



## ***General Conditions for Laboratory Services***

### **Section 1 - Services to be Provided**

Laboratory shall provide testing services in accordance with this Agreement and executed Test Request Forms. All tests will be performed with that degree of care and skill ordinarily exercised under similar circumstances by reputable similar laboratories and using test procedures and laboratory protocols as specified in the Test Request Forms.

### **Section 2 - Standard of Care**

Client/Engineer expects the services provided by Geotechnics under this agreement will be performed in a manner consistent with the level of care and skill ordinarily exercised by members of the laboratory profession currently practicing under similar conditions and time period in the locality of the project. No warranty, expressed or implied, is made or intended by providing laboratory services or by furnishing oral or written reports of the findings made.

### **Section 3 - Reports and Confidentiality**

Laboratory will provide written reports by the delivery date and in the quantities as specified in the Test Request Forms. Except as required by law, Laboratory shall not disclose to any person or entity other than Engineer/Client: 1) reports, 2) the conclusions, observations and opinions contained in reports or 3) any information, samples or other material supplied to Laboratory by Engineer/Client. Laboratory shall abide by any additional confidentiality requirements requested by Engineer/Client provided that such requirements are provided to Laboratory at or before execution of the testing.

### **Section 4 - Chain of Custody, Document Retention**

Laboratory or Engineer/Client shall create and maintain appropriate written chain of custody documentation to assure linking of results to specific samples. If requested by Engineer/Client, Laboratory shall provide the chain of custody documentation with the report. Laboratory will retain test data for three years and financial data for three years relating to the services performed.

### **Section 5 - Delivery, Acceptance and Retention of Samples**

Loss or damages to samples remains the responsibility of Engineer/Client until Laboratory's acceptance of samples by notation on chain of custody documents or otherwise in writing.

As to any samples that are suspected of containing hazardous substances or radioactive material, Engineer/Client will specify the suspected or known substances and or the level and type of radioactive activity. This information will be given to Laboratory as a part of the Test Request Form and will precede radioactive samples and will precede or accompany samples suspected of containing hazardous substances.

Laboratory will retain samples for a period of 90 days following the date of submission of the report. If directed, laboratory will extend the retention period provided the Engineer/Client agrees to pay the storage charge. Following the retention period, Laboratory will dispose of all non-impacted samples. Impacted samples will be returned to the Engineer/Client at their cost for disposal. However, details for disposal of impacted samples by the laboratory may be arranged prior to sample arrival.

### **Section 6 - Changes to Test Request Forms**

No persons other than the designated representatives for each Test Request Form are authorized to act regarding changes to a Test Request Form.

Laboratory shall provide Engineer/Client with written notification promptly upon identifying any activity that is a change to the terms and conditions of a Test Request Form. The notice will include the date; nature, circumstance, and cause of the activity regarded as a change, and will specify the particular elements of project performance for which an equitable adjustment is sought.

Changes may be made to a Test Request Form through issuance of an amended Test Request form. The amendment will specify the reason for the change and, as appropriate, include any modified budgets, schedules, scope of work, and other necessary provisions. The amended Test Request Form will become part of this agreement upon execution by Laboratory and Engineer/Client.

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Raleigh Facility, 2200 Westinghouse Blvd, Suite 103, Raleigh, NC 27604 919-876-0405  
Nashville Facility, 13 Industrial Park Drive, Suite 500, Hendersonville, TN 37075 615-590-7695*

### **Section 7 – Compensation**

Laboratory shall submit invoices at the completion of the testing program or monthly to the Engineer/Client, who shall review them promptly. The Engineer/Client shall either approve these invoices or notify the Laboratory of any invoices not approved. The Engineer/Client and Laboratory shall confer and attempt to resolve such disputed invoices. The Engineer/Client shall promptly invoice for the Laboratories service in accordance with the billing terms of the Engineer/Client's agreement with their Client and shall use reasonable and diligent efforts to collect payment from the Client. The Engineer/Client shall pay the Laboratory within 10 calendar days after receiving payment from the Client.

Regardless of whether or not the Client pays the Engineer/Client in full, the Engineer/Client shall pay the Laboratory for all undisputed invoices within a reasonable period of time after the completion of the Laboratories services under this Agreement. If payment is not received by the Laboratory for undisputed invoices within ten (10) calendar days after the Client pays the Engineer/Client for such services, or within sixty (60) calendar days after the Laboratory submits its invoices for such services, whichever occurs first, then such invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the PAST DUE amount per month, which shall be calculated from the tenth or forty-fifth day, as above, whichever occurs first. Payment to the Laboratory shall first be applied to accrued interest and then to the unpaid principal.

### **Section 8 - Disputes**

All disputes under this Agreement shall be resolved as follows. Within 15 days after written notification of the dispute, principals or officers of Laboratory and Engineer/Client shall meet in an effort to resolve the dispute. If the dispute remains unresolved, the parties shall participate in a facilitated mediation pursuant to the rules of the American Arbitration Association, or such other person or entity as the parties may agree upon. Notwithstanding the foregoing, upon request by Laboratory, Engineer/Client shall participate in and be bound by any disputes resolution mechanism contained in Laboratory's agreement with its Engineer/Client.

### **Section 9 - Indemnification**

Laboratory shall indemnify and hold harmless Engineer/Client, its officers, directors, shareholders and employees from and against claims, demands, damages, liability and expenses, including attorneys' fees arising from Laboratory's negligent acts, omissions or breaches of contract or from the negligent acts, omissions or breaches of contract of persons or entities for whom Laboratory is legally responsible.

Engineer/Client shall indemnify and hold harmless Laboratory, its officers, directors, shareholders and employees from and against claims, demands, damages, liability and expenses, including attorneys' fees arising from Engineer/Client's negligent acts, omissions or breaches of contract or from the negligent acts, omissions or breaches of contract of persons or entities for whom Engineer/Client is legally responsible.

### **Section 10 - Termination and Suspension**

Engineer/Client may order work suspended or terminated upon seven days advance written notice. If work is suspended, Laboratory shall receive, upon resumption, an adjustment in the cost of services to compensate for additional costs incurred due to the interruption of services. Upon suspension or termination, Laboratory shall preserve samples provided that Engineer/Client agrees to pay the sample storage charge.

### **Section 11 - Limits of Liability**

Engineer/Client agrees to limit Geotechnics' liability to the sum of twice the Testing Fee or a sum of Twenty-Five Thousand Dollars (\$25,000), whichever is greater.

### **Section 12 - Miscellaneous Provisions**

This agreement constitutes the entire agreement between the parties, and supersedes all other and prior agreements. Any term, condition, prior course of dealing, course of performance, usage of trade, understanding, purchase order conditions, or other agreement purporting to modify, vary, supplement, or explain any provision of this agreement is of no effect until placed in writing and signed by both parties subsequent to the date of this agreement. In no event will the printed terms or conditions stated in a purchase or work order, other than an agreed upon Test Request Form, be considered a part of this agreement, even if the document is signed by both the Laboratory and Engineer/Client.

Neither party will assign this agreement without the express written approval of the other, except the assignment of receivables for financing purposes. Laboratory may subcontract portions of this Agreement to other qualified laboratories if agreed upon by Engineer/Client.

If any of the provisions of this agreement are held to be invalid or unenforceable in any respect, the remaining terms will remain effective and the agreement will be construed as if the invalid or unenforceable matters were never included in it. No waiver of any default will be a waiver of any future default. Neither party shall be liable for nonperformance caused in whole or in part by Acts of God, civil unrest and war.

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