

# H. M. Pitt Labs, Inc. Professional Services

## Standard Terms and Conditions

The terms and conditions set forth below constitute the entire agreement between H.M. Pitt Labs, Inc. ("Company") and you ("Customer") with respect to the Company professional services, unless otherwise agreed to in writing by an authorized representative of Company. If Customer is an existing customer of Company, this Agreement confirms and memorializes an agreement that Company and Customer have had since Company first commenced providing services to Customer. In the event that Customer issues any form of order to Company authorizing the purchase of Company professional services, it is agreed that such order is issued exclusively for the purpose of confirming Customer's purchase of the specified service(s) and the price(s) thereof and that no other terms and conditions specified or preprinted on Customer's order shall add to or modify the terms and conditions of this Agreement, nor shall such order terms and conditions affect either party's responsibility to the other party as set forth herein. Receipt by Company of a Customer purchase order or other written or oral authorization shall constitute acceptance of Company's offer as specified in a valid quote, subject solely to the terms of these standard terms and conditions of sale. The Company reserves the right to reject any order.

### 1. Service Terms

1.1 The Company agrees to provide and Customer agrees to take and pay for the services set out in the Company quote or proposal (the "Services") as may be provided to Customer from time-to-time and at the rates or for the sum set out in the Company's quote or proposal.

1.2 The Services are provided at Customer's request and Customer accepts that it is responsible for ensuring that the Services are suitable for its own needs.

1.3 The Company will provide to Customer an appropriately qualified agent(s) (the "Consultant"). The Consultant will perform the Services in a timely and professional manner, exercising due skill and care and will use reasonable efforts to meet any agreed target dates.

1.4 In the event that Customer cancels or requests a rescheduling of a mutually confirmed Services engagement date with less than 24 hours notice to the Company, then Customer shall pay a cancellation fee equal to 50% of the amount of the applicable quote or proposal for Services or the actual amount expended by Pitt Labs as a result of such cancellation, whichever is greater.

### 2. Customer Obligations

2.1 Customer shall pay for the Services and associated expenses under the terms of this Agreement. The rates are exclusive of any tax that shall be payable by Customer at the rate and in the manner prescribed by law. Customer agrees to pay invoices NET 30 days. Unpaid amounts outstanding past the due date of the invoice accrue interest charges from the date of the invoice at the lesser of 12% or the legal rate.

2.2 Customer agrees to reimburse the Company for any expenses reasonably and properly incurred by the Consultant in performing the Services upon submission of copies of valid receipts, or as otherwise agreed in writing.

2.3 Customer shall provide the Consultant with all information and help reasonably required by the Consultant and shall make available such of its own appropriately qualified staff as may be reasonably required to assist the Consultant with the performance of the Services.

2.5 Customer shall provide full access to those areas of Customer's premises that are required for performance of the Services.

2.6 Customer shall take all reasonable steps to ensure the health and safety of Company's employees while they are at Customer's premises.

### 4. Force Majeure

The Company shall not be liable to Customer for any delay in or failure to perform the Services as a result of a Force Majeure Event. "Force Majeure Event" means any event affecting the performance by Company of its obligations arising from any act, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the above) government regulations, fire, flood or any disaster or an industrial dispute affecting a third party.

### 5. Confidentiality

The Company will not disclose Customer information, including test results and information about the customer received from a third party, to any unauthorized person or entity, except as required by law, and will not put such information into the public

domain. Company will promptly notify Customer of any third party request for disclosure of information about Customer, unless prohibited by law.

### 6. Limitation of Liability

The liability of the Company to Customer in respect of any claim for breach of contract, negligence, breach of statutory duty or otherwise shall be limited as follows: In respect of any claim for personal injury or death caused by the negligence of Company, its employees, agents or sub-contractors, no limit shall apply; in respect of other claims for personal injury or death however caused and claims for damage to or loss of property, liability shall be limited to the lesser amount of the fees paid to Company under this agreement or the minimum amount permitted by law per claim or series of claims arising from one incident; in respect of any other claim, liability shall be limited to the lesser amount of the fees paid to Company under this agreement or the minimum amount permitted by law per claim or series of claims arising from one incident. For the avoidance of doubt, in recovering against Company for any loss or damage suffered by Customer, any consequential or indirect loss; loss of profits or loss of business are hereby excluded.

### 7. Governing Law & Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws provisions thereof. The courts of the State of California shall have exclusive jurisdiction to determine any disputes, which may arise out of, under, or in connection with this Agreement.

### 8. Professional Services

Company warrants to Customer that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Except for the foregoing warranty, all professional services are provided as is and Company disclaims all other warranties, including all warranties of merchantability, fitness for a particular purpose and noninfringement. Notwithstanding anything else herein or in Company's standard terms and conditions of sale, Company will not be liable with respect to any subject matter of this agreement or under any contract, negligence, strict liability or other legal or equitable theory for any amounts that are in excess of the aggregate amount actually paid to Company under this Agreement for professional services. Customer shall, under no circumstances, be entitled to a refund of any fees paid for products or services or of fees paid under any other agreement outside of this Agreement.

### 9. Dispute Resolution

The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against the Company, its agents, employees, successors, assigns or affiliates arising out of or relating to this Agreement or the Services through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. If unsuccessful, the Dispute will be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, provided however, that each party will have a right to seek injunctive or other equitable relief in a court of law. The prevailing party will be entitled to receive from the nonprevailing party all costs, damages and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with that action or proceeding, whether or not the controversy is reduced to judgment or award. The prevailing party will be that party who may be fairly said by the arbitrator(s) to have prevailed on the major disputed issues. Consultant hereby consents to the arbitration in the State of California in the county of San Diego.

### 10. Miscellaneous

The section headings used herein are for reference only, do not form a part of the Agreement and no construction or inference shall be derived therefrom. The failure of either party to enforce at any time or for any period of time the terms of this document shall not be construed as a waiver of such terms or the rights of such party there-after to enforce each term contained herein. If any term or condition of this agreement is held void or unenforceable, it shall be severed, and every other provision shall be enforced as if the void or unenforceable term or condition had never been a part hereof. If any action at law or in equity is commenced to enforce or interpret the terms of this Agreement the party finally prevailing in the proceeding or action (after appeal, if any) shall be entitled to recover from the unsuccessful party reasonable attorney fees, costs and necessary disbursements in addition to any other relief to which the prevailing party may be entitled.

IN WITNESS WHEREOF, the Customer has caused this Agreement to be duly executed by its authorized representative as of the dates set forth below

CUSTOMER

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Company: \_\_\_\_\_