

VCH PPE Testing Lab's Terms and Conditions of Service

These Terms and Conditions of Service (these "**Terms and Conditions**") govern all dealings and transactions between the client identified in the PPE Testing Sample Submission Form ("**Client**") and Vancouver Coastal Health Authority ("**VCH**"), regarding the tests requested by Client therein (the "**Services**").

1. Agreement

(a) By submitting the PPE Testing Sample Submission Form, Client represents, warrants and agrees: (i) it has read and understands these Terms and Conditions; (ii) to be bound by these Terms and Conditions; (iii) that all dealings and transactions with VCH regarding the Services will be governed by these Terms and Conditions, to the exclusion of all other terms and conditions Client may purport to apply (unless agreed to by VCH in writing); and (iv) the person submitting the form on behalf of Client (if not a natural person) has the legal authority to bind Client to these Terms and Conditions.

(b) Upon the submission of the PPE Testing Sample Submission Form by Client, a binding agreement will be formed between VCH and Client comprised of these Terms and Conditions and the accompanying PPE Testing Sample Submission Form (collectively, the "**Agreement**"). In the case of any conflict between these Terms and Conditions and the PPE Testing Sample Submission Form, these Terms and Conditions will govern.

2. Services

(a) Upon receipt of the sample products submitted by Client to VCH for testing (the "**Samples**") and assessment by VCH that the Samples are suitable for testing, VCH will provide the Services described in the PPE Testing Sample Submission Form. VCH reserves the right to decline to provide some or all of the Services to Client, in which case VCH will endeavour to notify Client as soon as practicable and may amend or terminate the Agreement.

(b) VCH will perform the Services consistent with its governing regulatory requirements and internal quality management systems. It is Client's exclusive responsibility to confirm that VCH's standard practices meet Client's needs before placing any order for the Services.

(c) Estimated turnaround times will be provided by VCH upon receipt of the Samples. VCH will make commercially reasonable efforts to comply with any timelines provided by Client or VCH, but does not make any guarantees and such timelines shall be estimates only.

(d) Requests for expedited testing are subject to capacity restrictions, are not guaranteed to be available and may be subject to a surcharge. Any surcharge will be discussed with Client prior to commencement of the Services.

(e) Client acknowledges that VCH, by providing the Services, neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party of Client. No one other than Client will have the right to rely on any Report or other representation of VCH, and VCH disclaims any obligations of any nature whatsoever with respect to such third parties.

3. Samples

(a) Client will ensure that the Samples are suitable for testing and are labeled, packaged, transported and delivered in accordance with applicable laws. VCH may refuse to test or may return Samples submitted for testing which are unsuitable due to damage or contamination, or that may be considered hazardous or which is likely in VCH's judgement to pose an unreasonable risk to VCH's personnel or facility. In such case, Client will be responsible for the cost of returning the Samples.

4. Test Reports

(a) VCH will prepare reports of services performed indicating the results of testing ("**Reports**") and unless otherwise required by law, VCH will only provide Reports to Client.

(b) Reports are limited in scope. Reports only relate to Samples as received and tested by VCH at the time of testing, and not from any lot(s) from which the Samples may have been taken, or any apparently identical or similar products. Reports reflect the test results as recorded by VCH at the time of testing and are subject to expected measurement variability.

(c) The interpretation of the Reports and any decisions to be made on the basis of any information contained in the Reports are the sole responsibility of Client. VCH does not provide any interpretation of, or any opinion with respect to, the information contained in the Reports.

(d) If a Report is amended by VCH, the amended Report will identify that it is an amendment to an existing Report and any change of information will be identified and where appropriate, the reason for the change will be included in the amended Report. Client must not amend or alter any Report or other information received from VCH relating to VCH or the Services provided to Client.

(e) Reports are for the exclusive benefit of Client and may not be relied upon by any other party. Client may not use, reproduce or otherwise disseminate excerpted, partial, redacted or otherwise altered Reports without the prior review of such use and written approval by VCH. Client is prohibited from manipulating data and/or extrapolating from Reports statistics or conclusions that contradict or eclipse the empirical results of testing as reflected by the complete Report.

(f) Client will not, without the prior written consent of VCH (which may be subject to conditions) use VCH's name, logo, test results or Reports prepared by VCH in connection with any sale, marketing, advertising or in any way that may be interpreted as denoting product conformity or that may imply that VCH has approved a product. Client will not, under any circumstances, use VCH's name, logo or any results or Report prepared by VCH in any manner which may cause harm to VCH's reputation and/or business.

5. Fees and Payment

(a) Fees for the Services will be at VCH's standard rates (which are subject to change) and all applicable taxes will be payable by Client. Unless otherwise stated, rates are in Canadian dollars and exclusive of applicable taxes.

(b) Unless otherwise agreed, Client will promptly pay no later than 30 calendar days from the relevant invoice date or such other date as may be established by VCH in the invoice (the “Due Date”) all fees due to VCH, failing which, VCH reserves the right to charge interest at a rate of 1.5% per calendar month (or the maximum interest rate allowed by law, whichever is lower) from the Due Date up to and including the date payment is actually received.

(c) VCH reserves the right, prior to performing any Services, to require from Client satisfactory security for performance of Client’s obligations. If Client fails to furnish satisfactory credit information, security or if its account is in arrears, VCH may, at its option, immediately and without further liability suspend further performance or terminate the Agreement.

(d) For non-routine special projects, VCH reserves the right to request a payment of up to 100% in advance of Services performed.

(e) In the event that any unforeseen problems or expenses arise in the course of carrying out the Services, VCH will endeavour to inform Client and will be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the Services.

(f) Client will not be entitled to retain, withhold or defer payment of any sums due to VCH on account of any complaint, dispute, counter claim or set off which it may allege against VCH.

(g) VCH may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction. Client will pay all of VCH’s collection costs, including legal fees and related costs.

6. Complaints

(a) In the case of any complaint by Client regarding the Services, Client may contact the laboratory manager.

(b) Upon receiving the complaint, VCH will acknowledge receipt and will communicate progress updates to Client during the resolution of the complaint. Complaint resolution will be handled by person(s) not involved in the original provision of the Services that are the subject matter of the complaint. Upon conclusion of the complaint resolution, VCH will provide notice to Client regarding the outcome.

7. Suspension or Termination of Services

(a) VCH shall be entitled to immediately and without liability either suspend or terminate provision of the Services in the event of: (i) failure by Client to comply with any of its non-payment obligations hereunder, and such failure is not remedied within 14 calendar days of written notice of such failure to Client; (ii) any failure on the part of Client to make payment to VCH when due hereunder; (iii) the bankruptcy, insolvency, receivership or cessation of business by Client; or (iv) as otherwise contemplated in the Agreement.

(b) Client may suspend or terminate the Services for any reason at any time, by providing written notice of such suspension or termination to VCH.

(c) If the Services are terminated by either party for any reason, Client will pay to VCH a proportion of the fees payable for the Services equal to the proportion of the Services actually carried out (or preparatory work actually carried out, in the event that the Services are terminated after the Samples are received by VCH but prior to commencement of the testing), and any complete and reportable

results will be provided to Client. Client will responsible for the cost of returning any Samples.

8. Warranty and Limitation of Liability

(a) VCH warrants that VCH will provide the Services in a professional manner using qualified personnel and will devote adequate resources to meet its obligations under the Agreement.

(b) VCH shall not be liable for a breach of the warranty set forth in Section 8(a) unless Client gives written notice of the defective Services, reasonably described, to VCH within 45 calendar days of the completion of the Services.

(c) Subject to Section 8(b), VCH shall, in its sole discretion, either: (i) repair or re-perform such Services (or the defective part); or (ii) credit or refund the price of such Services at the pro rata rate.

(d) THE REMEDIES SET FORTH IN SECTION 8(c) SHALL BE CLIENT’S SOLE AND EXCLUSIVE REMEDY AND VCH’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8(a).

(e) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 8(a) ABOVE, VCH MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OR CONDITION OF MERCHANTABILITY; OR (B) WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(f) IN NO EVENT WILL VCH’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, EXCEED THE AGGREGATE FEES PAID BY CLIENT FOR THE SERVICES PURSUANT TO THE AGREEMENT.

(g) The Reports are issued on the basis of information, documents (including the PPE Testing Sample Submission Form) and/or Samples provided by, or on behalf of, Client and solely for the benefit of Client who is responsible for acting as it sees fit on the basis of the Reports. VCH shall not be liable to Client nor any third party for any actions taken or not taken on the basis of such Reports; the use, reliance upon or interpretation of the Reports by Client or any third party; nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to VCH.

(h) VCH shall not be liable for any delayed, partial or total non-performance of the Services arising directly or indirectly from any act or omission by Client.

(i) VCH will have no liability for any indirect or consequential loss including, without limitation, loss of profits or revenue, loss of business, loss of contracts, loss of opportunity, loss of anticipated savings, loss of goodwill and cost of product recall, however arising and whether caused by breach of contract, tort, negligence, breach of statutory duty or otherwise, even if foreseeable. In addition, VCH will have no liability for any loss, damage or expense arising from the claims of any third party (including, without limitation, product liability

claims) that may be incurred by Client, except to the extent that such claims are caused by VCH's gross negligence or wilful misconduct.

9. Indemnity

(a) Client will hold harmless and indemnify VCH and its directors, officers, employees, agents and contractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to any breach of Client's representations and warranties hereunder; any failure by Client to comply with any of its obligations hereunder; any use, reliance upon or interpretation of the Reports or any other information provided by VCH; or the performance, purported performance or non-performance, of any Services by VCH, except to the extent that such claims are caused by VCH's gross negligence or wilful misconduct.

10. Force Majeure

(a) VCH shall not be liable or responsible to Client, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of VCH including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage (each an "Event of Force Majeure"), provided that, if the event in question continues for a continuous period in excess of 1 calendar month, Client shall be entitled to give notice in writing to VCH to terminate the Agreement. In respect of an Event of Force Majeure that is related to a cybersecurity incident, VCH shall not be liable for any loss, destruction, or damage to data, reports, or results, or have any liability to Client due to lack of access to data, Reports or results, based on a cybersecurity incident affecting VCH's operations, irrespective of whether the cause of such cybersecurity incident was internal or external and whether or not it was caused by any type of cyber-attack, network failures, human error, or any shortcomings in VCH's cybersecurity systems or program, unless such shortcomings were due to the negligence of VCH.

11. Sample and Record Retention

(a) After the test results have been reported to Client, VCH will dispose of the Samples in accordance with VCH's standard operating procedures or such other time period as the nature of the Sample permits. Special disposal charges will be billed to Client if incurred. VCH will not be responsible for providing a refund or compensation for unused products of Client.

(b) VCH will retain copies of testing job files (including Reports) for a period of 10 years. If Client requests additional copies of the Report during this period, an additional charge may apply for the preparation and delivery of the Report.

12. Confidentiality

(a) The "Client's Confidential Information" includes but is not limited to financial data; employee, supplier, customer information; business or marketing plans; trade secrets or other intellectual property; contracts; documents of internal nature or with third parties; and policies and procedures of Client's business. For certainty, the Client's Confidential Information includes the Reports.

(b) Client retains all rights, interest and control in the Client's Confidential Information, which will remain and be the exclusive property of Client. VCH will hold in confidence and will not use, in any form or manner, and will not disclose, in whole or in part, to any other party, any of the Client's Confidential Information, except as reasonably necessary to carry out the Services or as authorized by Client in writing.

(c) Notwithstanding Section 12(b), the Agreement will not restrict disclosure or use by VCH of the Client's Confidential Information that is required to be disclosed by applicable law, by ruling of a government body or by a court of law or equity with competent jurisdiction over VCH, provided that: (i) VCH first provides Client with written notice of such required disclosure and the opportunity, if possible, to limit, object to or narrow such disclosure; and (ii) any disclosure hereunder is limited in scope and recipients to that which is required by such legal proceeding. Without limiting the foregoing, Client acknowledges that VCH is a public body subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) ("FIPPA") and the Agreement between VCH and Client (and associated records) may be subject to the disclosure requirements and exceptions as provided for in FIPPA. VCH shall not be liable to Client for the release or disclosure of any information or records pursuant to or in connection with FIPPA.

13. General

(a) These Terms and Conditions and the PPE Testing Sample Submission Form represent the entire agreement between VCH and Client in relation to the subject matter therein, and supersede any prior agreement, understanding or arrangement between VCH and Client, whether oral or in writing.

(b) The provisions set out in Sections 2(e), 4, 7(a), 7(c), 8, 9, 11, 12 and 13 shall survive the termination of any Services rendered.

(c) If any provision of the Agreement is determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

(d) The Agreement will be governed by and construed under the laws of the Province of British Columbia, without regard to choice or conflict of law rules.

(e) Except as otherwise provided herein, any dispute arising out of or based on the Agreement which cannot be resolved between the parties within 2 calendar months of the initial notice of dispute, shall be referred to and finally resolved by arbitration under the rules of the Vancouver International Arbitration Centre in effect as of the date of the Agreement. The arbitration shall be subject to the following: (i) the appointing authority will be the Vancouver International Arbitration

Centre; (ii) the case will be administered by the Vancouver International Arbitration Centre in accordance with its Domestic Arbitration Rules; (iii) the place of arbitration will be Vancouver, British Columbia; (iv) the number of arbitrators will be one; and (v) the language used in the arbitral proceeding will be English.

(f) Subject to Section 13(k), the Agreement may only be amended or modified in writing which specifically states that it amends the Agreement and is signed by an authorized representative of each party.

(g) The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

(h) No waiver by VCH of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by VCH. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(i) Client shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of VCH. Any purported assignment or delegation in violation of this Section 13(i) is null and void. No assignment or delegation relieves Client of any of its obligations under the Agreement.

(j) Save and except for the third party beneficiaries of the indemnity in favour of VCH in Section 9(a), the Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

(k) VCH has the right to revise and amend these Terms and Conditions from time to time. Client will be subject to the Terms and Conditions in force at the time Client orders the Services from VCH.