

CONTRACT FOR WATER MANAGEMENT SERVICES and CHEMICALS

TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS are annexed to and are a part of that certain CONTRACT FOR WATER MANAGEMENT SERVICES and CHEMICALS.

1. **CONTRACT ACCEPTANCE:** Acceptance of this Contract by TW is contingent upon (a) the receipt of a satisfactory credit report on Customer if required by TW, and (b) signature of an approved representative of TW on this Contract. TW retains the right to cancel and terminate this Contract if Customer fails to meet TW's minimum credit score requirements. Changes to incoming water supply may affect the terms of this contract.
2. **EQUIPMENT OWNERSHIP:** All equipment installed under this Contract, except (a) any equipment previously owned, purchased or otherwise acquired by Customer and listed on Exhibit A to the Contract, or (b) any equipment purchased by Customer from TW, as set forth on Exhibit A to the Contract, is and shall remain the exclusive property of TW. At no time shall Customer grant a lien, security interest or other encumbrance on TW's equipment, and TW shall have the right to file, record and maintain a UCC-1 financing statement to evidence TW's ownership of said equipment. Equipment may be affixed with labels or plaques confirming TW's ownership; Customer shall not obscure, remove or damage in any way such label, plaque or other indicia of TW's ownership.
3. **LIMITED WARRANTIES; DISCLAIMER:** For equipment provided by or purchased from TW pursuant to this Contract, TW shall assign to, or exercise for the benefit of Customer all manufacturers' warranties. If Customer takes any actions as to the equipment contrary to the manufacturer's warranties, or fails to maintain the equipment as required by the manufacturer or as otherwise recommended by TW, **Customer may cause such warranties to be voided.** If the actions, neglect or omissions of Customer or those of its agents or invitees cause a manufacturer's warranty to be voided on equipment that remains the property of TW during the term of this Contract, then Customer shall be liable to TW for the full replacement value of that equipment.

TW warrants that its personnel are duly trained to perform the Services hereunder, and that such personnel shall at all times remain the employees and/or subcontractors of TW. TW shall be responsible for the salaries and other employee benefits of its personnel rendering Services hereunder.

TW further warrants that the equipment provided hereunder shall be either new or fully refurbished, and that when provided by TW, shall be in good working order.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSES, ARE EXPRESSLY DISCLAIMED HEREBY TO THE FULLEST EXTENT PERMITTED BY LAW.

4. **PRE-EXISTING EQUIPMENT:** TW makes no representations or warranties, express or implied, as to the condition of any equipment, materials or systems installed in or to Customer's Premises by any party other than TW (the "Customer Systems"). Except as expressly stated otherwise herein, **TW's warranties and liability shall not extend to or cover any part of a Customer System, all of which warranties, express or implied, are expressly disclaimed hereby to the fullest extent permitted by law.** Without limiting the foregoing Customer expressly acknowledges that although TW may provide maintenance or repair services hereunder, it cannot examine the interior of any Customer Systems to determine such Customer's System's age, prior maintenance or remaining useful life.
5. **MAINTENANCE SERVICE:** TW shall perform those maintenance and repair Services listed on Exhibit A, and provide replacement parts to maintain the equipment listed on Exhibit A and located at Customer's Premises. Service and parts shall be furnished at no additional cost to Customer other than the fees set forth on the first page of the Contract, subject to the provisions of Section 7 hereof.
6. **CONFIDENTIALITY:** Customer shall maintain in confidence all proprietary or non-public information of TW which may come into Customer's possession in connection with or as a result of the performance of Services

under this Contract. Violation of this provision shall be a material breach of this Contract. Upon the expiration or earlier termination of this Contract, Customer shall return all such confidential information to TW, retaining no copies, summaries or excerpts thereof or therefrom.

7. EQUIPMENT AND MATERIALS REPAIRS, LOSS OR DAMAGE: If any equipment or materials belonging to TW and maintained or stored at Customer's Premises (a) is stolen, lost or damaged due to Customer's or its employees' agents' or invitees' acts, omissions, neglect or misuse, or (b) is the subject of a condemnation, seizure or requisition of title to any portion of the equipment or the Customer's Premises, Customer shall pay to TW the full replacement value, as determined by TW and/or the equipment manufacturer or supplier, including any installation expenses made necessary thereby.

8. EVENTS OF DEFAULT:

a) It shall be an event of default under this Contract if Customer:

- (i) fails to make payment hereunder within thirty (30) days of the date of invoice; or
- (ii) fails to perform any covenant herein and such failure is not rectified within fifteen (15) days after written notification from TW; or
- (iii) attempts to remove, sell or sublet or assign any equipment or materials owned by TW and located at Customer's Premises, without TW's written approval.

REMEDIES: Upon the occurrence of an event of default, TW, at its own election, may (i) terminate this Contract, upon written notice to Customer; (ii) declare all sums which are then due and unpaid, immediately payable; (iii) demand the return of any equipment; and/or (iv) enter upon Customer's premises where such equipment is located and take possession and remove such equipment from the premises without liability to Customer or its agents for such entry. Customer shall be liable for any and all legal fees, costs and expenses resulting from the foregoing. If TW terminates this Contract due to Customer's default, then in addition to the foregoing, as liquidated damages, and not as a penalty, Customer shall be liable to TW for one-half (50%) of the fees that would be otherwise due and payable hereunder during the remainder of the then current term.

b) If TW fails to render Services in accordance with this Contract or Exhibit A, then Customer shall provide to TW thirty (30) days' prior written notice, detailing therein the nature of the subject default. If such failure is not cured within said thirty (30) day period, then Customer shall have the right to terminate this Contract upon written notice to TW.

9. PRICING UPON RENEWAL: Following the initial term of this Contract, TW may increase the prices for services and chemicals prior to the commencement of each renewal term upon written notice to the Customer.

10. RETURN OF EQUIPMENT: Upon the expiration or earlier termination of this Contract for any reason, at TW's direction, Customer shall either (a) immediately return to TW, freight pre-paid, all TW equipment, parts and materials installed or maintained at Customer's Premises, or (b) allow TW to enter upon Customer's Premises to retrieve all TW supplied equipment, parts, materials and software. If Customer fails to return the equipment, materials, parts and/or supporting software to TW in accordance with (a) the above within ten (10) days after the expiration or earlier termination of this Agreement, at TW's election, TW may either enter upon Customer's Premises to recover same and/or recover from TW the full replacement value for such equipment, parts, materials and/or software which are not returned or otherwise made available to TW.

11. INDEMNITY:

a) Customer shall defend, indemnify, and hold TW, parent, subsidiaries, affiliates, officers, directors, shareholders, managers, members, employees and agents harmless from and against all claims, damages, including damage to property or injury to persons, losses and expenses, including but not limited to reasonable attorneys' fees, arising from, connected with, or incidental to the Services and/or products to be provided pursuant to this Contract, except to the extent such claims are caused by the gross negligence or willful misconduct of TW.

TW shall defend, indemnify, and hold Customer, parent, subsidiaries, affiliates, officers, directors, shareholders, managers, members, employees and agents harmless from and against all claims, damages, including damage to property or injury to persons, losses and expenses, including but not limited to reasonable attorneys' fees, arising directly from the grossly negligent acts or willful misconduct of TW in the performance of the Services hereunder.

b) Customer expressly agrees that any claims arising from the equipment itself shall be asserted by Customer only against the manufacturer of the equipment, and not against TW unless the subject claim arose solely from the gross negligence or willful misconduct of TW in performing the Services hereunder.

12. INSURANCE: Each of the parties shall maintain such workers' compensation and other insurance with respect to its own business as may be required by LAW.
13. LIMITATION OF LIABILITY; LIMITATION OF DAMAGES: IN NO EVENT SHALL TW BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, REGARDLESS OF THE NATURE OF THE UNDERLYING CLAIM, AND REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN BY TW. FURTHER, IN NO EVENT SHALL TW'S DAMAGES HEREUNDER, REGARDLESS OF THE BASIS FOR THE SUBJECT CLAIM, EXCEED THE AMOUNT OF THE FEES PAID HEREUNDER FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE SUBJECT CLAIM.
14. CHEMICAL PRICING: The price for chemicals to support and maintain the equipment and systems to be serviced hereunder is based upon the current operating and market conditions. If in the event additional chemicals are required while operating under the existing conditions, the cost for such chemicals will be the responsibility of TW. If, however, conditions change, excessive water loss occurs, circumstances develop beyond the control of TW, or the market price for the subject chemicals increases by more than five (5%) percent, then in any such case, the pricing hereunder shall be increased by TW, subject to TW providing to Customer thirty (30) days' prior written notice of such increase, providing a statement as to the basis for such increase. If Customer has prepaid all or any portion of the affected Service fees due hereunder, then upon or before the effective date of the price increase, Customer shall pay to TW the balance due as a result of such price increase for the remaining period of the then current term.
15. INDEPENDENT CONTRACTORS: Each party to this Contract is an independent contractor and this Contract does not create a joint venture or partnership, employer/employee or any other relationship other than contractual of any kind, nor shall this Contract give rise to any fiduciary duty on the part of any party to any other party. Neither party shall have the authority to bind the other party hereto.
16. BINDING EFFECT; ASSIGNMENT; SUBCONTRACTING: The Contract, which includes the Exhibits annexed thereto, and the rights, powers and duties set forth herein, shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. TW shall have the right to assign any or all of its obligations hereunder to a business entity controlled by or under common control with TW (an "Affiliate"). Further, TW shall have the right to subcontract any portion of its obligations hereunder to an Affiliate. Any such assignment or subcontracting shall be done upon written notice to Customer.
17. FORCE MAJEURE: TW shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, fire, war, national or local states of emergency, insurrection, and acts of terrorism, labor disputes, strikers, power outages, earthquakes or other natural disasters.
18. SEVERABILITY: In the event that any one or more of the provisions of this Contract shall be determined to be void or unenforceable by a court of competent jurisdiction or by law, such determination shall not render this Contract invalid or unenforceable. Instead, the unenforceable provisions shall be stricken here from, and the remaining provisions hereof shall remain in full force and effect.
19. WAIVER: The failure of either party to demand strict performance of any term or condition of this Contract shall not constitute a waiver thereof or in any way limit or prevent subsequent strict enforcement of such term or condition. No waiver shall be enforceable unless in writing and signed by the party to be charged.

20. NOTICES: All notices hereunder shall be in writing, and delivered by certified mail, return receipt requested, by a nationally recognized overnight courier or by a confirmed facsimile, with an original sent by either of the foregoing methods, and shall be effective upon receipt at each party's address for notice set forth on the first page of the Contract.
21. GOVERNING LAW; JURISDICTION: This Contract shall be governed by and construed and enforced in accordance with the laws the state of New Jersey, regardless of conflict of laws principles. All disputes arising hereunder shall be brought before the courts of the State of New Jersey, to which exclusive jurisdiction both parties hereto hereby agree to submit.
22. AMENDMENT: This Contract can only be amended by a writing signed by both parties. Any preprinted terms on any purchase order or invoice issued hereunder shall have no force and effect unless expressly accepted by the parties hereto.