Nondisclosure and Confidentiality Agreement

- 1. <u>Use and Confidentiality of Information</u> EMSL acknowledges the competitive value of the Information, that the Information is important and confidential and materially affects the effective and successful conduct of the Client's business and the goodwill related thereto, that any breach of the terms of this Agreement is a material breach hereof, that the Information is the property of Client, that the disclosure of the Information does not result in EMSL obtaining any property rights in the Information and that the decision of what information to disclose and the manner in which it is disclosed is solely at the Client's discretion. EMSL will (a) use the Information solely in the performance of the Services, (b) keep the Information confidential at all times and (c) not, without the Client's written consent, duplicate any of the Information.
- 2. <u>Confidentiality Exclusions</u>. The requirement of confidentiality set forth in this agreement does not apply to any Information which (a) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure made, directly or indirectly, by EMSL), (b) was made available to EMSL on a nonconfidential basis from a source other than Client, provided that the source is not and was not bound by a confidentiality agreement with the Client, (c) was independently acquired or developed by EMSL without violating any of EMSL's obligations under this Agreement, or (d) has become publicly available other than by EMSL's breach of this Agreement, but the obligation of confidentiality shall cease only after the date on which such information has become publicly available.
- 3. <u>Prohibited Disclosures</u>. EMSL will not disclose to any person (i) the fact that EMSL is performing Services for Client, (ii) the fact that EMSL has requested or received the Information, (iii) any of the terms, conditions or other facts with respect to the performance of the Services, or (iv) any of the details of Client's Information.
- 4. <u>Court Proceedings</u>. If EMSL is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand or similar process) to disclose any of the Information, EMSL must provide the Client with prompt oral and written notice of the request or requirement so that the Client may either seek an appropriate protective order or waive EMSL's compliance with the provisions of this Agreement.
- 5. <u>Equitable Remedies</u>. Irreparable injury will result from a breach of any provision of this Agreement, and money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the

provisions of this agreement, Client (in addition to any other remedies which may be available to it) shall be entitled to one or more preliminary or permanent injunctions (a) restraining any act which would constitute a breach, or (b) compelling the performance of any obligation which, if not performed, would constitute a breach.

- 6. <u>Amendments; Waivers</u>. No provision of this agreement may be waived or amended except by written consent of Client, which consent must specifically refer to the provision being waived.
- 7. Parties Benefited; Governing Law; Jurisdiction. This agreement is for the benefit of Client and will be governed by and construed in accordance with the laws of the State of New Jersey. Any party hereto shall institute any claim, counterclaim or other proceeding relating to this agreement, the Services to which it relates or any other dispute between the parties, under any written or oral agreement or any legal theory, solely in the Superior Court of New Jersey, Camden County, or the United States District Court for the District of New Jersey, Camden Vincage. Each party irrevocably consents to the exclusive jurisdiction of such courts, and agrees that such courts are the most convenient forum for all litigation of such matters. Each party further agrees that such service of process is in every respect effective and valid personal service of process upon it.
- 8. <u>Parties Bound</u>. The parties to this Agreement shall be deemed to mean each named organization and individual and their successors, assigns and Representatives.

EMSL Analytical, Inc.	Client
By: Robert De Malo Sr. V.P., Laboratory Services	By:
Date:	Date: