

## Terms and Conditions for Air Sampling Canisters/Flow Controllers and/or Pump Equipment Loan Agreement

These Terms and Conditions for the rental program for pump equipment and accessories and TO-15 Air Sampling equipment and accessories shall constitute the complete agreement between EMSL Analytical, Inc., 200 Route 130 North, Cinnaminson, NJ 08077 hereinafter (“EMSL”), and the customer stated in the Information Section, hereinafter (“Customer”). EMSL enters into this Agreement with Customer, subject to these terms and conditions, for the equipment listed on Schedule A, hereinafter (“Equipment”), attached hereto and incorporated herein by reference. All of the Equipment listed on Schedule A is included in the term Equipment as used herein. Customer hereby acknowledges acceptance of the terms and conditions along with delivery of the Equipment.

### A. Equipment Loan

1. Customer understands and agrees these sampling pumps, canisters, flow controllers and accessories are provided at no charge (except for shipping charges, duties, tariffs, customs fees, etc.) provided all samples taken utilizing the sampling pumps are returned to EMSL for analysis. While on loan, the Equipment is, and shall at all times, remain the sole property of EMSL. Please note the canisters are intended to sample ambient air or soil gas/sub slab air, and are not intended to sample Vent Stack gases or highly contaminated air without the permission of EMSL prior to sampling. EMSL recommends TO-15 canisters be returned to the laboratory within 30 days of shipping to minimize the potential for contamination by outside air. If canisters cannot be certified clean for reuse due to extreme contamination, replacement fees will be charged.
2. At the time of order, Customer will provide to EMSL the date when EMSL will receive the equipment and accessories back (“Return Date”). The packing list will note this Return Date and will be sent with the equipment to the Customer. EMSL will provide sampling pumps and chargers in good working condition along with, if applicable, media and accessories, all at no cost (Customer is responsible for all shipping charges, duties, tariffs, customs fees, etc.). Within one business day of delivery, Customer will contact EMSL if any items are missing or damaged. Customer shall have the option to extend this Agreement for additional days at the end of the initial term, provided Customer provides EMSL a minimum of two (2) business days notice of its intent to extend the Agreement, and EMSL agrees to extend the Agreement.
3. Customer is responsible for all taxes, duties and fees associated with this Agreement.
4. Customer is responsible for all shipping charges, both from EMSL to Customer, and from Customer to EMSL. All sampling pumps, chargers, TO-15 canisters, equipment and accessories are to be sent by two-day courier service (Federal Express, UPS, etc.) or sooner. Additional shipping charges will apply for faster shipping.



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5. Customers may elect to drop off their kits at an EMSL laboratory for return to the appropriate EMSL lab for analysis. Customer's account will be charged the return shipping fee between labs. Shipping of sampling items described in this Agreement is not eligible for free shipping under "EMSL's \$100 Free Shipping™" program.

6. Customer's failure to return any or all sampling pumps, TO-15 canisters, flow controllers, equipment, chargers and accessories to EMSL by the Customer provided Return Date, without obtaining EMSL's prior written permission to extend this Loan Agreement, will automatically convert this Loan Agreement to a Lease Agreement, as described below, for said pumps, chargers, TO-15 canisters, flow controllers, equipment and accessories. If EMSL has not received any samples from the use of these sampling pumps by the Customer provided Return Date, the rental term will include the time beginning with the date that sampling pumps were shipped from EMSL, and ending on the date when the sampling pumps, chargers and accessories are returned to EMSL. The rental fees charged by EMSL will be the lowest combination for the days outstanding, using the fees as set forth on Schedule A attached hereto. If sampling pumps, chargers and accessories are not returned by Customer within twenty-two (22) days from the provided Return Date, Customer understands they have now purchased these sampling pumps, chargers and any other accessories. EMSL will bill Customer the replacement cost value for each piece of equipment as set forth on Schedule A, attached hereto. If equipment is returned after the replacement invoice has been sent, a \$25.00 service fee will be assessed.

## B. Equipment Lease

EMSL leases to Customer the Equipment for Customer's business purposes during the Minimum Days Rented, said Equipment to be used for the ordinary business purposes of Customer and for those purposes for which Equipment is intended.

1. This lease commences on the day the Equipment is received by Customer via common carrier, EMSL courier service, or collected by or on behalf of the Customer from the premises of EMSL, or other premises specified by EMSL, and will continue until the day Customer returns the Equipment to EMSL.

2. The rental shall be charged pursuant to the following rates set forth on Schedule A, attached hereto. Rental charges will accrue daily. All rates quoted are quoted in US Dollars on a per day basis, unless specified otherwise in the Equipment Section. The Minimum days Rented are to be calculated daily, and a partial day shall be charged as if it were a full day. In addition to the rental charge, Customer shall be responsible for installation, shipping and return shipping of Equipment. Customer is responsible for purchasing insurance in the amount of replacement value on all equipment shipped, including return shipments. EMSL's \$100 Free Shipping™ program prepaid labels may not be used for this purpose. All returned equipment, other than cans and regulators, should be sent to the location in which the rental equipment originated. The fee for shipping cans and regulators between labs as stated in Section A.5 of this agreement will apply. A \$100 relocation fee will be assessed for

equipment returned to the wrong address.

3. As security, COD Customers shall pay a deposit equal to the replacement cost of the rented equipment at the time of order. The Deposit will be returned to Customer after it is verified by EMSL the Equipment has been returned to EMSL in the same condition as when the Equipment was originally leased to Customer. Customer shall remain responsible for any amounts owed to EMSL following depletion of the Deposit.

4. Customer may elect to pay for the Equipment Rental in advance of the Lease Term or, where credit information is provided by Customer and approved by EMSL, by invoice. Invoices will be issued to Customer by EMSL subsequent to the Lease Term, and are due and payable within thirty days from the invoice date. Interest shall accrue on invoice amounts left unpaid at the end of the thirty-day payment period at a rate of 18% APR, until paid in full. Failure to pay invoices in a timely manner will lead to a refusal to grant credit in the future, and may be the basis for a demand by EMSL that equipment is to be returned immediately. Payments shall be made to EMSL at its address set forth above.

5. Acceptance of delivery of the equipment by Customer or Customer's agent shall constitute conclusive evidence Customer has examined the condition of the Equipment, accepts the condition of the Equipment, and finds the Equipment to be complete, in good condition, fit for any purpose for which it might be required, and satisfactory in every way.

6. Delivery date request shall be as set forth in the Equipment Section. EMSL will make reasonable efforts to meet specified delivery dates. EMSL shall not be legally bound to meet delivery dates. It is expressly agreed EMSL shall not be liable to Customer for any losses, consequential or otherwise, arising as a result of late delivery, or for the condition of the Equipment at time of delivery.

### C. General Terms and Conditions

1. The Equipment is, and shall at all times, remain the sole property of EMSL. EMSL shall have the right to enter upon the delivery address or any address where the Equipment is stored at all reasonable times in order to inspect the Equipment.

2. EMSL shall have the right to substitute Equipment upon giving Customer reasonable notice. Customer shall cooperate with EMSL in effecting such substitutions.

3. During the Loan/Lease Agreement Term, Customer shall:

- a) Ensure the Equipment will only be operated properly and by competent persons trained in the proper use of the Equipment.
- b) Maintain the Equipment in its present good condition, reasonable wear and tear occurring despite standards of good maintenance of Equipment accepted. Customer shall immediately report any damages to Equipment to EMSL. Customer shall be liable for expenses incurred by EMSL to repair damages to said Equipment caused by operation or use by Customer, or by others, during the Loan Agreement Term and until delivery of the Equipment to EMSL.

- c) Obtain all necessary licenses, certificates, permits, authorizations and others required for the operation of, or in connection with, the Equipment, and shall maintain the same in full force and effect throughout the Term of the loan agreement. Customer shall not do, neglect to do, or permit to be done, any act whereby the Equipment or its use would contravene any statute, rule, regulation or by-law or any such license, certificate, permit authorization, and others, for the time being in force pertaining to the use, maintenance or safety of the Equipment. Customer shall, during the term of this Loan Agreement and until return and delivery of the Equipment to EMSL, abide by, and conform to, and cause others to abide by and conform to, all laws and governmental rules and regulation, including any future amendments thereto, controlling or in any manner affecting operation, use, maintenance or storage of said Equipment. Customer shall, at its own expense, ensure the Equipment is kept safe and without risks to health or safety. Customer agrees to undertake all reasonable and practical steps to ensure its use of said Equipment conforms to the terms of this loan agreement, and to all local and national health and safety regulations.
  - d) Not assign this Agreement without the express written consent of EMSL.
  - e) Not permit the Equipment to be used by any party other than Customer and its employees.
4. Customer shall provide all power sources and other support equipment necessary to enable the Equipment to operate in a safe and proper manner. Customer acknowledges full responsibility for the performance of the work intended by Customer, and that EMSL is in no way responsible for the work or performance of the work. Customer will provide an appropriate operating environment for the Equipment in accordance with manufacturer's recommendations.
5. Where there is a failure of the Equipment attributable to acts or omissions on the part of Customer, which cannot be repaired by Customer on-site, Customer shall pay travel and repair costs for an engineer designated by EMSL to visit the site.
6. EMSL does not make any express or implied warranty to Customer of any kind. All conditions, representations, warranties, whether express or implied, whether in relation to fitness of the Equipment for any particular purpose, or as to the description, state, quantity or condition of the Equipment on delivery or at any time, are hereby excluded or extinguished. Neither this document nor any action or communication on the part of EMSL shall lead to the issuance of express or implied warranties to Customer.
7. Customer shall assume the entire risk of loss and damage to the Equipment from the time Customer takes possession of the Equipment, until the time EMSL regains possession of the Equipment. Customer shall give EMSL immediate written notice of such loss or damage, and shall, in the event of loss, reimburse EMSL at the manufacturer's list price in respect thereof within 14 days of the occurrence of the loss. Customer will keep the Equipment insured from, and including this day, until return and delivery of the Equipment to EMSL, in such company or companies as EMSL shall approve, according to applicable standard forms of policy, and for the benefit of EMSL, (1) against loss or damage from any cause or causes to

the Equipment for the full value thereof in the amount of one million dollars, and (2) against liability for personal injuries, death, or property damages, or any of them, arising or in any manner occasioned by the acts or negligence of Customer or others in the custody, operation or use of, or with respect to said Equipment, in the amount of one million dollars relative to personal injuries and/or death, and one million dollars relative to property damages. Customer may choose to pay for additional property insurance coverage on the Equipment to be included with the total rental rates in the Equipment Section. Insurance may be required for select Equipment.

8. Customer shall be responsible and liable to EMSL for, and indemnify EMSL against, any and all damage to the Equipment, which occurs in any manner from any cause or causes during the Term of this Loan/Lease Agreement, or until return and delivery of the Equipment to EMSL. Compensation will be the replacement cost of all pumps, chargers and accessories plus one-half of the accrued rental fees. A \$50 cleaning fee may be applied if pumps are returned excessively dirty or modified (i.e. tape adhesive or paint). Replacement cost for damaged or lost items will be the published list price in USD (including all taxes) for each item listed in the EMSL Products Catalog; replacement costs for canisters and regulators is as set forth on Schedule A, attached hereto. While in Customer's possession, the Equipment shall not be exposed to contaminants or toxins, and Customer shall not return the Equipment contaminated in any way; if the Equipment is returned in a contaminated state, a \$100 cleaning fee shall apply. Customer shall be responsible and liable for, indemnify EMSL against, hold EMSL free and harmless from any claim and all claims of any kind whatsoever for or from, and promptly pay any judgment for, any and all liability for personal injuries, death, or property damages, or any of them which arise, or in any manner are occasioned by, the acts or negligence of Customer or others in the custody, operation, or use of, or with respect to, said Equipment, during the Term of the Loan/Lease Agreement, or until return and delivery of the Equipment to EMSL, including all attorney's fees and costs associated with EMSL's defense of said claims. Neither Customer nor others shall have the right to incur any mechanic's or other lien in connection with the repair, maintenance or storage of the Equipment, and Customer agrees neither it nor others will attempt to convey or mortgage or create any lien of any kind or character against the same, or do anything or take action that might mature into such a lien. Customer shall not assign, sell, mortgage, pledge rent, part with possession, or otherwise engage in any dealing with the Equipment or with any interest therein, or attempt to do any of these things.

9. Customer accepts sole responsibility and shall hold EMSL, its servants and agents, fully indemnified against any and all claims made and/or actions brought against EMSL concerning any liability, claim or loss, including loss of business or other consequential loss, damage or injury to persons or property occurring in connection with any of the Equipment to or from EMSL, or use of the Equipment. EMSL shall not be liable for any losses resulting from any failure on the part of the Equipment. In no event shall EMSL have any responsibility or liability to Customer for any failure or delay in performance by EMSL which results, directly or indirectly, in whole or in part, from any cause or circumstance beyond the reasonable control of EMSL. Such causes and circumstances



shall include, but not be limited to, acts of God, acts of Customer, acts or orders of any governmental authority, strikes or other labor disputes, natural disasters, accidents, wars, civil disturbances, unavailability of supplies from usual suppliers, difficulties or delays in transportation, mail or delivery services, or any other cause beyond EMSL’s reasonable control.

10. If Customer shall commit any breach of this Agreement, default in any payment, cease to carry on business or abandon the Equipment, file for bankruptcy, is sequestered or has a Liquidator or Receiver appointed, or if legal process is commenced or levied against Customer in any way, it is mutually agreed EMSL may, as its option, without notice, terminate this Agreement, enter upon the place where the Equipment is kept, and take possession of the Equipment. EMSL’s waiver of any rights under this Agreement shall not be deemed a waiver of any other right of EMSL. In the case of any breach of Customer resulting in a termination of the Agreement, Customer shall pay EMSL all monies due, or those that would have been due, as if the Agreement had run its full term.

These Terms and Conditions, together with any additions or revisions which may be agreed to in writing by EMSL, embody the whole agreement of the parties, and provide the only remedies available. There are no promises, terms, conditions, understandings, obligations or agreements other than those contained herein, and these Terms and Conditions shall supersede all previous communications, representations, or agreements, either verbal or written, between the Customer and EMSL. These Terms and Conditions, and any transactions or agreements to which they apply, shall be governed both as to interpretation and performance by the laws of the state of New Jersey.

The invalidity or unenforceability, in whole or in part of any provision, term or condition hereof, shall not affect in any way the validity or enforceability of the remainder of these Terms and Conditions, the intent of the parties being the provisions be severable. The section headings of these Terms and Conditions are intended solely for convenient reference, and shall not define, limit or affect in any way these Terms and Conditions or their interpretations. No waiver by either party of any provision, term or condition hereof, or of any obligation of the other party hereunder, shall constitute a waiver of any subsequent breach or other obligation.

EMSL's acceptance of this Agreement is strictly conditioned upon the Borrower's signatory having the requisite authority to legally bind the Borrower to this Agreement. Borrower agrees to furnish any requested documentation in support of this authority prior to EMSL's execution of this Agreement.

_____	_____	
<b>(Client/Company)</b>	<b>(Authorized Signature)</b>	
_____	_____	_____
(Signatory Name)	(Title)	(Date)



## Schedule A

### 1. Air Sampling Canisters and Flow Controllers:

Rental Fees per Canister/Flow Controller as a combination, or separate:

Daily: \$65.00 per day  
Weekly: \$250.00 per week  
Monthly: \$900.00 per month

Replacement Fees:

6 Liter canister with Micro-QT valve \$610.00 each  
6 Liter canister with On/Off valve \$675.00 each  
1.4 Liter with Micro-QT valve or smaller, \$450.00 each  
Grab adapter \$75 each  
Flow Control/Regulator \$925.00 each

Canister Recertification Fees:

Unused, 6 Liter \$100.00 each  
Unused, 1.4 Liter or smaller, \$50.00 each  
Any Unused size canister certified for NJDEP Low Level analysis or individually certified canister \$150.00 each

### 2. Sampling Pumps: Rental fees charged will be the lowest combination for the days outstanding, using the following fees per sampling pump.

Rental Fees per pump:

Daily: \$35.00 per day  
Weekly: \$95.00 per day  
Monthly: \$200.00

In the event the sampling pump is not returned, Customer will be billed for 50% of the rental fee accrued, in addition to the replacement cost of the pump.

Cleaning fee per pump \$50.00