TERMS AND CONDITIONS – PROVISION AND SALE OF LABORATORY SERVICES

Ver en español

1. Area of Application.

1.1. All orders accepted by Primus Group, Inc., dba PrimusLabs and its respective affiliates, platforms and services (collectively "Primus"), from the party submitting samples for testing ("Client") will be governed by these Terms and Conditions - Provision and Sale and of Laboratory Services (the "Terms and Conditions" or "Terms"), including but not limited to orders placed by telephone, electronic mail, electronic ordering systems, sample dispatch request forms, or made by delivery of samples. A contract with these Terms comes into being when an order has been placed with Primus, and the order is accepted by Primus. An order that is placed with Primus is considered accepted by Primus when (a) Primus proceeds to fulfill that order or (b) Primus accepts the order in writing. All services provided by Primus are expressly limited to, and will only be provided on the basis of, the Terms and Conditions stated herein and to the exclusion of all other terms and conditions, including any terms or conditions which Client may purport to impose.

1.2. These Terms set forth the entire agreement between the Primus and Client, and supersede all prior and contemporaneous negotiations, agreements, representations, understandings, and commitments with respect thereto. The parties agree that their standard terms, conditions, and pre-printed provisions on any purchase order, acknowledgment, release or other purchasing document purporting to address the same subject matter shall be null and void and of no force or effect, whether such terms conflict with or purport to add terms to these Terms. No employee, agent or subcontractor, other than an authorized officer of Primus, has the authority to alter or waive any of these Terms as to Primus or to make any representation on behalf of Primus which conflicts with or purports to override any of these Terms; and no such alteration, waiver or representation shall be binding upon Primus, unless it is in writing and signed by an authorized officer of Primus to be bound.

2. Performance of Services

2.1. Primus will perform testing services, sampling, and any other related or ancillary services in accordance with an order accepted by it (the "Services"). Primus warrants that all Services provided by it will be performed in a good and workmanlike manner with reasonable skill, care and diligence.

2.2. A request for any change to the scope or nature of the Services to be provided under any order shall, if mutually agreed, be set forth in an amended order which shall include any change to estimated delivery dates and fees as agreed by the parties. Services may not be cancelled or modified by Client after testing is initiated.

3. Price and Terms of Payment

3.1. Client shall compensate Primus for its provision of Services according to the prices stated in the then applicable current price list, or the prices otherwise agreed to by Primus and Client. Primus may revise pricing, fees, testing charges, service charges, supply charges, platform subscription charges, and other rates for its Services from time to time. Primus shall provide reasonable notice of material pricing changes for recurring services. Continued use of Services after the effective date of revised pricing constitutes acceptance of the revised pricing.

3.2. If Client requests Primus to perform Services for the FDA Detention Without Physical Examination program, Client understands, acknowledges, and agrees that it is liable for the fees incurred to Primus in performing such Services regardless of FDA's acceptance, rejection, or other response to the results submitted by Primus, as well as costs incurred by Primus to perform such Services.

3.3. Payment of all invoices is due within thirty (30) days of the invoice date, other than amounts being disputed in good faith which shall require written notice to be given to Primus on or before the due date of the invoice, specifying in reasonable detail the nature of the dispute. Client agrees to pay all undisputed amounts as provided above. The challenge of an analytical result will not entitle Client to defer payment. Any invoice which remains outstanding after due date may carry interest at the rate of one and one-half percent (1.5%) per month or the maximum interest rate permitted by applicable law, whichever is lower.

3.4. The invoice settlement method is check, bank transfer or direct debit, or credit card (in certain circumstances).

3.5. Under some circumstances, Primus may require prepayment for all Services for each order as a condition of acceptance.

3.6. Primus may provide sampling supplies, containers, collection materials, or related supplies to Client. Unless otherwise agreed in writing, shipping and delivery charges are the responsibility of Client. Primus reserves the right to charge for supplies that are not returned, are damaged beyond normal use, or are otherwise not used in connection with Services provided by Primus. Such charges may be based on Primus's then-current replacement pricing.

4. Duties of Client

4.1. For Clients that perform the sampling of tested commodity, Client shall provide Primus with sufficient amounts of all samples or materials to be tested (the “Samples”) together with all other information necessary for Primus to perform the Services including information relating to the storage and safety requirements of the Samples.

4.2. Client acknowledges that in order to get accurate results, it is crucial that Client follow sampling procedures provided by Primus. Client understands and acknowledges that its intentional or accidental failure to sample in accordance with the guidelines provided by Primus can lead to inaccurate testing results. Where Client requests Primus to select sampling locations, sampling points, sampling rotations, or related sampling plans, Client acknowledges that such selections are made solely at Client's request based upon information available at the time. Primus does not warrant that any selected sample locations or sampling plans are sufficient to meet Client's operational, regulatory, contractual, statistical, or risk-management objectives. Client remains responsible for determining the adequacy of all sampling strategies. Primus may provide randomized sampling schedules, rotations, or similar programs designed to assist Client's monitoring activities. Such schedules are advisory in nature and are not guarantees of regulatory compliance, contamination detection, risk elimination, or operational performance.

4.3. Client hereby represents and warrants to Primus that all Samples provided to Primus by Client for analysis are, to the best of Client’s knowledge: (i) organized and ready for analysis; (ii) free of foreign materials or substances that were not previously reported by Client; (iii) safe and in a stable condition for and during transportation, storage under normal conditions, and use in connection with instruments and by personnel or representatives; (iv) labeled appropriately if they contain dangerous or hazardous materials; (v) labeled appropriately if refrigerated or frozen storage is required; and, (vi) accompanied by any relevant occupational health and safety information known by Client.

4.4. Primus will conduct an initial examination of the Samples to check their condition before any Services are performed. If the Samples do not comply with the requirements described in these Terms or any order, then Primus will notify Client regarding the non-compliance. With Client’s approval, Primus may: (i) prepare the Samples for use as set forth in these Terms which may result in an additional charge to Client for such preparation and a delay to the order which will be documented via a written modification to the order; (ii) terminate the order if the result of the initial examination indicates that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated, and Client shall pay to Primus all expenses incurred before the effective date of termination of the order.

4.5. Client is responsible for the proper delivery of Samples sent to Primus for the performance of the Services. Client will at all times be liable for the security, packaging and insurance of the Samples from its dispatch until it is delivered to Primus’s facility.

5. Report Terms

5.1. Any data analyses, Certificates of Analysis, and results reports will be prepared in Primus’s standard format and in accordance with Primus's standard operating procedures, unless otherwise agreed in writing.

5.2. Any communications from Primus to Client regarding analyses, Certificates of Analysis, presumptive positive readings, and other results reports will be made and/or sent to the contacts provided by Client to Primus. Client should (and it is the responsibility of Client to) update Primus with the current contact information for anyone whom Client authorizes Primus to convey messages and information. Client also agrees to immediately update Primus at any time that there is a change to Client contact information, including providing new contact information when applicable, or informing Primus to delete any old contacts that are no longer relevant or authorized. Primus is not responsible for any communication that was conveyed and not received by Client due to Client’s failure to update contact information.

5.3. Preliminary, verbal, interim, partial, or otherwise incomplete test results (collectively, “Preliminary Results”) are not a standard deliverable under any Client order, these Terms, or a part of the Services and shall not be expected or relied upon by Client as a routine feature of the Services. Primus may, in its sole discretion, provide Preliminary Results during the course of testing for informational or planning purposes only. Such Preliminary Results are inherently subject to change upon completion of ongoing testing, final analysis, quality control checks, and data validation or lab error, and may be corrected, revised, retracted, or superseded at any time without notice. Client acknowledges that any action taken in reliance on Preliminary Results is at Client’s own risk, and Primus expressly disclaims any responsibility and shall have no liability for Client’s use of, reliance on, disclosure of, or actions taken based upon Preliminary Results. Only the final report or results issued in writing by Primus constitutes an official result, and no Preliminary Results communication shall be cited, reproduced, or relied upon as an official Primus report or result for any purpose, including regulatory submissions, product release decisions, or third-party reporting.

6. Estimated Delivery Dates and Turnaround Times

6.1. Delivery dates and turnaround times stated in any order are estimates and do not constitute a commitment by Primus. Nevertheless, Primus shall make commercially reasonable efforts to meet the estimated delivery dates and turnaround times.

6.2. Unless a different delivery method is specified in writing, analytical reports are sent by email or via other electronic means, to the attention of the persons indicated and authorized by Client in the order, promptly after the analysis is completed.

6.3. Primus shall not be responsible for any delays in the timely progression of the Services to the extent any such delay is attributable to Client action or inaction. During the performance of the Services, Client shall use commercially reasonable efforts to provide any approvals required to be given by Client to Primus in a timely manner.

7. Client Data, License, and Transfer of Property & Intellectual Property Rights

7.1. “Client Data” means all information, records, documents, files, samples, audit reports, certificates, laboratory results, Certificates of Analysis (COAs), logs, correspondence, images, metadata, transactional records, supplier records, operational records, and other materials submitted, uploaded, stored, transmitted, generated, maintained or otherwise made available by or on behalf of Client, including by Client’s employees, contractors, agents, growers, suppliers, or other authorized representatives, to Primus in connection with the performance of Services, including through the Azzule platform and the Primus Laboratory Information Management Systems (LIMS) database.

7.2. “Transferred Data” means Client Data that Client authorizes, licenses, shares, releases, transfers, grants access to, or otherwise makes available to a third-party recipient through the Azzule platform or any other Primus-controlled system. Client acknowledges and agrees that Transferred Data may include identifying information relating to suppliers, growers, facilities, audits, laboratories, products, commodities, operations, audit scores, corrective actions, test results, and related records. Recipients authorized by Client may use such Transferred Data to perform analyses, benchmarking, supplier evaluations, rankings, trend reviews, compliance reviews, report generation and other business assessments.

7.3. “Derived Data” means summaries, benchmarks, analytics, rankings, trends, statistical compilations, predictive models, performance indicators, machine learning outputs, reports, insights, algorithms, or other information created through analysis or processing of Client Data, Transferred Data and System Data, including from artificial intelligence. All Derived Data, analytics methodologies, algorithms, statistical models, software tools, benchmarking systems, scoring systems, trend analyses, and other analytical outputs developed by Primus shall be owned exclusively by Primus, provided that such ownership does not transfer ownership of underlying Client Data.

7.4. “System Data” means operational, usage, transactional, volume, audit trail, platform, system performance data, audit and control data and metadata generated through use of Primus Services or materials related to them, which does not contain (i) Client identifying information; or (ii) Client confidential information. All System Data generated by or transferred to Primus becomes the property of Primus. Primus may use aggregated System Data for legitimate internal business purposes, such as to ensure that Primus is meeting the demands of its clients and their customers. Primus may also share and license aggregated System Data with its affiliates, subsidiaries, and platforms for the purposes of analysis and improvements, where permissible under applicable laws and regulations.

7.5. Client grants Primus and its affiliates, subsidiaries, contractors, subcontractors, subprocessors, technology providers, auditors, consultants, and service providers a worldwide, non-exclusive, royalty-free right and license to collect, receive, store, host, reproduce, access, review, organize, index, process, analyze, transmit, transfer, disclose, use, generate and create Derived Data from Client Data and Transferred Data to: (a) provide Services; (b) operate, support, secure, improve, and develop Primus services and platforms; (c) produce summaries, analytics, reports, trends, benchmarks, rankings, predictive analyses, and business intelligence; (d) conduct research, industry studies, quality improvement initiatives, and food safety initiatives; (e) train, validate, test, improve, and utilize artificial intelligence, machine learning, automation, and analytical systems; (f) perform desk reviews, audit preparation services, supplier performance evaluations, and compliance assessments; (g) comply with legal, regulatory, accreditation, certification, and contractual obligations; and (h) otherwise perform activities contemplated by these Terms.

7.6. Title in any testing analysis results, analytical reports, or other work product (the “Results”) supplied by Primus to Client shall remain with Primus until all invoices in respect thereof have been paid by Client in full, and until such full payment, Client shall have no ownership or property rights therein.

7.7. Notwithstanding Section 7.6, Client retains ownership of all right, title, and interest in and to Client Data. Except as expressly set forth in these Terms, nothing herein transfers ownership of Client Data to Primus.

7.8. Primus is not in the business of selling or leasing Client personal information or Client confidential information collected or generated in connection with Services to third parties. Except where data has been validly transferred or authorized by Client, Primus shall not disclose identifying Client Data to third parties without Client authorization, except as required by law. Primus shall comply with all data privacy laws and shall implement reasonable safeguards to protect Client personal and proprietary information. However, Client acknowledges that if it submits Client Data or Transferred Data through the Azzule platform or any other Primus-controlled system, that one purpose in doing so is to efficiently facilitate the sharing and transfer of Client Data. If

applicable, when Client authorizes the release, sharing, transfer, or disclosure of Client Data to a recipient through the Azzule platform or any other Primus-controlled system, Client acknowledged it grants such recipient permission to access, review, analyze, evaluate, summarize, store, and otherwise use the Transferred Data, including all identifying information associated with such Transferred Data.

7.9. Primus shall be entitled to store, aggregate, and use any System Data generated, transferred or provided as a result of the performance of the Services. Client expressly authorizes Primus to use artificial intelligence tools, machine learning systems, automated analytical systems, document extraction technologies, text-processing tools, data-mining technologies, and similar technologies to review, extract, organize, summarize, classify, and analyze Client Data and documents uploaded to or stored within any Primus-controlled systems.

7.10. Client hereby acknowledges and agrees that any and all Intellectual Property that is developed, conceived or reduced to practice by representatives of Primus in the performance of the Services and that is (i) within the field of the Primus' Intellectual Property, and (ii) does not rely on or incorporate Client's Samples or Confidential Information ("Primus Developed IP"), is not part of the Client Data and shall vest in and be the sole and exclusive property of Primus.

7.11. Primus may use aggregated and anonymized Derived Data for summaries, presentations, benchmarking, and other materials, in which data is accumulated for generic presentation. Such use shall not include identifying information of the Client unless explicitly authorized by the Client. Primus desires to provide consolidated anonymized insights to support business critical decision-making, strengthen food safety risk management programs and supply chain integrity while promoting competitiveness among industry participants to reach higher quality and safety standards.

7.12. Primus shall retain records and related data of all Client Data and Transferred Data as required by the applicable regulatory and accreditation standards including but not limited to ISO 17025, ISO 17065, Global Food Safety Initiative (GFSI), USDA, Codex, and FDA (including the 5-year retention requirement under LAAF). Such records will be maintained in accordance with these standards to ensure traceability and compliance. Client acknowledges that under applicable law or regulation or pursuant to valid subpoena or court order, Primus may be required to disclose Client Data, Results, audit records, laboratory records, communications, correspondence, uploaded documents, metadata, and related records pursuant to subpoena, court order, governmental request, regulatory requirement, accreditation requirement, or other legal process. To the extent legally permitted, Primus may provide notice to Client prior to disclosure but shall have no liability for disclosures made in good-faith compliance with legal obligations.

8. Limited Warranties and Responsibilities

8.1. Analyses, interpretations, assessments, consulting work and conclusions are prepared with a commercially reasonable degree of care, but Primus cannot guarantee that Results will always be exact or relevant. Results are influenced by outside factors including, but not limited to, the condition of the Samples when received by Primus, the current state of (and limitations of) technology and methods developed and generally applied by Primus), applicable testing tolerances, selection of testing methodologies from among available options, and the impact of contaminants or undisclosed/unknown substances contained in a Sample. Due to the inherent limitations of testing factors described above, Client must independently verify the validity of any Results, interpretations, assessments and conclusions supplied by Primus if it wishes to rely on the same in respect of matters of importance, and shall do so at its own risk. Results apply solely to the Samples actually received and analyzed by Primus. Primus makes no representation, warranty, or guarantee regarding any lot, commodity, product, facility, operation, supplier, shipment, or material other than the specific Samples tested. Primus' liability is limited to the cost of the laboratory tests. See also www.primuslabs.com for additional information. The results apply to the Sample as received.

8.2. Information, reports, analyses, and Results are provided solely for the benefit of Client and are not intended for reliance by any third party unless otherwise expressly agreed in writing. Client specifically acknowledges that the Services provided do not grant Client any right or license to use any Primus name, logo, or any other similar identifying mark for promotional or marketing purposes.

8.3. By ordering the provision of Services with Primus, Client represents that: (i) it has full power and authority to enter into these Terms and the person placing an order with Primus is its duly authorized representative; (ii) these Terms have been duly authorized; (iii) these Terms are binding upon it; and (iv) performance of these Terms does not conflict with any other legal obligation of the party. Client also represents and warrants that acceptance of these Terms by any person placing an order as the Client's duly authorized representative shall constitute acceptance by Client as a legal entity and shall remain binding notwithstanding any subsequent change in Client personnel, employees, agents, representatives, management, ownership or internal delegations of authority.

8.4. Unless explicitly agreed in writing by all parties, the contractual relationship shall be exclusively between Client and Primus. There shall be no third party beneficiary or collateral warranty relating to any Services.

9. Indemnification and Limitation of Liability

9.1. Client shall release, defend, indemnify and hold harmless Primus and its affiliates, subsidiaries, directors, employees, officers, agents, representatives, successors and assigns from and against any loss, claims, or damages claimed by a third party against Primus related to Client's products, operations, suppliers, facilities, commodities, production, distribution, or business activities; provided, however, that Client shall not be liable for any damages to the extent attributable to the gross negligence or willful misconduct of Primus. This limitation includes consequential damages, business interruption, loss of profits, recall costs, loss of goodwill, lost opportunities, and claims arising from third-party reliance upon Results or analytical reports, including sampling or analysis not directly performed by Primus.

9.2. Except to the extent that such limitations are not permitted or are void under applicable law, in no event shall Primus be responsible for any indirect, consequential, incidental, punitive or special damages (including, without limitation, damages for lost profits or revenue, loss of use, business interruption, loss of information, or for the procurement of substitute services) of Client or of any third party, even if it has been advised of the potential for such damages and regardless of whether such damages arise in contract, negligence, tort, under statute, in equity, at law or otherwise. In all cases, Primus's liability for any damages, claim or series of related claims of Client or of any third party arising under or relating to these Terms shall be limited to the amount charged for the Services to which such claim relates.

9.3. Results are prepared and supplied exclusively for the use of Client. Client remains responsible for any consequences due to the divulgence and use of such Results and any reliance of a third party on such Results and hereby agrees to defend, indemnify and hold harmless Primus against any liability or damages which Primus may incur as a result of such divulgence or any such reliance by a third party. Primus shall not be responsible or liable for any misuse or unauthorized disclosure of Results, Client Data, or Transferred Data by third parties to whom Client has provided Primus prior written or electronic authorization to release such information in Client's usual course of business.

10. Remedy for Deficient Services and Repeated Analysis

10.1. In the event that any Services are improperly or inadequately performed by Primus, Client's sole and exclusive remedy, and Primus's sole obligation, with respect to such deficient Services shall be for Client to either: (i) require that Primus re-perform such improper or deficient Services, subject to the provisions of Section 10.2 below, or (ii) request a refund of all amounts paid to Primus for such improperly or inadequately performed Services.

10.2. Objections to Results must be made within thirty (30) days after Client receives the Results. However, a repeated analysis will be possible only if Primus has a sufficient amount of the original Samples on hand, and in the same condition and quality as when originally provided, when it receives Client's objection. Client will be required to pay all costs, including sampling, transportation, analytical and disposal costs for the repeat analysis.

10.3. Primus reserves the right to identify and highlight omissions or missing data in Client records in the course of providing Services.

11. Force Majeure

11.1. Neither party shall be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond such party's reasonable control, or which result from compliance with governmental requests, laws and regulations.

12. Subcontracting; Assignment

12.1. Primus is hereby authorized to subcontract any or all Services requested by Client to any of its affiliates, subsidiaries, or to a third party. Primus shall be responsible for the performance of its subcontractors as and to the same extent Primus would be responsible had it directly performed such Services. Client authorizes Primus to provide such subcontractors access to Client Data, Transferred Data, Samples, Results, and related information as reasonably necessary to perform subcontracted services. Primus may require subcontractors to maintain appropriate confidentiality and security obligations.

12.2. No Client shall assign, by merger, reorganization, operation of law or otherwise, or transfer any obligation or right of such party under these Terms ("Assign") to any other person or entity without the prior written consent of Primus, and any attempt to Assign these Terms without such consent shall be void; provided, however, that Client may Assign these Terms without such consent to an affiliate or to a purchaser of all or substantially all of the stock or assets of such party or to an entity into which such party is merged. These Terms shall be binding upon the parties, their successors and their permitted assigns.

13. Governing Law and Dispute Resolution

13.1. These Terms shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions. It is the intention of the parties that in the event disputes should arise over the interpretation and application of these Terms, the parties will first attempt to settle such disputes by negotiation and consultation between the senior executives or otherwise authorized representatives or counsel of Client and Primus.

13.2. Any litigation, controversy, or dispute arising out of or in connection with these Terms and Conditions, not settled by negotiation shall be resolved exclusively by binding arbitration administered under the rules of the American Arbitration Association (AAA) or another mutually agreed arbitration body. The arbitration shall take place in Santa Maria, CA, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The prevailing party in any arbitration or related enforcement proceeding shall be entitled to recover its reasonable attorneys' fees, expenses, and court costs.

14. Disclaimer of Warranties

14.1. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, PRIMUS GIVES NO WARRANTIES, EXPRESS OR IMPLIED, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PRIMUS SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF SUITABILITY, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND QUALITY OF SERVICE.

15. Miscellaneous

15.1. Independent Contractor. It is understood and agreed that Primus shall perform its duties as an independent contractor and not as an agent, employee, partner or joint venture of Client.

15.2. Amendment. Unless exceptions have been agreed to, in writing by both parties, these Terms are deemed accepted by Primus and Client without signature. Terms may be modified from time to time by Primus as posted on Primus's website. Prior to placing any order, Client will review updated and current terms at https://www.primuslabs.com/termsandconditions and by placing an order, Client acknowledges and agrees that they have read, understood and accepted the Terms and Conditions as posted at the time of the order, and such action constitutes Client's consent to be bound by and comply with these Terms.

15.3. Severability. If a final judicial determination is made that any provision of these Terms is an unenforceable restriction against either party, the provisions hereof will be rendered void only to the extent that such judicial determination finds such provisions unenforceable; and, to the extent possible, such unenforceable provisions shall be deemed replaced by provisions that are valid and enforceable and that come closest to expressing the intention of such invalid or unenforceable provisions. A judicial determination that any provision of these Terms is unenforceable will not render the entire Terms unenforceable, but rather these Terms will continue in full force and effect absent any unenforceable provision to the maximum extent permitted by law.