

 **Natividad** MEDICAL CENTER
County of Monterey Agreement for Services
(Not to Exceed \$100,000)

This Agreement (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC"), and Water Tech Specialties, Inc. hereinafter "CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the "Parties.").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED; NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of the Agreement. The services are generally described as follows:
Establish a Water Management Plan

PAYMENTS BY NMC; NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$32,088.00.

TERM OF AGREEMENT; the term of this Agreement is from April 1, 2019 through March 31, 2021 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

NMC reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

SCOPE OF SERVICES AND ADDITIONAL PROVISIONS/EXHIBITS; the following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A: Scope of Services/Payment Provisions

Exhibit B: LAMPS Water Management Plan and Training Platform Terms of Use

1. PERFORMANCE STANDARDS:

- 1.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
- 1.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement.

CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

2. PAYMENT CONDITIONS:

- 2.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. NMC (Monterey County) does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 2.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.
- 2.3. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 2.4. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

3. TERMINATION:

- 3.1. During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 3.2. NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement.

4. INDEMNIFICATION:

- 4.1. CONTRACTOR shall indemnify, defend, and hold harmless NMC (hereinafter "County"), its officers, agents and employees from any claim, liability, loss injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The CONTRACTOR shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement.

5. **INSURANCE:**

5.1. Evidence of Coverage:

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

5.2. Qualifying Insurers: All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

5.3. Insurance Coverage Requirements: Without limiting Contractor's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

5.4. Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached; subject to approval)

5.5. Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached; subject to approval)

- 5.6. Workers' Compensation Insurance, If CONTRACTOR employs other in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached; subject to approval)

- 5.7. Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached; subject to approval)

6. Other Insurance Requirements:

- 6.1. All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.
- 6.2. Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 6.3. **Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance.**
- 6.4. Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no

way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

6.5. CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

7. RECORDS AND CONFIDENTIALITY:

- 7.1. Confidentiality: CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.
- 7.2. NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.
- 7.3. Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 7.4. Access to and Audit of Records: NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess or \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
8. Royalties and Inventions: NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.
9. Non-Discrimination: During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all

federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

10. Compliance with Terms of State or Federal Grant: If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.
11. Independent Contractor: In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.
12. Notices: Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

NATIVIDAD MEDICAL CENTER:

Natividad Medical Center
Attn: Contracts Division
Natividad Medical Center
1441 Constitution Blvd
Salinas, CA. 93906
FAX: 831-757-2592

CONTRACTOR:

Name: Water Tech Specialties, Inc.
Attn: Bonnee Randall
Address: 47428 Fremont Blvd
City, State, Zip: Fremont, Ca 94538
FAX: 510-573-0379
Email: bonneewalker@watertech.net

MISCELLANEOUS PROVISIONS:

- 13.1 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 13.2 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 13.3 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

- 13.4 Contractor. The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 13.5 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 13.6 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 13.7 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 13.8 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 13.9 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 13.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 13.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 13.12 Non-exclusive Agreement. This Agreement is non-exclusive and both NMC and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 13.13 Construction of Agreement. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 13.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 13.15 Integration. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 13.16 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

Signature Page to follow

NATIVIDAD MEDICAL CENTER

By: _____
Gary R. Gray, DO, CEO

Date: _____

APPROVED AS TO LEGAL PROVISIONS

By: AB _____
Monterey County Deputy County Counsel

Date: 2.26.19 _____

APPROVED AS TO FISCAL PROVISIONS

By: [Signature] _____
Monterey County Deputy Auditor/Controller

Date: 22719 _____

CONTRACTOR

Water Tech Specialties, Inc.

Contractor's Business Name*** (see instructions)

[Signature] President
Signature of Chair, President, or Vice-President

Jack Walker, President

Name and Title

Date: December 13, 2018 _____

By: Bonnee Randall, CFO
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Bonnee Randall, CFO

Name and Title

Date: December 13, 2018 _____

*****Instructions:**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required). If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required). If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).

EXHIBIT A – Scope of Services/Payment Provisions

I. Description of All Services to be Rendered by CONTRACTOR:

CONTRACTOR shall provide to NMC an editable, easy-to-use, effective, evidence-based Water Management Plan (WMP) in CONTRACTOR's cloud-based water management program application, LAMPS. LAMPS will allow NMC to hide or edit control measures according to NMC preferences. Other parts of the WMP can also be edited to NMC specifications.

II. CONTRACTOR Obligations:

A. The WMP delivered to NMC shall include the following per ANSI/ASHRAE Standard 188-2015:

- Overview
- Team members list
- Management section
- Validation procedures
- Steps for responding to Legionnaires' disease
- Water system data entry
- Flow diagram templates
- Hazard analysis
- Control Measures

B. The control measures are the most important part of a WMP because they are what actually reduce the risk of disease. Control measures will be included for operation and maintenance of water systems, design and construction, and for responding to incidents such as water main breaks or system shut downs. The objective is to take reasonable, effective, responsible, evidence-based, legally defensible steps to minimize risk without overspending.

III. NMC Obligations:

A. NMC will:

1. Establish a water management team.
2. Participate in a water management survey. This will include all water sources from all buildings, some patient rooms, sinks, ice machines, showers, water features, etc.
3. Designate an NMC staff member to attend quarterly meetings.
4. Perform hazard analysis and control measures.

IV. Pricing/Fees:

A. \$1,497.00 for one year of access to the LAMPS WMP Platform for use by NMC.

1. This price shall include access for a team of up to seven NMC users.

2. Use of the LAMPS WMP Platform will be in accordance to the attached LAMPS Water Management Plan and Training Platform Terms of Use (Exhibit B).
 3. NMC shall have the option of renewing for subsequent years at the yearly rate in place at the time of renewal by way of an amendment signed by both parties. If NMC does not renew, NMC shall be able to continue using the PDF version of NMC's WMP. *This quote includes the first year of access to the WMP platform.*
- B. \$13,047.00 for on-site set-up services.
1. CONTRACTOR shall visit NMC to (1) gather water system information from NMC, (2) take pictures of NMC water systems, and (3) construct flow diagrams.
 2. CONTRACTOR shall use LAMPS to upload (1) flow diagrams, (2) pictures, (3) enter your water system data, (4) configure the Hazard Analysis, and (5) "hide" control measures that do not pertain to your facility.
 3. CONTRACTOR shall provide NMC with a tutorial of the WMP and show NMC staff how to get started in setting up documentation and verification for NMC control measures.
 4. NMC shall not reimburse CONTRACTOR for travel expenses related to on-site set-up services.
- C. \$500.00 per quarterly meeting to review NMC documentation and verification procedures.
1. CONTRACTOR shall meet with NMC three times approximately three months after the WMP is turned over to NMC. After CONTRACTOR turns the WMP over to NMC, NMC may begin implementing the control measures. NMC should review each control measure and enter the documentation procedures, verification person, and "date compliance last verified" for each. NMC may also add comments (e.g., "Scheduled for next month") to keep track of NMC's progress.
 2. NMC shall not reimburse CONTRACTOR for travel expenses related to quarterly meetings.
- D. CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged to any other client for the same services performed by the same individuals.
- E. Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.
- F. County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.
- G. No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

Exhibit B - LAMPS Water Management Plan and Training Platform Terms of Use

This is the official Terms of Use Agreement (“Agreement”) for the LAMPS web-based platform which includes its use for: (i) analytics, training, or reports; (ii) configuring, customizing, viewing, editing, or documenting a water management plan; or (iii) for any other purpose (all such uses are hereby collectively known as “the Platform”). This Agreement applies whether you are accessing the Platform via a personal computer, a mobile device or any other technology or devices now known or hereafter developed or discovered (each, a “Device”). The Platform is provided by HC Information Resources Inc. (“HC Info”). This Agreement governs the use of the content related to the Platform. These terms and conditions regarding your use of the Platform constitute a legally binding agreement between you and HC Info. In this Agreement, the term “Platform” includes all content of any nature within the Platform. By using the Platform, you understand, acknowledge and agree that you will abide by the terms of this Agreement. This Agreement will remain in full force and effect as long as you are a user of the Platform. The words “use” or “using” in this Agreement, means any time an individual (a “user”), directly or indirectly, with or without the aid of a machine or device, does or attempts to access, interact with, use, display, view, print or copy from the Platform, transmit, receive or exchange data or communicate with the Platform, or in any way utilizes, benefits, takes advantage of or interacts with any function, service or feature of the Platform, for any purpose whatsoever. This Agreement does not cover your rights or responsibilities with respect to third party content. This is the entire and exclusive Agreement between you and HC Info regarding use of the Platform and it cannot be modified, except as specifically described below in Section 2.

1. Registration: We may require each user to have a unique user name and password combination in order to access and use certain features or functions of the Platform and may also, from time to time, provide users with additional codes or passwords necessary to access and use certain features or functions of the Platform. Please read our Privacy Policy, which describes the personally identifiable information (“Personal Information”), and other information we collect, use, disclose, manage and store. As part of the registration process for a feature or function, you may have to choose a user name and password (or we may assign an initial password which we will give you the option to change). Your user name and password are personal to you and you may not allow any others to use your user name or password under any circumstances. We are not liable for any harm caused or related to the theft or misappropriation of your user name or password, disclosure of your user name or password, or your authorization of anyone else to use your user name or password. You agree to immediately notify us if you become aware of or believe there is or may have been any unauthorized use of (or activity using) your user name or password or any other need to deactivate your user name or password due to security concerns.

2. Modifications: We reserve the right, at any time and from time to time, for any reason in our sole discretion, to change the terms of this Agreement. We will post or display notices of material changes in the Platform and/or e-mail you or notify you upon login about these changes; the form of such notice is at our discretion. Once we post them on the Platform, these changes become effective immediately and if you use the Platform after they become effective

it will signify your agreement to be bound by the changes. You should check back frequently and review the terms and conditions of this Agreement regularly so you are aware of the most current rights and obligations that apply to you and the terms and conditions of your agreement with us.

3. Ownership Of Intellectual Property: The contents and output of the Platform, including all software, design, text, images, photographs, illustrations, audio and video material, artwork, graphic material, databases, data, analytics, results, reports (including both graphical and tabular output), proprietary information and all copyrightable or otherwise legally protectable elements and output of the Platform, including, without limitation, the selection, sequence and “look and feel” and arrangement of items, and all trademarks, service marks and trade names (individually and/or collectively, “Materials”), are the property of HC Info, its Affiliates, and any of their successors and assigns, and any of their respective licensors, suppliers, and service providers, and are legally protected, without limitation, under U.S. Federal and State, as well as applicable foreign laws, regulations and treaties. Unless the context clearly requires otherwise or we explicitly say so in writing, the “Platform” includes “Materials” as detailed above as well. HC Info hereby grants a nonexclusive, nontransferable right to you to use this Platform for the water management of one building or multiple buildings located on one campus. Access to the Platform and any water management plan (WMP) and any data, analytics, results or reports generated from it shall be used only by the registered users and may not be donated, sold, distributed, or commercially exploited in any form. You must not alter, delete or conceal any copyright or other notices contained in the Platform, including notices on any Materials you download, transmit, display, print or reproduce from the Platform. You shall not, nor will you allow any third party (whether or not for your benefit) to reproduce, modify, create derivative works from, display, perform, publish, distribute, disseminate, broadcast or circulate to any third party, or otherwise use, any Materials without the express prior written consent of HC Info. Any unauthorized or prohibited use of any Materials may subject you to civil liability, criminal prosecution, or both, under applicable federal, state and local laws. We require users to respect our copyrights, trademarks, and other intellectual property rights. We likewise respect the intellectual property of others. On notice, we will act expeditiously to remove content from the Platform that infringes the copyright rights of others and will disable the access to the Platform and its services of anyone who uses them to repeatedly infringe the intellectual property rights of others. We take protection of copyrights, both our own and others, very seriously. We therefore employ multiple measures to prevent copyright infringement of this Platform and to promptly end any infringement that might occur. If you believe that the Platform contains elements that infringe your copyrights, please notify us immediately.

4. Rules of Conduct: Your use of the Platform is subject to all applicable local, state, national laws and regulations and, in some cases, international treaties. You are solely responsible for all activities, acts and omissions that occur in, from, through or under your user name or password. You shall not use, allow, or enable others to use the Platform, or knowingly condone use of this Platform by others, in any manner that is, attempts to, or is likely to:

- be libelous, defamatory, indecent, vulgar or obscene, pornographic, sexually explicit or sexually suggestive, racially, culturally, or ethnically offensive,

harmful, harassing, intimidating, threatening, hateful, objectionable, discriminatory, or abusive, or which may or may appear to impersonate anyone else;

- affect us adversely or reflect negatively on us, the Platform, our goodwill, name or reputation or cause duress, distress or discomfort to us or anyone else, or discourage any person, firm or enterprise from using all or any portion, features or functions of the Platform;
- be used for advertising, marketing or offering goods or services, whether or not for financial or any other form of compensation;
- transmit, distribute or upload programs or material that contain malicious code, such as viruses, time bombs, cancelbots, worms, trojan horses, spyware, or other potentially harmful programs or other material or information;
- forge any TCP/IP packet header or part of the header information in any email or newsgroup posting for any reason;
- violate any laws, regulations (including, without limitation, laws regarding the transmission of technical data or software exported from the United States), judicial or governmental order or any treaties, or violate or infringe upon any intellectual property rights, rights of publicity or privacy or any other rights of ours or of any other person, firm or enterprise; or use the Platform in any manner which violates or is inconsistent with the terms and conditions of this Agreement;
- modify, disrupt, impair, alter or interfere with the use, features, functions, operation or maintenance of the Platform or the rights of use and enjoyment of the Platform by any other person, firm or enterprise; or
- collect, obtain, compile, gather, transmit, reproduce, delete, revise, view or display any material or information, whether personally identifiable or not, posted by or concerning any other person, firm or enterprise, in connection with their or your use of the Platform, unless you have obtained the express, prior permission of such other person, firm or enterprise to do so.

5. Viral Features: There may be portions of our Platform, content, functionality or features (e.g., digital streaming media player(s)) (“Viral Features”) that we make available to users. While we can obviously change how, to whom and to what extent we make these Viral Features available at any time without any notice and in our sole discretion, so long as they are available to you, whenever you visit our Platform or take advantage of any of these Viral Features you agree not to download any content made available as part of the Viral Features and acknowledge that such content is available only for streaming viewing and, further, that you are bound by the applicable provisions of this Agreement and our Privacy Policy.

6. Certain Products and Services a. RSS Feeds and Podcasts: HC Info may provide RSS Feeds (“RSS Feeds”) consisting of selected text, audio, video, and photographic content (“Content”) from the Platform that is provided over the Internet using an XML feed. Certain RSS Feeds may be podcasts (“Podcasts”) which may include as part of the Content an associated audio, video and/or photographic file where the audio and/or video file may be downloaded and played from a user’s Device or transferred to a portable listening device. Certain software and hardware is required for users to download and view and/or play Content

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9. Indemnification: Except in the event of HC Info's gross negligence or willful misconduct, you agree to indemnify, defend and hold HC Info, its officers, directors, employees, agents, representatives, licensors, advertisers, suppliers, and service providers harmless from and against any and all claims, actions, losses, expenses, damages and costs

(including reasonable attorneys' fees), resulting from any breach or violation of this Agreement by you.

10. Ads and Malware: We took great care and pride in creating the Platform. We are always on the lookout for technical glitches that effect how the Platform functions. When we find them on our end, we will fix them. Unfortunately, your home computer may cause some glitches that effect how you see our Platform – and that is beyond our control. If you experience any unusual behavior while using the Platform, it may be the result of Malware on your computer. Malware – short for MALicious softWARE – is a term used to broadly classify a form of software which is installed in a computer system with malicious intentions, usually without the owner's knowledge or permission. Malware includes computer viruses, key loggers, malicious active content, rogue programs and dialers, among others. While we continuously work closely with our partners to ensure that everything is working properly, sometimes Malware programs on your personal computer may interfere with your use of the Platform. Please note that we cannot be responsible for the effects of any third-party software including Malware on your computer system. If you do discover any Malware on your system, we also suggest you speak with a qualified computer technician. If, after taking the above actions, you are still experiencing any problems, please feel free to contact us.

11. Privacy: We respect your privacy and the use and protection of your Personal Information. Please see our Privacy Policy for important information and disclosures relating to the collection and use of your Personal Information in connection with your use of the Platform.

12. Law that Applies to this Agreement; Miscellaneous Terms: This Agreement, together with any other regulations, procedures and policies which we refer to and which are hereby incorporated by reference, contains the entire understanding and agreement between you and HC Info and supersedes any and all prior or inconsistent understandings relating to the Platform and your use of the Platform. This Agreement cannot be changed or terminated orally. If any provision of this Agreement is held to be illegal, invalid or unenforceable, this will not affect any other provisions and the Agreement will be deemed amended to the extent necessary to make it legal, valid and enforceable. Any provision which must survive in order to allow us to enforce its meaning shall survive the termination of this Agreement; however, no action arising out of this Agreement or your use of the Platform, regardless of form or the basis of the claim, may be brought by you more than one (1) year after the cause of action has arisen (or if multiple causes, from the date the first such cause arose). This Agreement and your use of the Platform is governed by, construed and enforced in accordance with the internal substantive laws of the State of Washington (notwithstanding the State's conflict of laws provisions) applicable to contracts made, executed and wholly performed in Washington, and, for the purposes of any and all legal or equitable actions, you specifically agree and submit to the exclusive jurisdiction and venue of the State and Federal Courts situated in the State of Washington and King County and agree you will not object to such jurisdiction or venue on the grounds of lack of personal jurisdiction, forum non conveniens or otherwise. To the extent it may be applicable, you agree to opt out from and expressly exclude any applicability of the Uniform Computer Information Transactions Act. IN ANY ACTION OR PROCEEDING COMMENCED TO ENFORCE ANY RIGHT OR OBLIGATION OF THE PARTIES UNDER THIS AGREEMENT, YOUR USE OF THE PLATFORM OR WITH RESPECT TO THE

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