

# Client Portal User Agreement

This Client Portal User Agreement "Agreement" is made by and between Advanced Technology Laboratories (the "Firm") and you the "Client" upon the following terms and conditions:

**1. Purpose.** Firm provides a voluntary Client Portal (secure internet site) to permit easy and secure electronic transfer of documents between Client and Firm, as well as ongoing Client access to certain documents (may include confidential documents) created or maintained by Firm. Firm has the sole discretion to decide what types of documents can be uploaded or viewed on the Client Portal. Client's access code allows viewing of materials related to its relationship with Firm, and provides no ability to view materials for any other party. Client shall not attempt to access or view materials for any other party. Client must maintain the appropriate level of confidentiality for material that it downloads from the Client Portal. Firm is not responsible for the security of any material that Client downloads from the Client Portal.

**2. Service Availability.** Firm will use its best efforts to provide 24 hour daily availability of the Client Portal. However, Firm makes no representation or warranty that 24 hour service will be available. Client agrees and acknowledges that the Client Portal will, at times, be unavailable due to regularly scheduled maintenance, service upgrades or other mechanical or electronic failures.

**3. Supported Browsers.** Client agrees to access the Client Portal using an internet browser listed in the Client User Guide, as updated from time to time.

**4. Security.** Firm will use its best efforts to make the Client Portal secure from unauthorized access. The Client Portal utilizes 128-bit, Secure Socket Layer (SSL) encryption with password protected access. Documents are encrypted before being sent over the web when being added to portals, and while stored on the Portal server. SSL is the industry standard for establishing secure information transport over the web and allows the firm to meet the more stringent legislative and regulatory requirements governing the transmission of sensitive client information over the internet. However, Client recognizes that no completely secure system or electronic data storage transfer has yet been devised. Firm makes no warranty, express or implied, regarding the efficacy of the security of the Client Portal and shall never be liable for any claimed actual or consequential damages arising from any breach or alleged breach of security of the Client Portal. Client shall not attempt to disable or circumvent any security features on the Client Portal.

**5. Login Accounts and Their Security.** Firm will set up an administrator login account for the primary user to access the Client Portal. (Firm strongly recommends that Client establish a policy that login information not be shared among its employees.) The administrator has the ability to give additional employees access to the Client Portal and is responsible for maintaining an accurate list of employees that have access. Client understands that it is responsible for all access to the Client Portal granted through the administrator login account. Firm does not have the ability to add additional employees at this time.

**6. Termination of Login Account.** Client has the responsibility to remove an individual login account if the access is to be terminated. The Firm does not have access to terminate individual accounts. If the administrator on the Client Portal needs to be changed, please notify Firm immediately and the assigned account administrator will be blocked and removed.

**7. Ownership.** Client agrees not to copy, modify, rent, lease, loan, sell, assign, distribute, reverse engineer, grant a security interest in, or otherwise transfer any right to the technology or software underlying the Client Portal. Client agrees not to modify the software underlying the Client Portal in any manner or form or to use modified versions of such software, including, without limitation, for the purpose of obtaining unauthorized access to the Client Portal.

**8. No Unlawful and Prohibited Use.** You are prohibited from using the portal to damage, disable, or overburden Firm's servers or network or impair the portal or interfere with any other party's use of the portal. Hacking, password mining, or any other means to gain unauthorized access to the portal, portal accounts, computer or network is prohibited. Posting or transmitting any unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic, or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law is also prohibited. Firm will fully cooperate with any law enforcement authorities or court order requiring or directing Firm to disclose the identity of any one posting any such information and materials..

**9. Modification of Services.** Firm reserves the right, in its sole discretion, to supplement, modify or discontinue any aspect of the Client Portal, including, without limitation, restricting the times or means of access to the Client Portal. Firm also reserves the right, in its sole discretion, to modify this Agreement in any manner and to adopt additional terms or conditions governing Client's access and use of the Client Portal, at any time, without prior notice.

**10. Term and Termination.** This Agreement and the services contemplated by it may be terminated by either Firm or Client with or without cause and with or without notice at any time; provided, however, that the warranty disclaimer in Section 4 and the dispute resolution provision in Section 7 shall survive any termination.

**11. Survival.** Upon termination of Client's access to the Client Portal, in addition to any survival rights which may be expressly provided for herein, any provisions in this Agreement which expressly or by implication are to be in effect after such termination also shall survive. All such provisions shall be binding for such period of time as may reasonably be required in order to give full effect to the intended application of such provision.

**12. Indemnification.** To the extent allowed by applicable law, Client agrees to defend, indemnify and hold harmless Firm and any of its directors, officers, shareholders, and employees from and against any and all third party claims and all liabilities, assessments, losses, costs or damages resulting from or arising out of or related to Client's use of the Client Portal, or any breach by Client of any term or condition of this Agreement. If any such action shall be brought against any indemnified party, they shall notify Client in writing and Client shall assume and control the defense and settlement of each such action, including the employment of counsel and payment of all expenses. Any indemnified party shall have the right to employ separate counsel in any such action and participate in the defense, at their own cost unless otherwise agreed to by Client.

**13. Dispute Resolution.** The parties agree that any dispute between Client and Firm relating to this Agreement, or the breach of it, shall, if negotiations and other discussions fail, be first submitted to mediation in accordance with the provisions of the Commercial Mediation Rules of the American Arbitration Association ("AAA") then in effect before resorting to arbitration. The parties agree to conduct the mediation in good faith and make reasonable efforts to resolve any dispute by mediation. Failure or refusal by either party to mediate shall not in any way affect any subsequent arbitration. The parties agree to conduct the arbitration in Signal Hill, California or other mutually agreed upon location.

If the dispute is not resolved by mediation, the dispute shall be subject to binding arbitration under the Dispute Resolution Rules for Professional Accountancy and Related Service Disputes of the AAA, and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitration shall be heard before one or more arbitrators selected in accordance with these rules. The parties agree to conduct the arbitration in Houston, Texas, or other mutually agreed upon location. The arbitrator may only award actual damages and may not award consequential, exemplary, or punitive damages. The prevailing party in any arbitration

or litigation shall be entitled to recover from the other party reasonable attorney and expert witness fees, court costs, fees, and expenses of the AAA, as the case may be, incurred in the same, in addition to any other relief that may be awarded.

Notwithstanding the provisions of the immediately preceding paragraph, neither Firm nor Client shall be compelled to arbitrate any dispute between the parties which arises out of or is related to any claim asserted against either party by a third party unless the third party (whether one or more) agrees to join the arbitration and can be compelled to join it.

**14. No Warranties. ACCESS TO THE CLIENT PORTAL AND ITS CONTENT, PRODUCTS AND SERVICES ARE PROVIDED "AS IS." FIRM DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, CONCERNING THE MERCHANTABILITY, QUALITY, NON INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF THE CLIENT PORTAL OR ITS CONTENT. CLIENT ASSUMES ALL RISK OF USE. NO WARRANTY IS GIVEN THAT THE SERVICES WILL BE ERROR-FREE, FREE OF VIRUSES OR UNINTERRUPTED. FIRM IS NOT RESPONSIBLE FOR INVALID DESTINATION AND TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF INFORMATION CARRIED OVER TELECOMMUNICATIONS CARRIERS' OR OTHER PROVIDERS' FACILITIES. THE FIRM HAS NO LIABILITY FOR FAULTY OR INTERRUPTED COMMUNICATION LINKS.**

**15. Limitation of Liability. FIRM SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY DIRECT, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES INCURRED ARISING OUT OF THE USE OR THE INABILITY TO USE THE CLIENT PORTAL, EVEN IF FIRM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.**

**16. Miscellaneous.** This is the entire agreement between Firm and Client regarding its subject matter. This Agreement does not modify or affect any existing or future engagement letter or agreement between the Firm and Client. If any part of this Agreement is deemed unlawful, void or unenforceable, that part will be deemed severable and will not affect the validity and enforceability of remaining provisions. The failure of Firm to act on or enforce any provision of these Terms shall not be construed as a waiver of that provision or any other provision in these Terms. No waiver shall be effective against Firm unless made in writing and signed by Firm, and no such waiver shall be construed as a waiver in any other or subsequent instance. This Agreement is made and entered into in the State of California and is to be

construed under the laws of the State of California as they may from time to time exist.

**DRAFT TESTING ONLY**