

# Contract for Standard Performance Evaluation And Continual Compliance Evaluation

SPEXXX

Agreement is made and entered into this XXth day of MONTH, 202X by and between **Gulf Coast Testing, LLC**, a **Louisiana limited liability corporation**, with principal offices at 5261 Highland Road, #347, Baton Rouge, Louisiana, 70808, hereinafter referred to as GCT and \_\_\_\_\_ with principal offices at \_\_\_\_\_, hereinafter referred to as CLIENT and herein represented by its duly approved agent \_\_\_\_\_.

## 1. TERM

The term of this Agreement shall remain in effect until canceled by either party upon thirty (30) days written notice.

## 2. EVALUATION SERVICES

In consideration of the fees by CLIENT in Section 3 of this contract, CLIENT is submitting a wastewater treatment system described as \_\_\_\_\_, hereinafter called MODEL. CLIENT desires to have GCT evaluate MODEL in accordance with the NSF/ANSI Standard 40 and NSF/ANSI Standard 245, hereinafter referred to as the STANDARDS. MODEL shall be operated in accordance with CLIENT's operating instructions and the applicable provisions of the STANDARDS. The CLIENT is responsible for assuring proper installation of MODEL at GCT's testing facility at 14378 Park Avenue, Prairieville, Louisiana, 70769 and shall sign a form indicating MODEL was properly installed prior to the start of the evaluation. Fees and arrangements for installation and removal of the MODEL are the responsibility of the CLIENT.

As part of the evaluation services, the CLIENT agrees to participate in and/or provide the following information:

- 1) Detailed information, including ingredients, for MODEL;
- 2) Detailed schematics of MODEL in CAD or PDF format;
- 3) Manufacturing Procedures and Processes, as appropriate;
- 4) Instructions/Manuals for the MODEL;
- 5) Any additional information as required by the STANDARDS or GCT.

CLIENT is responsible for meeting all provisions of the STANDARDS, including correcting non-conformances, and GCT's certification requirements.

## 3. COMPENSATION

The costs for the preparation of the report and contractual certification are based on the following three categories: professional activities, field activities, and laboratory testing. Professional activities will include project initiation, supervision of field and laboratory activities, agency liaisons, and report preparation (weekly status, final evaluation report, and annual compliance audit). Field activities will include daily sample collection, field testing, and coordination of any required stress testing. GCT is obligated to provide only one sampler per test site. Additional samplers will be provided by GCT, if available, at a fee. Laboratory testing will be on a per test basis and shall include analytical testing of the influent and effluent samples as required by the STANDARDS.

The total fee for the preparation of the report, contractual certification and the first annual compliance evaluation is \$\_\_\_\_\_. This includes all activities required to evaluate the MODEL in accordance with the STANDARDS and to perform the first annual compliance evaluation on the operation of the MODEL. Included in the evaluation fee is compensation for the initial CLIENT audit. The evaluation fee shall be invoiced equally on a monthly basis over

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a six-month period. Additional costs incurred on this project will be invoiced monthly in accordance with GCT's Rate Schedule. The rate schedule is attached as Exhibit A. Payment shall be due within thirty (30) days of the invoice date.

## **4. SUSPENSION AND/OR CANCELLATION OF EVALUATION SERVICES**

Should evaluation services be stopped for any reason, CLIENT agrees to pay all fees incurred through the stop date. CLIENT agrees to pay for any additional work performed in conjunction with suspending or cancelling the evaluation. Calculation of charges and an operation, maintenance, and sampling fee will be based on the GCT's Rate Schedule in effect at the time of analysis. Unexpended fees advanced by CLIENT shall be refunded to CLIENT by GCT if this contract is voided prior to expenditure of these funds.

## **5. USE OF SUBCONTRACTORS**

GCT may use qualified subcontractors to perform part of GCT's obligations pursuant to this contract. GCT shall give CLIENT written notice of any subcontractors used by GCT prior to use of the subcontractor. CLIENT shall have forty-eight (48) hours after receipt of notice to object to the subcontractor and the reason for such objection. An objection constitutes the CLIENT notifying GCT on the Complaint Documentation Form. The objection shall be handled using GCT's Complaints, Disputes, and Appeals Documentation Procedure.

## **6. EXTENSION OF TESTING**

If an extension of the testing is required because a component failure of MODEL not attributable to GCT, MODEL performance, or any additional research and development not covered under this contract at the CLIENT's request is undertaken, additional charges will be assessed at the rates specified in the GCT's Rate Schedule, plus additional sample analysis charges. These charges will be invoiced monthly, as services are provided. "Extension" includes interruptions in testing but does not include periods following termination of the evaluation that necessitates a new evaluation.

## **7. MODEL LOSS AND/OR DAMAGE**

CLIENT agrees to assume all risks and hold GCT harmless for loss or damage of any kind to MODEL and any equipment or materials placed with GCT under the terms of this agreement, whether such loss or damage results from fire, vandalism, strikes, floods, other acts of God, or other agencies.

## **8. REASONABLE ACCESS OF ENTRY**

GCT agrees to provide CLIENT or representatives of CLIENT reasonable access to GCT's testing facility for purpose of MODEL examination. CLIENT shall give GCT notice prior to access, and the access shall require oversight by appropriate designated GCT staff, to CLIENT. CLIENT shall be billed for GCT oversight during all visits pursuant to the current GCT Rate Schedule. Failure of CLIENT to comply with these requirements is grounds for cancellation of contract by GCT.

## **9. PRELIMINARY DATA**

CLIENT agrees to refrain from using any and all data provided by GCT at any time during the period of the contract, except for in-house review purposes. This data is preliminary, may be subject to change, and is provided for CLIENT's information only. Use of preliminary data in any form, or final data taken out of context from all data generated during the contract, is grounds for cancellation of contract by GCT.

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## **10. PROHIBITION OF UNAUTHORIZED DISTRIBUTION OF FINAL REPORT**

Only the final "Compliance Evaluation Report for Individual Mechanical MODELS" obtained directly from GCT is considered an authorized report. GCT's reports shall not be copied by CLIENT for other than CLIENT's internal purposes unless authorized for distribution by GCT. Any unauthorized distribution, publication, or other unauthorized use of reports is prohibited and is grounds for cancellation of contract by GCT. GCT will respond to a request from CLIENT or regulatory agency for a GCT report within 5 business days. The GCT report request response shall consist of an electronic copy of the GCT report transmitted to the requesting party and CLIENT via electronic mail.

## **11. COMPLETION OR TERMINATION OF EVALUATION SERVICES**

CLIENT agrees to remove MODEL from the test site no later than sixty (60) days following completion or termination of the evaluation services, or termination of this contract, or at such time as agreed by GCT. CLIENT agrees to pay a storage charge pursuant to GCT's rate schedule for every week or part of a week that the MODEL remains at the test site beyond the date agreed for removal.

## **12. LISTING**

In the event MODEL complies with all applicable provisions of the STANDARDS and GCT's certification requirements, GCT agrees to:

- 1) Provide a signed Standard Performance Evaluation (SPE) Report to CLIENT containing the following information:
  - a) GCT's address and ANSI certification number;
  - b) Client's name and address;
  - c) Certification date;
  - d) Term of certification;
  - e) Scope of certification;
  - f) Any additional information required by the STANDARDS.
- 2) Publicly list MODEL on GCT's website ([www.gctla.com](http://www.gctla.com)) listing;
  - a) CLIENT's name and address;
  - b) MODEL identification;
  - c) STANDARD for which certification was granted.
- 3) Provide information, upon request, regarding the validity of the certification
- 4) Provide information to CLIENT regarding and changes in the STANDARDS affecting CLIENT pursuant to GCT's policies and procedures

The evaluation service, as defined by this contract, is also a contractual relationship that authorizes the use of the GCT's mark on products that comply with the STANDARDS. By using the GCT Mark®, CLIENT agrees to:

- 1) Apply the GCT Mark® to each individual product except where the physical size of the unit or the type of product does not permit this, in which case the mark may be applied to the smallest package in which the unit is marketed.
- 2) Only make claims regarding MODEL consistent with certification;
- 3) With the exception of the executive summary, only reproduce the certification documents in their entirety;
- 4) The CLIENT shall not specify any function or make any claim or the like in user information that could lead purchasers to believe that performance of the product or its

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use is covered by the certification when in fact they are not and make claim for MODEL that would bring GCT into disrepute;

- 5) Complies with GCT's requirements in referring to the certification in any documents, brochures, or advertisements;
- 6) Make any changes to MODEL to comply with changes in the STANDARDS;
- 7) Limit the use of the GCT Mark® to the provisions of the STANDARDS and GCT's program requirements;
- 8) Notify GCT, without delay, of changes that may affect its ability to conform with the provisions of the STANDARDS or GCT's certification requirements.

### **13. ANNUAL COMPLIANCE AUDIT**

In the event, the STANDARDS call for an annual compliance audit, CLIENT agrees to:

- 1) Make all necessary arrangements for GCT to conduct the annual compliance audit;
- 2) Continue to meet all the provisions of the STANDARDS;
- 3) Notify GCT of any changes to MODEL, including process or production changes and changes in management;
- 4) Investigates and takes appropriate action on all complaints and provides to GCT the documentation of action taken;
- 5) Allow for the participation of observers;
- 6) Provide GCT information for any manufacturing facilities that produce certified products;
- 7) Provide GCT information on MODELS installed, including date and location;
- 8) Verify information from material suppliers by providing records as requested;
- 9) Provide GCT with any additional information to verify compliance with the STANDARDS;
- 10) Correct any nonconformity from the audit pursuant to GCT's procedures.

GCT agrees to:

- 1) Notify CLIENT 60 days prior to the date of the audit
- 2) Inform the CLIENT of the results of the audit

The annual fee for the compliance audit is \$10,000 per year. This will be an annual fee to fulfill the requirements of this contract. GCT reserves the right to increase the fee with thirty (30) days' notice to CLIENT. The annual fee increase shall be no greater than 3% per year.

### **14. TERMINATION OF CONTRACT**

Termination of the contract may occur for the following reasons:

- 1) CLIENT no longer wishes to have the product certified;
- 2) MODEL no longer meets the criteria of the STANDARDS;
- 3) GCT terminates the contract for cause;
- 4) Evaluation results did not meet provisions of the STANDARDS and CLIENT did not or could not correct the nonconformance;
- 5) Failure to comply with the STANDARDS or GCT's requirements concerning the annual compliance audit;
- 6) Misrepresentation of the certification scheme, misleading use of the license or misuse of the GCT Mark® in any way.

Upon termination, GCT shall:

- 1) Notify CLIENT in writing the contract has been terminated;
- 2) Change the public listing records to remove Model.

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Upon notification of termination by GCT, the CLIENT shall:

- 1) Cease selling and offering the MODEL for sale with the GCT Mark® applied to the product;
- 2) Discontinue use of all advertising matter that contains reference to the MODEL with the GCT Mark®;
- 3) Discontinue use of all advertising matter that contains reference to the MODEL complying with the STANDARDS as determined by GCT.

## **15. ENVIRONMENTAL AND/OR HEALTH HAZARDS**

CLIENT hereby certifies and represents that CLIENT has complied with all applicable rules and regulations issued under Toxic Substances Control Act (Public Law 94-469), and that unless otherwise exempted, the MODEL furnished for the SPE does not include or use any chemicals other than those listed in the Inventory of Chemical Substances or a Revised Inventory of Substances issued by the US Environmental Protection Agency, and that CLIENT will indemnify and hold harmless GCT from and against any and all claims, lawsuits, damages, costs and expenses, penalties and fines arising out of any failure to so comply with this paragraph.

## **16. COLLECTION**

In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees and other related expenses. Interest on any unpaid amounts shall accrue after the due date at the rate of twenty-eight percent (28%) per annum or the maximum rate allowed by law, whichever is less. Any claim that the invoice is incorrect or claim that a credit is due for any reason must be made within forty-five (45) days of the receipt of the invoice or such claim is waived. The exclusive forum for the resolution of any dispute arising pursuant to this contract is the 19<sup>th</sup> Judicial District Court located in East Baton Rouge Parish, Louisiana.

## **17. CLAIM FOR PROFESSIONAL NEGLIGENCE**

The CLIENT shall make no claim for professional negligence, either directly or in a third party claim, against GCT unless the CLIENT has first provided GCT with a written certification executed by an independent testing professional currently practicing in the same discipline as GCT. This certification shall: a) contain the name and license number or proof of accreditation of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of the testing professional under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to GCT not less than thirty calendar days prior to the presentation of any claim or the institution of judicial proceeding.

## **18. CONFIDENTIALITY**

GCT is responsible for ensuring that secrecy is maintained by its employees concerning all confidential information with which they become acquainted as a result of their contacts with the CLIENT. As a result, GCT will need to obtain information which will enable it to conduct an appropriate evaluation and testing of the MODEL. During the course of the evaluation and testing, GCT will obtain information through interviews, observations and records review. In addition, the CLIENT will convey to GCT information that might constitute trade secrets and/or proprietary information. All information and resulting work products shall be handled under the following terms and conditions:

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GCT shall, for fifteen years from the date of this agreement, maintain confidential and secret all information obtained from the CLIENT and shall not disclose the same to any third party; additionally, GCT may make no use of the information for any other purpose other than to perform the required evaluation and conduct the testing, except with the expressed written consent of the CLIENT.

GCT understands that no right or license to use any of the information provided is expressly implied or given hereunder, and GCT agrees to return all information to the CLIENT, if requested, promptly upon completion of the evaluation and testing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and the year first above written.

**CLIENT**

**GULF COAST TESTING, LLC**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

ATTEST/WITNESS:

ATTEST/WITNESS:

By \_\_\_\_\_

By \_\_\_\_\_