

TERMS AND CONDITIONS

By submitting food products and related materials (e.g., recipe, submission requests), hereinafter the “Materials,” for acidified food and shelf-life expectation analysis (“Services”) to Texas A&M AgriLife Extension Service (“AgriLife”), Company agrees to the following terms and conditions (the “Agreement”):

1. **MATERIALS.** Company represents and warrants that all Materials provided for testing are owned or licensed by Company and Company is authorized to provide the Materials to AgriLife for testing purposes. Additionally, Company represents and warrants the Materials are not regulated and do not require a permit to perform testing. Company agrees to indemnify and defend AgriLife if any claims are brought against AgriLife as a result of the foregoing representations not being accurate.
2. **CONSIDERATION AND PAYMENT.** As consideration for the performance of the testing, Company shall pay AgriLife the fixed-fee total of \$75.00 U.S.D. per sample, as further described at <https://aggie-horticulture.tamu.edu/food-technology/food-processing-entrepreneurs/getting-started/submitting-samples/>. Payments shall be made to AgriLife by submitting payment to the address indicated on the invoice. At Company’s request, AgriLife may send Materials to a third-party lab for additional testing. Charges for third-party lab testing will be billed directly to Company by the relevant third-party lab. Nothing in this Agreement limits the freedom of AgriLife to engage in similar inquiries made independently by entities other than Company.
3. **PUBLICITY.** Company may not use the name of AgriLife, nor any of its employees or affiliates (including The Texas A&M University System and its members), nor any adaptation thereof, in any advertising, promotional or sales literature, or news release without the prior written consent of AgriLife in each instance. Any Company publication referring to the testing results shall be worded as not to imply endorsement by AgriLife or any other member of System of a specific product or producer and must reflect appropriate credit on AgriLife, its personnel, and activities.
4. **PUBLIC INFORMATION ACT.** Company acknowledges that AgriLife is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, as well as any other disclosure of information required by applicable Texas law.
5. **EXPORT ADMINISTRATION.** Company acknowledges that AgriLife is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that AgriLife’s performance under this Agreement is contingent upon compliance with applicable United States export laws and regulations. Furthermore, the transfer of certain technical data and commodities may require a license from one or more agencies of the United States Government. Company shall comply with applicable U.S. export control laws including without limitation the Export Administration Regulations and the International Traffic in Arms Regulations as currently codified or later amended.
6. **FORCE MAJEURE.** AgriLife shall not be held liable or responsible to Company, nor be deemed to have defaulted under or breached this Agreement, for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond AgriLife’s reasonable control, including, but not limited to, acts of God, strikes, riots, floods, fires, epidemics, quarantines and similar governmentally mandated closures or restrictions, natural disasters, severe weather events, embargoes, wars, insurrections, terrorist acts, or any other circumstances of like character. Any such failure shall be excused for the duration of such event and for such time thereafter as is reasonable to enable AgriLife to resume performance hereunder. Company acknowledges and agrees that in the event AgriLife is unable to obtain testing results, no refund will be issued.
7. **DISCLAIMER.** Any use by Company of the testing results is solely at Company’s own risk, and Company retains the responsibility for determining the adequacy of the testing results for Company’s intended use. AGRILIFE MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, IN CONNECTION WITH THE TESTING RESULTS FURNISHED UNDER THIS AGREEMENT. AGRILIFE DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES THAT USE OF THE TESTING RESULTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.
8. **AGENCY.** Company acknowledges AgriLife is an agency of the State of Texas and nothing in this Agreement waives or relinquishes the right of AgriLife to claim any exemptions, privileges, or immunities as may be provided by law.
9. **DISPUTES.** To the extent that Chapter 2260, Texas Government Code, is applicable to the testing and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules

adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by the parties to attempt to resolve any claim for breach of contract made by Company against AgriLife that cannot be resolved in the ordinary course of business.

____ Company is not providing any Confidential Information.
____ Company is providing Confidential Information.

10. INDEPENDENT CONTRACTOR. The parties are independent contractors and not partners, joint venturers, agents, or employees of the other party. Neither party may bind the other party or otherwise act in any way as the representative of the other, except as explicitly authorized in advance and in writing to do so, and then only for the limited purpose stated in such authorization.

The person signing below represents and warrants that he/she is an authorized representative of Company with the authority to enter into this Agreement and agrees to the above terms on behalf of Company.

“Company”: _____

Signature: _____

11. ENTIRE AGREEMENT. Company acknowledges and agrees this Agreement constitutes the entire agreement regarding the testing and supersedes all other written and oral agreements regarding the testing.

Name: _____

Title: _____

12. PUBLICATION AND CONFIDENTIALITY. “Confidential Information” is confidential and/or proprietary information unknown to the general public. Company shall identify Confidential Information disclosed by an appropriate and conspicuous marking. Confidential Information does not include information that: (i) is now, or hereafter becomes, publicly known or available through no act or failure to act on the part of AgriLife; (ii) was known by AgriLife at the time of receipt of such information; (iii) is hereafter furnished to AgriLife by a third party as a matter of right and without violating any confidentiality obligation to Company; (iv) or was independently developed by AgriLife without use or knowledge of Company’s Confidential Information.

Date: _____

AgriLife shall use Company’s Confidential Information solely for the purpose of the Services. AgriLife shall exert reasonable efforts to maintain the Disclosing Party’s Confidential Information in confidence for a period of three (3) years. If AgriLife is legally required to disclose certain Confidential Information received from Company, AgriLife shall, to the extent allowed by law, promptly give written notice to Company so as to provide Company a reasonable opportunity to pursue the appropriate process to prevent or limit such disclosure. The foregoing notice requirement does not apply to disclosures required by Section 51.954 of the Texas Education Code. In any event, required disclosure must be limited to only that portion of Confidential Information which is legally required to be disclosed. Nothing in this Agreement requires AgriLife to pursue any claim, defense, cause of action, or legal process or proceeding on Company’s behalf.

Company agrees that AgriLife may publish the results of the Services except for Company’s Confidential Information, if applicable.