



TERMS AND CONDITIONS FOR ANALYTICAL SERVICES

Novati TECHNOLOGIES, LLC - 2706 Montopolis Drive, Austin, TX 78741 - [REV 12092016]

1. **Applicability.** Except as otherwise mutually agreed in writing, these Terms and Conditions shall govern analytical services provided by Novati. These Terms and Conditions supersede all previous communications, representations, or agreements, either verbal or written, between the parties. These Terms and Conditions shall override any additional, inconsistent or conflicting terms, whether printed or otherwise set forth in any purchase order or other documents provided by Customer to Novati.
2. **Services.** Novati agrees to perform the services described in the proposal/quotation to which these Terms and Conditions are referenced. Unless specifically agreed, completion times are not assured. Unless otherwise agreed, Novati will electronically transmit the results of the analytical services which shall constitute full performance of Novati's obligations.
3. **Law.** This agreement shall be interpreted under the laws of the State of Texas except for that portion known as conflict of laws. The invalidity or unenforceability, in whole or in part of any provision shall not affect the validity or enforceability of the remainder of the Terms and Conditions. Waiver by Novati of any provision or of any breach or obligation shall not constitute a waiver of such provision on any other occasion. Modifications to this Agreement must be mutually agreed in writing.
4. **Methodology.** (A) Services provided by Novati: Customer acknowledges that analytical services may be outsourced to subcontractors of Novati at Novati's sole discretion. Industry standard methodologies will normally be used, however, Novati reserves the right if necessary to deviate from standard methodologies. Customer shall provide a prior written disclosure of known or suspected hazards or toxicity and shall provide written instructions concerning handling. Customer warrants that all submissions will be packaged, labeled, transported and delivered in accordance with applicable laws. Customer will be responsible for disposal. (B) Services performed by Customer: With Novati's prior written consent and upon satisfactory completion of training on the applicable equipment, Customer may be allowed limited access to Novati facilities to perform its own analytical services; if Customer damages any Novati equipment, Customer agrees to be liable for all damages, repairs, and replacement, to Novati. Customer acknowledges that Novati shall have the right to require Customer to maintain and keep in force, specific insurance to protect Novati against damages from Customer's use of Novati equipment. Novati shall have no obligations regarding the performance or results of Customer's analytical work.
5. **Warranty.** Novati warrants only that it will perform analytical services and prepare reports in a commercially reasonable manner. No specific results are guaranteed. Preliminary results may be given in advance of a final report. If provided to Customer, preliminary results are subject to change and final review by Novati and Customer's use of preliminary results shall be at Customer's risk. Novati DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.
6. **Liability.** Customer's exclusive remedy in the event of a breach of this Agreement shall be that Novati will repeat the services at its own expense, and Novati shall have no other liability whatsoever. All claims shall be deemed waived unless made in writing and received by Novati within sixty (60) days following completion of services. Results are provided only for the use and benefit of Novati Customers. Customer shall indemnify Novati from any claims by third parties arising out of or related to the services provided under this agreement. IN NO EVENT SHALL NOVATI BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER CUSTOMER, FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. IN THE EVENT THAT ANY LIABILITY IS IMPOSED ON NOVATI HEREUNDER, AWARDED DAMAGES SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO NOVATI FOR THE SERVICE TO WHICH SUCH LIABILITY RELATES. Each party acknowledges that the foregoing limitations are an essential element of the Agreement and that in the absence of such limitations the pricing and other terms set forth in this Agreement would be different.



7. **Handling.** Novati shall have no responsibility or liability for the actions of any carrier or for delivery problems to or from Novati. All shipment arrangements will be at Customer's expense. If not picked up, submissions will be held for a limited time after which they will be destroyed unless otherwise agreed in writing. Disposal of hazardous materials is the responsibility of the Customer. Novati reserves the right to refuse accept any submission if Novati determines in its sole discretion, that a submission is of insufficient volume, or that it poses a risk due to health, safety, environmental or other factors, even if not a hazardous substance or notice was made by Customer.

8. **Fees.** Services performed will be billed in the amounts quoted or as stated on applicable Novati Fee Schedules. If Customer notifies Novati to terminate services prior to completion, Customer shall remain liable for all services performed prior to receipt of notice. Payment terms are stated on Novati's invoice and unless otherwise agreed, are due within thirty days. Charges do not include any sales, use or other taxes that will be added if legally required. Novati reserves the right to require payment prior to commencing services or release of data. Forensic testimony or other services not stated on the quotation are not included the services to be provided.

9. **Intellectual Property.** Customer's proprietary property submitted to Novati shall remain the Customer's property. Upon satisfactory payment to Novati for services provided, data or information generated by Novati for the Customer shall be deemed the Customer's property. Novati or its subcontractors shall retain ownership of all analytical methods, protocols, and equipment. Without Novati's prior written consent, Customer shall not use Novati's or its subcontractor's names or trademarks in any written materials, press releases or in any other manner and shall not attribute to Novati any test result, tolerance or specification derived from Novati's data.

10. **Assignment.** Upon written notice to Customer, Novati may assign this agreement to a successor in interest that is not a competitor of Customer upon a merger, acquisition, reorganization, change of control, or sale of all or virtually all of the assets of Novati, and any such assignment shall not require Customer's consent. Except as otherwise provided herein, this agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not unreasonably be withheld, conditioned or delayed. Any unauthorized assignment shall be void and invalid from the start and may not be enforced against Novati.

11. **Equal Opportunity.** Novati is a government contractor and is subject to the requirements of Executive Order 11246, Section 503 of the Rehabilitation Assistance Act and VEVRAA. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations, Novati Technologies Inc. shall abide by the requirements of sections 60-1.4(a) (1-7), sections 60-250.5, sections 60-300.5 (1-11) and sections 60-741.5 (a) (1-6). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, gender identification, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran or disability status.