



COMPLIANCE SERVICES TERMS AND CONDITIONS

THESE COMPLIANCE SERVICES TERMS AND CONDITIONS (these “T&Cs”) apply to all services and related deliverables more specifically described in your proposal letter duly signed by both Parties (the “**Proposal**”, the Proposal and these T&Cs are sometimes referred to jointly hereon as the “**Agreement**”). These T&Cs are entered into by and between Legionella Compliance Solutions, LLC a Delaware limited liability company (“**LCS**”), and you (the “**Client**”); and these T&Cs together with the Proposal constitute a contract between LCS and Client. By signing the Proposal, you agree to be bound by these T&Cs. If you do not agree to these T&Cs, do not sign the Proposal. Any reference herein to the “**Parties**” is a collective reference to both LCS and Client.

ARTICLE 1. ENGAGEMENT

Section 1.1 Engagement. Client hereby engages LCS, and LCS hereby agrees, to supply the compliance services with respect to the cooling tower system (the “**System**”) located at the Building (the “**Building**”) as more particularly described in the Proposal (collectively, the “**Services**”) to Client during the term described on the Proposal and subject to the terms and conditions set forth in the Proposal and these T&Cs. In the event of a discrepancy between the terms of the Proposal, on one hand, and the terms of these T&Cs, on the other hand, the terms of these T&Cs shall govern and be binding.

Section 1.2 Fees; Invoices. In consideration of LCS’s performance of the Services, Client shall pay the associated fees and costs as set forth on the Proposal (the “**Fees**”). The Fees are subject to changes annually upon written notice from LCS to Client. LCS will issue invoices as set forth in the Proposal and payment shall be due within thirty (30) days of Client’s receipt of an invoice, all as more specifically set forth in the “Agreement for Legionella Compliance Services” section of the Proposal.

Section 1.3 Term. The term of this Agreement (the “**Term**”), along with any associated termination right, shall be as set forth in the “Agreement for Legionella Compliance Services” section of the Proposal.

ARTICLE 2. CERTAIN PROVISIONS REGARDING THE SERVICES

Section 2.1 Compliance Advice. It is understood and agreed that the Services include advice necessary to achieve compliance with certain governmental rules and regulations regarding the management and maintenance of water treatment systems. With respect to buildings and the local city, State, Country and/or Province regulations. Such regulations include those propounded by the New York

State Department of Health and the New York City Department of Health and Mental Hygiene, as well as any future city, State, Country and/or Province regulations or standards (collectively, “**Rules and Regulations**”); however, all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Client. LCS shall perform the Services using a workmanlike degree of skill, care and diligence. LCS represents and warrants that it has obtained all permits, licenses and registrations necessary to satisfy all legal and regulatory requirements for the provision of the Services in accordance with this T&Cs.

Section 2.2 Changes in Laws and Regulations and Inspectors. Client and LCS each acknowledge that the Rules and Regulations are in a state of rapid development and change. LCS shall use commercially reasonable efforts to remain informed regarding such rules and regulations and to inform Client of any necessary changes to the Services to accommodate such changes in rules and regulations. Such changes may require a change in the scope of the Services and the associated Fees. In such event, the parties shall confer in good faith to amend this T&Cs accordingly. Further, Client acknowledges that relevant inspectors may interpret the Rules and Regulations in an inconsistent or idiosyncratic manner, and LCS shall have no liability to Client in such event.

Section 2.3 Client Response and Cooperation. Client and LCS agree that the ultimate compliance with Rules and Regulations is dependent on diligent implementation of the recommendations made by LCS. LCS shall not bear any liability or responsibility for any failure caused in whole or part by the Client’s lack of diligence or failure to follow LCS’s recommendations. Neither shall LCS be liable for any failure or delay in providing its compliance program as a result of any Force Majeure Event or other act or circumstance beyond its control. The compliance program recommended by LCS is based on the operating conditions as of the Effective Date.

The Client acknowledges that it is obligated to provide accurate information to LCS and third parties used by LCS. Without limiting the generality of the foregoing, Client shall reasonably cooperate with LCS hereunder, including (i) providing LCS with reasonable facilities and timely access to System data, associated information and relevant personnel of Client; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion; and (iii) promptly notifying LCS of any issues, concerns or disputes with respect to the Services. Client shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to LCS for purposes of the performance of the Services. Client acknowledges and agrees that LCS's performance is dependent upon the timely and effective satisfaction of Client's responsibilities hereunder and timely decisions and approvals of Client in connection with the Services. LCS shall be entitled to rely on all decisions and approvals of Client. Client shall be solely responsible for, among other things: (A) evaluating the adequacy and results of the Services; and (B) establishing and maintaining internal controls, including monitoring ongoing activities consistent with the advice and direction of LCS. Notwithstanding the foregoing, the manner of LCS's performance is in its sole discretion and Client has no right or authority to control the manner or means by which the Services are rendered and Client will not supervise or otherwise instruct LCS's employees, contractors or agents. Client must provide relevant water treatment documents from its current vendor in a reasonable period following request.

Section 2.4 Reliance on Third Party Laboratories. With regard to testing generally, during the course of performing of the Services, LCS will rely on outside laboratories other than its own to test the Customer's samples. LCS will recommend the laboratory for this testing and will provide the laboratory with all the pertinent information necessary for the laboratory to do its job properly. The Customer will be provided all the information that LCS provides to the laboratory and the Customer will have the right of refusal to supply the laboratory this information. However, be it known that LCS and the Customer have placed absolute reliance on the tests conducted by the outside laboratories for their accuracy.

Section 2.5 Client Feedback; Signatures; Approvals. Client agrees to promptly provide clear feedback, signatures to required forms and other requisite approvals within a reasonable time of request by LCS. Client understands that failure to provide clear feedback, signatures and prompt

approvals may trigger noncompliance with application Rules and Regulations.

Section 2.6 Activities on Building Premises. LCS shall obey, and shall be responsible for ensuring that all LCS employees, contractors or agents obey, whenever on the Building premises, all applicable rules, regulations and policies, including network and equipment use, access and security, and safety and fire prevention policies and rules, in each case, to the extent notified by Client to LCS in writing.

ARTICLE 3. INSURANCE, INDEMNIFICATION & LIMITATION OF LIABILITY

Section 3.1 Insurance. During the term of this T&Cs, LCS shall maintain the following insurance:

- (i) Worker's Compensation Insurance:
 - Statutory Workers Compensation in accordance with all state and local requirements of the state(s) in which work is to be performed;
- (ii) Employers Liability insurance with minimum occurrence limits as follows:
 - Bodily injury by accident \$1,000,000 each accident,
 - Bodily injury by disease \$1,000,000 policy limit, and
 - Bodily injury by disease \$1,000,000 each employee;
- (iii) Commercial General Liability Insurance, written on an occurrence basis, including bodily injury, property damage, personal injury, advertising injury, products and completed operations, and contractual liability, in an amount not less than:
 - Each Occurrence Limit \$1,000,000,
 - Products/Completed Operations Aggregate Limit \$1,000,000,
 - Advertising Injury and Personal Injury Limit \$1,000,000, and
 - General Aggregate \$2,000,000;
- (iv) Umbrella or Excess Liability Insurance of not less than \$ 5, 000, 000 general aggregate; and
- (v) Professional Liability or Errors & Omissions Insurance in the amount of \$2,000,000 per claim and \$5,000,000 in the aggregate (If coverage is written on a claims-made basis, the coverage must be

maintained for a period of three years post completion of contract or purchase of run-off or tail coverage.).

- (a) All insurance policies provided and maintained by LCS shall be underwritten by insurers that are rated "A-VII" or higher. LCS shall be responsible for any self-insured retentions, deductibles or self-insurance associated with the coverages described in this Section.
- (b) LCS's coverage shall be primary and non-contributory to the fullest extent afforded by the policies and applicable law.
- (c) The Commercial General Liability Insurance, Employer's Liability Insurance and Umbrella or Excess Liability Insurance shall include a waiver of the insurers' subrogation rights and coverage and shall name Client as an Additional Insured.
- (d) Certificates of Insurance and evidence of the foregoing endorsements shall be provided to Client upon request. Such Certificates shall provide that the insurer will give thirty (30) days' written notice to Client prior to cancellation of any policy or endorsement.

Section 3.3 Indemnification. Subject to the terms and conditions of this T&Cs, each Party hereto (an "**Indemnifying Party**") agrees to indemnify and hold harmless the other Party hereto and its officers, managers, directors, stockholders, members, agents, employees, representatives, and their respective successors and assigns (each, an "**Indemnified Party**"), from and against any and all claims, liabilities, damages, costs, and expenses, including reasonable outside attorneys' fees, witnesses' fees and related costs (collectively, "**Losses**") incurred by such Indemnified Party and arising from any claim, action or demand by a third party against the Indemnified Party to the extent caused by (i) the Indemnifying Party's breach of its representations and warranties, covenants or agreements hereunder, or (ii) the Indemnifying Party or its representatives' gross negligence or willful misconduct. The Indemnified Party shall notify the Indemnifying Party in writing of any claim for which the Indemnified Party is entitled to indemnification hereunder. Failure or delay in providing such notice shall not relieve the Indemnifying Party of its indemnification obligations, except to the extent the Indemnifying Party demonstrates that the defense or settlement of such claim has been prejudiced thereby. The Indemnifying Party shall have the right to control the defense and settlement of any such claim, or may at any time tender control of the defense or settlement

of such claim to the Indemnified Party in the Indemnifying Party's sole discretion. The Indemnified Party may elect to participate in the defense or settlement of any claim with counsel of its choice at its expense. No compromise or settlement may be committed to without the Indemnified Party's prior written approval (which shall not be unreasonably withheld, conditioned or delayed).

Section 3.4 Limitation of Liability: NEITHER LCS, ON THE ONE HAND, NOR CLIENT ON THE OTHER HAND, SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS AND LOST BUSINESS), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, PRODUCT LIABILITY, FUNDAMENTAL BREACH, OR OTHERWISE ARISING OUT OF OR RELATED TO THIS T&Cs, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE REASONABLY FORESEEABLE, EXCEPT ONLY TO THE EXTENT SUCH DAMAGES ARE AWARDED TO A THIRD PARTY IN A BINDING COURT ORDER FOR WHICH A PARTY IS OBLIGATED TO INDEMNIFY THE OTHER UNDER THIS T&Cs. THE MAXIMUM AGGREGATE LIABILITY OF A PARTY TO THE OTHER PARTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS T&Cs SHALL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT OF THE FEES PAID FOR THE TWENTY FOUR (24) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH OBLIGATION. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE CAUSE OR FORM OF ACTION, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY OR OTHERWISE.

ARTICLE 4. WARRANTY AND REPRESENTATIONS

Section 4.1 LCS General Warranties and Representations. LCS hereby warrants and represents that it: (i) shall perform the Services in good faith and in a professional manner and in accordance with all requirements and any time frames set forth in this T&Cs, including the associated schedules; (ii) shall use commercially reasonable efforts to prevent the deliverables and other materials provided by LCS hereunder from containing, or from transmitting to client or its

systems, any code, files, scripts, agents or programs intended to do harm; and (iii) LCS will provide the services in accordance with applicable laws and government regulations

Section 4.2 Clients General Warranties and Representations. Client hereby warrants and represents that: (a) Client has the full right, power and authority to enter into and fully perform this T&Cs and to provide LCS with access to the Building and Systems as necessary to perform the Services; (b) Client's execution and delivery of, and Client's performance under, this T&Cs does not and will not conflict with, violate, result in a breach or default of or otherwise adversely affect any applicable law or existing T&Cs or contract to which Client is a party.

4.3 Limitation on Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, LCS DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT'S EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY IN THIS ARTICLE 4 SHALL BE FOR LCS, UPON RECEIPT OF WRITTEN NOTICE, TO USE DILIGENT EFFORTS TO CURE SUCH BREACH, OR, FAILING ANY SUCH CURE IN A REASONABLE PERIOD OF TIME, THE RETURN OF PROFESSIONAL FEES PAID TO LCS HEREUNDER WITH RESPECT TO THE SERVICES GIVING RISE TO SUCH BREACH.

ARTICLE 5. CONFIDENTIALITY

Section 5.1 Confidential Information. "Confidential Information" means all information disclosed by or on behalf of a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes the terms and conditions of this T&Cs (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, names of customers and suppliers, and business strategies and processes disclosed by such party. Notwithstanding the foregoing, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is

received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

Section 5.2. Confidentiality Obligation.

The Receiving Party will protect the Confidential Information of the Disclosing Party using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care). The Receiving Party shall (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement to any third party other than its legal counsel and accountants and other professional advisors who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein, without the other party's prior written consent, provided that a Party that makes any such disclosure to its legal counsel, accountants or other professional advisors will remain responsible for such legal counsel's, accountant's or other professional advisors' compliance with this Article 5.

Section 5.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law or regulator to do so, provided that the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law or regulator to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

Section 5.4 Remedies. In addition to remedies available hereunder, in the event of any breach or alleged breach of this Article 5 by the Receiving Party, the Disclosing Party shall be entitled to seek an injunction without the requirement of posting any bond, to enforce the terms of this Article 5, and recover attorneys' fees and all other costs

incurred by the Disclosing Party in enforcing all such remedies.

ARTICLE 6. MISCELLANEOUS PROVISIONS

Section 6.1 Venue and Applicable Law.

This Agreement and all matters relating to this engagement shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the choice of law principles thereof). Any action based on or arising out of Agreement or the Services shall be brought and maintained exclusively in any court of the State of New York or any federal court of the United States, in each case located in New York County, the State of New York. Each of the parties hereby expressly and irrevocably submits to the jurisdiction of such courts for the purposes of any such action and expressly and irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such action brought in any such court and any Claim that any such action has been brought in an inconvenient forum. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein.

Section 6.2 Non-Assignable/Severability.

This Agreement and its provisions are non-assignable and non-delegable by either Party without the written consent of the other Party. The provisions of this Agreement are severable and the invalidity, unenforceability or waiver of any of its provisions shall not affect the remaining other provisions.

Section 6.3 Limitation on Actions. No action, regardless of form, relating to this Agreement, may be brought by either party more than three (3) years after the party bringing the action had actual knowledge that the cause of action has accrued, except that an action for non-payment may be brought not later than three (3) years following the date of the last payment due to the party bringing such action, in each case, to the extent permitted by applicable law. In any legal action or proceeding arising from, related to, or brought to enforce, construe, interpret, rescind or cancel this Agreement or any of its provisions, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs incurred in connection with such action or proceeding, in addition to any other relief to which it may be entitled.

Section 6.4. Independent Contractor. It is understood and agreed that each party is an independent contractor and that neither party is, nor shall be considered to be, the other's agent, distributor, partner, fiduciary, joint venturer, co-owner or representative. Neither party shall act or represent itself, directly or by implication, in any such capacity or in any manner assume or create any obligation on behalf of, or in the name of, each other. LCS agrees that, with respect to the Services, no LCS personnel are Client employees for any purpose, including: (i) for federal, state or local tax, employment, withholding or reporting purposes; or (ii) for eligibility or entitlement to any benefit under any of Client's employee benefit plans (including those that are subject to the Employee Retirement Income Security Act of 1974, as amended), incentive, compensation or other employee programs or policies.

Section 6.5 Notice. All notices or demands which either Party is required or desires to give to the other Party, shall be in writing and shall be given by personal delivery, by facsimile transmission, by electronic mail transmissions, by overnight courier (FED EX, UPS) or by U.S. Mail certified or registered, to the address of each Party as set forth in the Proposal. Each such notice shall be deemed "received" by the other Party (1) on the date of personal delivery if personally delivered, (2) the date of facsimile transmission if sent before 5:00 P.M., (otherwise the next day), (3) the date of electronic mail transmission if sent before 5:00 P.M., (otherwise the next date), (4) the day after deposit of the notice with an overnight carrier service, or (5) two days after deposit if the notice is sent by certified or registered U.S. Mail.

Section 6.6 Entire Agreement. The Proposal, taken together with these T&Cs, constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all other agreements, either oral or in writing. Each Party acknowledges that there are no representations, inducements, promises or agreements, oral or written, which have been made by any Party which are not included herein.

Section 6.7 Modifications. These T&Cs may be modified at any time without notice to Client. No waiver by either Party of any term or condition of this T&Cs shall be deemed effective unless given in writing.

Section 6.8 Successors; Assigns. All the terms and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 6.10 Rules of Construction. The Parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against

the drafting Party shall not be applied in the construction or interpretation of this T&Cs.