\$400.00
1.00	EPA 524.2	Trihalomethanes (THMs)		\$45.00	\$45.00	\$45.00
<b>Grand-Total</b>						<b>\$717.00</b>

#### Additional Pricing Considerations:

**If you have specific questions about any conditions noted below, please contact your Pace Analytical Representative.**

- Unless accepted, signed and returned, or unless noted above, proposal expires 60 days from Created Date above.
- Quoted prices include standard Pace Analytical QA/QC, reporting limits, compound lists and standard report format unless noted otherwise.
- If project specific MS/MSD samples are submitted, they may be billable.
- Volatile soils need to be frozen within 48 hours of collection. To facilitate this, they should be submitted to the lab within 40 hours of collection.
- TAT (Turn Around Time) is in working days unless otherwise specified above.
- To ensure requested TAT is available, please coordinate with your Pace Analytical representative at time of sample submittal.
- Any deviation from the above quoted scope of work, including sample arrival date and volume, may result in adjustment of prices.
- Please include Quote Number on Chain-of-custody to ensure proper billing.
- Pricing includes standard delivery of bottle/sample kits and coolers.
- Charges will apply for non-standard shipping and for projects where shipping exceeds 10% of the total analytical costs of the shipment.
- PACE RESERVES THE RIGHT TO SURCHARGE ON CREDIT CARD PAYMENTS BASED ON CARD TYPE AND ZIP CODE.

#### Pace Analytical Terms and Conditions

These Standard Terms (Terms) govern all services that Pace Analytical \_\_\_\_\_ ("Lab") will perform on behalf of \_\_\_\_\_ ("Client"), and supersede any other written provisions (including purchase/work orders) related to the services, as well as all prior discussions, courses of dealing, and/or performance, unless a separate, executed agreement for the same or similar services already exists between the Lab and Client (collectively "the Parties"), or the Parties subsequently agree to terminate or amend these Terms, as allowed in Sections 8 and 10, respectively.

##### 1. Definitions:

**Holding Time:** The maximum amount of time a sample may be stored before being analyzed.

**Sample Delivery Acceptance (SDA):** The date and time when Lab officially receives a sample or Sample Delivery Group, as evidenced by either a notation on the Chain of Custody or an entry in the Lab's information management system (LIMS).

**Sample Delivery Group (SDG):** A set of samples normally shipped and reported to the Lab as a group.

**Turnaround Time (TAT):** The maximum allowable period within which Lab must report out its analytical testing results to Client, calculated from the date of SDA.

##### 2. Client's Obligations:

- a. Client must complete one (1) of the following steps to initiate Lab's services:
  - i. submit a completed (hard-copy) purchase order
  - ii. place a telephone order
  - iii. email a request
  - iv. attach a completed purchase order to an email
  - v. approve Lab's quotation, or
  - vi. place an order for Lab's supplies via Lab's website.
- b. Subject to occasional, mutually agreed-upon exceptions, Client must, for each sample delivered to Lab, provide all of the following information:



- i. a minimum of five (5) days' prior notice
  - ii. the name of the responsible project manager
  - iii. the name of the person submitting the sample
  - iv. the specific collection site
  - v. the date and time of collection
  - vi. the specific testing being requested, and
  - vii. sufficient details about reporting requirement(s).
- c. Client shall also:
- i. remain liable for any loss or damage to sample(s) until SDA
  - ii. pay all invoices in full on a net 30 basis or as otherwise agreed in writing
  - iii. notify Lab about any disputed charges or results within 30 days of receiving applicable invoice
  - iv. reimburse Lab for any costs, including attorneys' fees, required to collect delinquent payments
  - v. demonstrate its (or, if applicable, the Prime Client's) credit worthiness by accessing the following link: <https://www.pacelabs.com/my-account.html> and clicking on "Client Profile Information." (Note: Client must pre-pay for services pending completion of this process and LAB's approval of a credit line.)
  - vi. pay for any services it orders on any sample(s) already analyzed by Lab.
  - vii. obtain Lab's prior written consent before assigning billing or payment of Lab services to any credit-worthy third party, (failure to do so shall mean Client remains responsible for the payment of any outstanding balance)
  - viii. refrain from using any of Lab's supplies (e.g., sample containers) in connection with any non-Lab services
  - ix. ensure that any sample(s) containing any known hazardous substance is (are) labeled, packaged, manifested, transported, and delivered to Lab in accordance with all applicable regulations
  - x. obtain Lab's prior written consent before publishing Lab's name and/or any data
  - xi. reimburse Lab for any out-of-scope services and related expenses (e.g., defending its analytical results or responding to a subpoena for documents and/or expert testimony)
  - xii. excuse Lab for any failure or delay in its performance caused by Client, a person for whom Client is responsible, or other "Force Majeure" event or circumstance beyond Lab's control, such as government shutdowns, natural disasters, labor strikes, or acts of God; and
  - xiii. accept responsibility for any claims, damages, losses, expenses, etc. (including reasonable attorneys' fees) to the extent they were caused by Client's: breach of these Terms; negligence or willful misconduct (which expressly includes Client's use of Lab's name and/or data for anything other than the specific purpose for which it was intended); or violation of applicable laws.

### **3. Lab's Obligations:**

Lab shall:

- a. Perform its services in accordance with generally accepted analytical and environmental laboratory practices and professionally recognized standards.
- b. Promptly notify Client of any:
  - i. missing sample(s) and/or sample(s) received in damaged, contaminated, improperly preserved condition, or
  - ii. subpoena or similar legal/administrative order requiring action by Lab so that Client might also take appropriate action.
- c. Assume responsibility for the quality of its services.
- d. Prepare and maintain accurate records.
- e. Obtain or maintain any permit(s), license(s), or certification(s) as necessary for the performance of its services.
- f. Charge its fees on a net 30 basis (unless otherwise agreed), including a one and a half percent (1.5 %) per month late charge on any unpaid balances.
- g. Invoice Client for each sample or SDG as reported.
- h. Assume risk of loss or damage to any Client sample(s) upon SDA.
- i. Initiate analysis within established holding times – so long as SDA occurred within 48 hours of collection or the first half of the maximum allowed holding time.
- j. Indemnify Client for any claims, damages, losses, expenses, etc. (including reasonable attorneys' fees) to the extent they were caused by Lab's: breach of these Terms; negligence or willful misconduct; or the negligence and willful misconduct of persons for whom Lab is legally responsible.
- k. Warrant the results, with the express understanding that this warranty is exclusive and does not extend to any merchantability or fitness for a particular purpose.

### **4. Lab's Discretionary Actions:**

Lab may:

- a. Cease all services, including any release of data, if Client does not pay as agreed
- b. Reject or rescind any SDA if Lab decides sample poses a risk
- c. Charge or bill Client directly for:
  - i. reasonable attorneys' fees
  - ii. any supplies (including containers) that are not used or returned
  - iii. outbound/return shipping
  - iv. disposal of any air samples that have not been reclaimed within seven (7) days of Lab's SDA thereof



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- v. disposal of any other samples that have not been reclaimed within 30 days of Lab's SDA thereof, or as otherwise required
  - vi. a minimum fee for invoicing and/or handling samples, and
  - vii. any sample that underwent SDA, but was subsequently, at Client's direction, not analyzed.
- d. Return unused portions of samples found or suspected to be hazardous to Client, at Client's cost.
- e. Retain Client's unreleased data and/or cancel Client's web portal access pending payment in full

**5. Confidentiality:** The Parties agree that they will take all reasonable precautions to prevent the unauthorized disclosure of any proprietary or confidential information of each other and that they will not disclose such information except to those employees, subcontractors, or agents who have expressly agreed to maintain confidentiality.

**6. Governing Law:** These Terms shall be construed and interpreted pursuant to the laws of the State of Minnesota without giving effect to the principles of conflicts of law thereof.

**7. Term:** The Parties shall perform the services identified in the applicable purchase order or other agreement until completed or terminated in accordance with Section 8. below

**8. Termination:**

- a. Either party may terminate these Terms upon 30 days' prior written notice.
- b. Lab may immediately terminate for any breach by Client, including its failure to pay within 60 days of Lab's dated invoice.

**9. Limitation of Liability:**

- a. If a court of competent jurisdiction finds that Lab failed to meet applicable standards and if Client suffers damages as a result, Lab's aggregate liability for its negligence or unintentional breach of contract shall not exceed the total fee paid for its services.
- b. This limitation shall not apply to any Client losses arising from Lab's negligence or willful misconduct, so long as Client:
  - i. Notifies Lab of any issue within thirty (30) days of receiving applicable invoice, and
  - ii. Allows Lab to defend its data, even to a regulatory agency that may have previously rejected same.
- c. Notwithstanding the foregoing, neither Lab nor Client shall be liable to the other for special, incidental, consequential, or punitive damages.

**10. Amendment/Change Order:** Any attempt to modify, vary, supplement, or clarify any provision of these Terms is of no effect unless reduced to writing and signed by both Parties.

**11. Storage of Data:** Following final report issuance, Lab will retain back-up data for up to three (3) years and final reports for up to ten (10) years depending upon the applicable requirements.

**12. Intellectual Property:** Lab shall retain sole ownership of any new method, procedure, or equipment it develops or discovers while performing services for Client pursuant to these Terms. Lab may, however, grant a license to the Client for its use of same.

**13. Non-competition:** Client shall not solicit or recruit any Lab personnel for at least 12 months following the termination of the services governed by these Terms.

**14. Non-assignment:** Neither party may assign or transfer any right or obligation existing under these Terms without prior written notice to the other party, except that Lab may freely transfer the services to another Lab location or, with Client's permission, subcontract the services to a third-party.

**15. Insurance:** Lab carries insurance with the limits of coverage as indicated below and will, upon Client's request, submit certificates of insurance showing same.

- a. General Liability - \$1,000,000 each occurrence; \$2,000,000 general aggregate;
- b. Personal and Advertising Injury - \$1,000,000;
- c. Automobile Liability - \$1,000,000 combined single limit;
- d. Excess Liability Umbrella - \$5,000,000 aggregate; \$5,000,000 each occurrence;
- e. Worker's Compensation Insurance - statutory limits; and
- f. Professional Liability \$5,000,000 aggregate, \$5,000,000 per claim.



**Pace Analytical Services, LLC**  
9800 Kinsey Ave., Suite 100  
Huntersville, NC 28078  
Phone: 704-875-9092  
Fax: 704-875-9091

**16. Miscellaneous Provisions:**

- a. In the absence of an executed agreement between the Parties, the SDA will constitute acceptance of these Terms by Client.
- b. The Parties may use and rely upon electronic signatures and documents for the execution and delivery of these Terms and any amendments, notices, records, disclosures, or other documents of any type sent or received in accordance with these Terms.
- c. The Parties are at all times acting and performing as independent contractors; neither one shall ever be considered an agent, servant, employee, or partner of the other.
- d. These Terms shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.
- e. Lab's compliance with a subpoena or other order shall not violate any requirement for confidentiality between the Parties.
- f. If any Term herein is invalidated or deemed unenforceable, it shall not affect the validity or enforceability of the other Terms.

**IN WITNESS WHEREOF**, Client and Lab have executed this Agreement through their duly authorized representatives as of the last date below:

[Client] \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Pace Analytical

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_