

# DATA RESOURCES INCORPORATED TERMS AND CONDITIONS

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This document sets forth the terms and conditions under which Data Resources, Inc. (hereinafter "Data Resources"), a South Carolina corporation, provides laboratory, consulting and sampling services to its customers throughout the US.

## **ORDERING**

Customers may order services (specify a "Scope of Work") by submitting a written purchase order or a written request for analysis or by placing a telephone order. All telephone orders must be subsequently confirmed in writing by the customer.

## **SAMPLES**

Customers must provide, together with the submission of their samples, a completed and signed Chain of Custody form with adequate instructions describing the type of analysis requested and a complete and thorough written disclosure of the known or suspected presence of any hazardous substances. Hazardous substances are those defined as such by local, state and federal law. Customers shall be liable and shall pay all costs and damages resulting from a customer's failure to disclose to Data Resources that a sample contained or was suspected to contain a hazardous substance. Customers shall be liable and shall pay all costs and damages resulting from a customer's failure to comply with any local, state or federal law regarding the sample. Customers shall be liable and shall pay all costs and damages resulting from any action on the part of the customer which interrupts Data Resource's ability to process work, contaminates Data Resource's instruments or work areas or necessitates any clean-up or recovery on the part of Data Resources.

## **PAYMENT**

All services provided by Data Resources shall be performed in accordance with the Quotation provided by Data Resources to the customer. An agreement by Data Resources and the customer to proceed absent the issuance of a Quotation shall be performed and billed in accordance with Data Resource's published price schedule IN effect at the time OF the agreement OF the parties TO proceed.

Data Resources will issue an invoice, based upon the Quotation or Price Schedule, whichever is applicable, upon completion of a sample project. Payment terms are due upon receipt. Finance charges will be assessed on the outstanding balance over 30 days old equal to one and one - half percent (1.5 %) per month. Data Resources may refuse to perform work, demand immediate payment for work performed, withhold delivery of data, or require prepayment for services based upon a customer's failure to make timely payments or upon receipt by Data Resources of an unfavorable credit report for customer.

## **INTERRUPTION OF PERFORMANCE**

The customer may direct Data Resources to suspend a portion or all of the work to be performed. In such case, the customer will remain responsible for all work performed up until the time Data Resources became aware of customer's desire to discontinue the services. Any uncompleted analysis will be billed on a prorated basis, as determined by Data Resources. All directions by Customer to suspend work must be issued to Data Resources in writing.

## **PROFESSIONAL WORKMANSHIP**

Data Resources employees will perform in accordance with accepted industry practice and to accepted industry standards. Data Resources seeks to insure that all services will be performed in a timely and professional manner and that all findings are technically valid. Any failure on the part of Data Resources to perform in accordance with industry standards will be corrected provided such failure was a direct result of acts or omissions by Data Resources concerning factors deemed to be in Data Resource's scope of work pursuant to this Agreement and under Data Resource's exclusive control.

## **COMPLIANCE**

Data Resources and the customer agree to comply with all applicable laws, ordinances, codes and regulations.

## **CERTIFICATIONS**

The customer shall provide Data Resources with notice in writing, prior to Sample Delivery Acceptance, of all licenses and certifications that it will require Data Resources to hold during performance of services by Data Resources for the customer. Data Resources will notify the customer of any revocation of a required license or certification.

## **SAMPLE HOLDING TIMES**

Data Resources will initiate preparation and/or analysis within holding times, provided Sample Delivery Acceptance occurs within forty- eight (48) hours of sampling or one-half (1/2) of the holding time for the test, whichever is less. In cases where Sample Delivery Acceptance is not made within these time periods, Data Resources will use their best efforts to meet the holding times. The holding time commitment shall be satisfied if an initial analysis is performed within the holding time and reanalysis, to comply with Quality Assurance Requirements, is performed outside the holding time. Data Resources will remedy any failure to meet a holding time commitment where such failure is due to Data Resource's negligence.

## **WORK IN PROGRESS**

Data Resources will provide the customer with information concerning the progress of the work Data Resources is performing for the customer and will notify the customer of any changes, concerns, problems or delays materially affecting performance.

## **ANALYTICAL METHODS**

Where the services to be provided by Data Resources require the use of analytical methodologies, Data Resources will use those analytical methodologies which conform with methodologies set by the U.S. Environmental Protection Agency (EPA), The South Carolina Department of Health and Environmental Control (DHEC), American Society for Testing and Materials (ASTM), Association of Official Analytical Chemists (AOAC), Standard Methods for the Examination of Water and Wastewater, or other such appropriate methodologies. Data Resources may deviate from these methodologies where, in Data Resource's judgment, it is necessary or appropriate to do so. The nature (matrix) or compositions of a sample are examples of factors that may require Data Resources to deviate from these methodologies. Any deviations from the analytical methodologies set forth above will be made in accordance with recognized industry standards, Quality Assurance Plans and/or referenced Standard Operating Procedures.

Should the customer want Data Resources to perform in accordance with a mutually agreed upon Quality Assurance Plan (QAP), the customer must seek agreement with Data Resources on such a plan before Data Resources receives the samples. Samples arriving prior to an agreement upon a QAP will be analyzed under Data Resource's standard Quality Assurance Plan then in effect. Data Resources will not be responsible for resampling or other costs for work that must be completed in order to comply with a QAP that is finalized subsequent to Data Resources receiving samples.

## **CONFIDENTIALITY**

Data Resources will exercise all reasonable efforts to maintain the customer's confidentiality with regard to business or technical information it receives in connection with its performance for the customer. Data Resources will use the information it receives about customers solely for the purpose of providing services to the customer.

The customer shall treat all information and data it receives about Data Resources as proprietary and confidential. The customer shall maintain in strict confidence all such information, including but not limited to information concerning technology, procedures, and methods used by Data Resources, formulas, trade secrets, ideas, computer programs and inventions. The customer shall not disclose, and shall

prevent disclosure of, confidential information to any third party without express written permission being granted by Data Resources.

This provision does not prevent either party from disclosing and/or using information or data (i) known to the receiving party before being obtained or derived from the transmitting party; (ii) that is available to the public without the receiving party's fault at any time before or after it is acquired by the transmitting party; (iii) that is obtained or acquired in good faith by the receiving party from a third party who has the same information in good faith and who is not under obligation to the receiving party with respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) after five (5) years from the receipt of such information; or (vi) when required by process of law; provided, however, upon service of such process, the recipient thereof shall notify the other party and afford it an opportunity to resist such process.

#### **WARRANTIES**

Data Resources does not make any express or implied warranties of any kind to the customer. Neither this document, nor the Quotation nor any action or communication on the part of Data Resources shall lead to the issuance of an express or implied warranty to customer.

#### **REMEDY**

In the case of any finding of liability, by a court of competent jurisdiction, on the part of Data Resources for damages incurred by customer, customer agrees, to the maximum extent permitted by law, to limit an award for damages, to one hundred dollars (\$100.00) or to the fee charged to the customer by Data Resources for the relevant services, whichever is greater. This limitation applies regardless of the cause of action or legal theory pled or asserted. This remedy is to be exclusive and in lieu of any other available in law or in equity. Indemnification, releases from liability and limitations of liability shall apply, not withstanding the fault, negligence, or strict liability of the party to be indemnified, released or whose liability is limited, except to the extent that there is willful misconduct.

#### **CHALLENGE TO RESULTS**

The customer shall pay Data Resources for all services performed on their behalf and for all results utilized by the customer or the customer's client, regardless of any allegation on the part of the customer or customer's client that the results issued by Data Resources did not conform to Data Resource's responsibilities as set forth in these terms and conditions. In every instance, Data Resources shall be given the opportunity to defend its data directly with any person or entity challenging its results. Should Data Resources be prohibited or hindered from directly defending its data, all sums owed to Data Resources by the customer shall be immediately due and payable and no refund for sums paid by the customer will be issued by Data Resources.

#### **OWNERSHIP OF DATA**

Data or information provided to Data Resources by the customer shall remain the customer's property. Upon full payment to Data Resources for all services provided by Data Resources, data or information generated by Data Resources for the customer shall become the customer's property. Data Resources will retain exclusive ownership of any and all analytical methods, QA/QC protocols, and equipment developed by Data Resources for performance of work by Data Resources.

#### **CHOICE OF LABORATORY**

Unless the customer has specified, in a timely manner, a particular location where Data Resources is to perform its services for the customer, Data Resources may perform services for the customer at any laboratory in its network. Data Resources retains the right, at its discretion, to subcontract services ordered by the customer to another laboratory or other laboratories. If Data Resources intends to use subcontract services to a laboratory in its network, Data Resources will make every reasonable effort to insure the laboratory chosen to perform the work is a South Carolina certified laboratory when the scope of work requires regulatory compliance testing.

#### **SAMPLE DISPOSAL AND RETURN**

Samples submitted to Data Resources become the property of Data Resources. For safety reasons samples cannot be returned to the client. Data Resources will dispose of all samples thirty (30) days following the acceptance into our LIMS system. Data Resources complies with all U.S. Environmental Protection Agency regulations and federal, state and local laws when disposing of samples.

#### **RECORD RETENTION**

Data Resources will retain records pertaining to the work performed for the customer for a period of five (5) years following the acceptance into our LIMS system. Should the customer desire Data Resources maintain the records in excess of five years, the Customer must notify Data Resources in writing. The customer, in accordance with Data Resources fee schedule, will owe an additional record retention charge in effect at the time of the request.

#### **LITIGATION SERVICES**

The customer will be required to pay and/or reimburse Data Resources for all costs incurred, including the time spent by Data Resources employees and officers, should Data Resources be required to respond to legal process related to services it has provided to the customer or should the customer request file searches, additional reporting, or a consultation that is above and beyond that usually offered in the normal course of business. Customer will pay for all time expended by Data Resources employees and officers in accordance with their hourly rate as set forth on the fee schedule published and in effect at the relevant time. In addition to the above enumerated charges, customer will pay all legal costs incurred by Data Resources in obtaining legal advice, preparing a response and issuing a legal response to the legal process, and in preparing and issuing legal testimony, whether oral or in writing. Customer's agreement to pay and/or reimburse Data Resources for the litigation services and costs referenced above shall remain in full force and effect for 10 years from the last date that Data Resources completes providing services for the customer.

#### **INSURANCE**

Data Resources shall maintain insurance for protection from claims under Worker's Compensation Acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any and all employees or of any person other than such employees; and from claims for damages because of injury to or destruction of property, including loss of use resulting from these causes; and from claims arising out of the performance of professional services, caused by an error, omission or negligent act for which Data Resources is liable; and for claims arising from Breach of Contract.

#### **SAMPLE DELIVERY AND ACCEPTANCE**

Sample Delivery Acceptance is defined as the point in time after which Data Resources has received and inspected the samples and received project guidance regarding the work to be done and resolved any discrepancies in the Chain of Custody Forms and made a determination that it can proceed with the defined work. Data Resources reserves the right to refuse or reject Sample Delivery Acceptance for any sample that it deems to be: (i) of unsuitable volume; (ii) a health, safety, environmental or other risk; or (iii) a sample that will fail to meet holding times either due to the passage of more than 48 hours from the time of sampling or the passage of half the holding time for the requested test, whichever is less.

#### **RISK OF LOSS**

Except where Data Resources provides courier services, the entire risk of loss or damage to samples remains with the customer. The customer will be responsible and Data Resources will not have any responsibility for the action or inaction of any customer or carrier shipping or delivering any sample to or from Data Resource's premises. As set forth in Paragraph 2 above, regarding samples, the customer is responsible for determining whether or not the sample it is shipping contains a hazardous substance as defined by law, and for taking all actions necessary to ensure the sample it ships is packaged, labeled, transported and delivered properly and in accordance with all local, state and federal laws.

**ENTIRE AGREEMENT**

These Terms and Conditions, together with any duly authorized and executed addendum, embody the entire agreement of the parties and provide the exclusive remedies available to the customer. These Terms and Conditions supercede all previous verbal and written communications, representations and agreements between the customer and Data Resources. No modification or waiver of any provision of these Terms and Conditions shall be binding on either party unless made in writing and executed by the customer and Data Resources.

**GOVERNING LAWS**

These Terms and Conditions, and any transactions and agreements to which they apply, shall be governed and construed, both as to interpretation and performance, by the laws of the State of South Carolina. The customer and Data Resources agree to submit to the jurisdiction of the State of South Carolina and the venue for any action arising out of the Terms and Conditions set forth herein will be in Richland County, South Carolina.

**SEVERABILITY**

The provisions of these Terms and Conditions are severable. The invalidity or unenforceability, in whole or in part, of any provision, term or condition herein shall not invalidate the remainder of these Terms and Conditions.

**WAIVERS**

No waiver of either party of any provision, term or condition herein or of any obligation hereunder shall constitute a waiver of any subsequent breach. No waiver shall be inferred by a party's conduct. All waivers must be in writing.

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