



# TERMS AND CONDITIONS

## for WATER TREATMENT SERVICES

These Terms and Conditions (these “Terms”) are made and entered into by and between **Blackmore Enterprises, Inc.**, a Georgia corporation (“Blackmore”), and the Customer, as identified in the accompanying Order Confirmation (“Order Confirmation”). These Terms may refer to Blackmore or the Customer as a “Party,” or collectively as the “Parties.” These Terms become binding on the Parties as of the Effective Date stated in the Order Confirmation.

### 1. Applicability.

- (a) These Terms and the accompanying Order Confirmation (collectively, this “Agreement”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Order Confirmation, these Terms shall govern, unless the Order Confirmation expressly states that the terms and conditions of the Order Confirmation will control.
- (b) These Terms prevail over any of Customer’s general terms and conditions regardless whether or when Customer has submitted its request for proposal, order, or such terms. Provision of services to Customer does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.

2. **Services.** Blackmore shall provide the services to Customer as described in the “Scope of Work” section in the Order Confirmation (the “Services”) in accordance with these Terms.

3. **Initial Term and Renewal.** The Services are to be rendered for an initial period not to exceed one year (the “Initial Term”), as specified in the Order Confirmation. After the Initial Term, this Agreement shall be automatically renewed for one year, unless a different renewal term is agreed to by both Parties. The original contract price may be adjusted annually by no more than five percent (5%) to reflect an increase of pricing for goods and services.

4. **Performance Dates.** Blackmore shall use reasonable efforts to meet any performance dates specified in the Order Confirmation, and any such dates shall be estimates only.

5. **Customer’s Obligations.** Customer shall:

- (a) cooperate with Blackmore in all matters relating to the Services and provide such access to Customer’s premises and other facilities as may reasonably be requested by Blackmore for the purposes of performing the Services;
- (b) respond promptly to any Blackmore request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Blackmore to perform Services in accordance with the requirements of this Agreement;
- (c) provide such Customer materials or information as Blackmore may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects;
- (d) inform Blackmore of any changes in the condition of Customer’s equipment or operations that could affect the quality or quantity of water at Customer’s facility, including any leaks or changes in water usage.

- (e) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start; and
- (f) follow all instructions and recommendations provided by Blackmore concerning water treatment and related equipment and materials.

**6. Customer's Acts or Omissions.** If Blackmore's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Blackmore shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

**7. Site Conditions.**

- (a) Customer acknowledges that treated equipment must be in operation or properly stored for the water treatment program to be effective. All system metallurgies are stated as being copper and mild steel composites; no other metals, such as aluminum have been disclosed as being present in the system.
- (b) This Agreement is based upon operating and water conditions at the proposed location at the time of the "Effective Date" specified in the Order Confirmation. Any change in such conditions during the term of this Agreement may require a change in water treatment products, procedures, and costs. Any such change in costs shall be subject to Customer's prior approval. However, should the Customer decline to give approval, this Agreement may be canceled at any time thereafter by either Party in accordance with Section 19.

**8. Change Orders.** Customer may request Blackmore to perform services or provide materials which are not set forth in the Order Confirmation. Blackmore agrees to perform such additional work so long as prior to the performance of such additional work, Customer shall authorize in writing the scope of such additional work and compensation payable to Blackmore for the full performance of said additional work. Blackmore may charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis in accordance with the Order Confirmation. Blackmore may also, from time to time, change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Order Confirmation.

**9. Fees and Expenses; Payment Terms; Interest on Late Payments.**

- (a) In consideration of the provision of the Services by Blackmore and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the Order Confirmation.
- (b) Customer agrees to reimburse Blackmore for all reasonable travel and out-of-pocket expenses incurred by Blackmore in connection with the performance of the Services.
- (c) All charges are due and payable no later than thirty (30) days from date of invoice. A service charge of 1.5% will be applied to all past due amounts, being an annual percentage rate of 18%. Should any payments to be made by the Customer be collected by or through an attorney, Customer also agrees to pay an additional fifteen (15%) percent of the amount due and accrued interest, plus any other costs of such collection, including reasonable attorney's fees.
- (d) Customer further agrees to notify Blackmore in writing or by email within five (5) days of receiving an invoice if Customer disputes any expense or fee entry on that invoice. In the absence of any such written objections within five (5) days, Customer will be deemed to have accepted and acknowledged the invoice as correct.

**10. Taxes.** Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder.

**11. Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Blackmore in the course of performing the Services, including any items identified as such in the Order Confirmation, (collectively, the "Deliverables"), except for any Confidential Information of Customer or customer materials, shall be owned by Blackmore and shall not be deemed "works made for hire." Blackmore hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

**12. Confidential Information.**

- (a) All non-public, confidential or proprietary information of Blackmore, including, but not limited to, trade secrets, technology (including chemical formulas), information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by Blackmore to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by Customer without the prior written consent of Blackmore. Confidential Information does not include information: (i) which has been voluntarily disclosed to the public by Blackmore or by another person with Blackmore's consent; (ii) which has been independently developed and disclosed by others; or (iii) which has otherwise entered the public domain through lawful means.
- (b) Customer agrees to use the Confidential Information only to make use of the Services and Deliverables. Blackmore shall be entitled to injunctive relief for any violation of this Section.

**13. Representations and Warranties.**

- (a) Blackmore hereby represents and warrants to Customer that it will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.
- (b) Blackmore shall not be liable for a breach of the warranty set forth in Section 13(a) unless Customer gives written notice of the defective Services, reasonably described, to Blackmore within five (5) days of the time when Customer discovers or ought to have discovered that the Services were defective.
- (c) Subject to Section 13(b), Blackmore shall, in its sole discretion either: (i) repair or re-perform such Services (or the defective part); or (ii) credit or refund the price of such Services at the pro rata contract rate.
- (d) THE REMEDIES SET FORTH IN SECTION 13(c) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND BLACKMORE'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 13(a).

**14. Disclaimer of Warranties.** EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 13(a) ABOVE, BLACKMORE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES,

INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE OR OTHERWISE.

#### **15. Reliance on Third-Party Suppliers.**

- (a) During the course of performing the Services, Blackmore may obtain materials and services from third parties, and may use outside laboratories to test water samples. Blackmore will provide third-party suppliers with all the pertinent information necessary to properly complete the work, including water testing.
- (b) Blackmore and Customer have placed absolute reliance on the tests conducted by outside laboratories for their accuracy. Customer acknowledges this condition of reliance and agrees to cooperate with Blackmore in bringing any claim which may arise from defective materials or inaccurate testing provided by such outside laboratories, and Customer also agrees not to hold Blackmore responsible for any damages caused by such inaccurate test results.

#### **16. Limitation of Liability.**

BLACKMORE SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD-PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR THIRD-PARTY DAMAGES OR CLAIMS, INCLUDING LOST PROFITS, AND REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL BLACKMORE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO BLACKMORE PURSUANT TO THIS AGREEMENT AND THE APPLICABLE ORDER CONFIRMATION.

#### **17. Contamination Dangers.**

- (a) Customer acknowledges that the ultimate success of any water treatment program provided under this Agreement is dependent on the Customer's diligent compliance with the instructions and recommendations made by Blackmore during normal service visits and otherwise.
- (b) Customer understands that a failure to follow Blackmore's instructions or recommendations with regard to water treatment and maintenance may result in physical injury or death to Customer or third parties from contamination by microorganisms such as Legionella.
- (c) Customer further acknowledges and understands that contamination by Legionella and other microorganisms is impossible to control completely and that such contamination may occur even if Blackmore has performed the Services properly and in compliance with all industry standards.
- (d) Customer represents that it has taken steps to prevent contamination by microorganisms, such as implementing a Legionella prevention program, in compliance with government and industry recommendations.
- (e) BLACKMORE SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD-PARTY FOR ANY DAMAGES INCURRED AS A RESULT OF CONTAMINATION BY MICROORGANISMS, INCLUDING LEGIONELLA, OR AS A RESULT OF CUSTOMER'S FAILURE TO FOLLOW INSTRUCTIONS OR RECOMMENDATIONS PROVIDED BY BLACKMORE REGARDING WATER TREATMENT AND MAINTENANCE.

**18. Indemnification.** If any investigation is initiated or if any action, civil or criminal, is brought by any individual, company, or entity whatsoever relating to the Services provided by Blackmore, then Customer agrees to cooperate fully in any such investigation or action and shall provide all relevant supporting documentation regarding Customer's water treatment and management activities. Customer shall indemnify, hold harmless and defend Blackmore and its officers, directors, agents (including Sub-Agents), employees and affiliates (the "Indemnified Parties") from and against any and all claims, demands, actions, costs, expenses, liabilities, judgments, causes of action, proceedings, suits, losses and damages of any nature, which are threatened or brought against, or are suffered or incurred by, the Indemnified Parties as a result of:

- (a) any breach by Customer (or its officers, directors, affiliates, representatives, contractors, or employees) of any of the obligations, representations, warranties, covenants, or conditions contained in this Agreement, including (i) failure to follow Blackmore's instructions or recommendations concerning water treatment, (ii) failure to provide accurate information to Blackmore, or (iii) failure to inform Blackmore of any changes in Customer's operations or equipment that may affect water quantity or quality;
- (b) any latent defects in water treatment equipment or plumbing that was not caused by Blackmore.
- (c) any bodily injury or death caused by infection by microorganisms such as Legionella; and/or
- (d) any violation of applicable laws or regulations.

**19. Termination.**

- (a) Either Party may terminate this Agreement by providing (30) days advance written notice to the other Party.
- (b) If this Agreement terminates during the Initial Term, Customer shall pay Blackmore the remaining balance of the entire first-year contract fee as described in the Order Confirmation, as well as for any existing inventory and equipment on-site. This payment is used to reimburse Blackmore for the reasonable costs of labor and materials incurred before termination.
- (c) If this Agreement terminates after the Initial Term, Customer shall pay Blackmore any outstanding invoices for labor and materials provided. If Customer terminates this Agreement without providing thirty (30) days' written notice, or if Customer terminates this Agreement after giving notice but before thirty (30) days have elapsed, Customer will immediately pay (1) all outstanding balances for the services performed up to the date of termination and (2) an early termination charge of \$500. Customer agrees that the early termination charge is not a penalty, but liquidated damages reasonably necessary to reimburse Blackmore for administrative expenses incurred as a result of early termination.
- (d) In addition to any remedies that may be provided under this Agreement, Blackmore may terminate this Agreement with immediate effect upon written notice to Customer, if Customer (i) fails to pay any amount when due under this Agreement; or (ii) has not otherwise performed or complied with this Agreement, in whole or in part.

**20. Publicity.** The Customer hereby irrevocably consents to any and all uses and displays, by Blackmore and its agents, representatives and licensees, of the Deliverables in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes and all other printed and electronic forms and media throughout the world, at any time during or after the term of this Agreement, for all legitimate commercial and business purposes of Blackmore ("Permitted Uses") without further consent from or royalty, payment or other compensation to Customer. Customer hereby forever waives and releases Blackmore and its directors, officers, employees

and agents from any and all claims, actions, damages, losses, costs, expenses and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the term of this Agreement by Blackmore, arising directly or indirectly from Blackmore's and its agents', representatives' and licensees' exercise of their rights in connection with any Permitted Uses.

## 21. Miscellaneous.

- (a) *Relationship of Parties.* The relationship of the Parties is that of an independent contractor and shall not be deemed to create any joint venture, association, or partnership.
- (b) *Modification and Waiver.* This Agreement may not be modified except in a writing signed by the Parties. No waiver by Blackmore of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Blackmore. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- (c) *Force Majeure.* Blackmore shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Blackmore including, without limitation, acts of God, flood, fire, snowstorm, earthquake, explosion, governmental actions, civil unrest, national emergency, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, including chemicals and other water treatment materials.
- (d) *Successors; Assignment.* This Agreement binds and inures to the benefit of the Parties and their respective heirs, personal representatives, and successors. This Agreement or any rights or obligations under this Agreement shall not be assigned without the other Party's prior written consent.
- (e) *Survival.* Provisions of this Agreement, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, Governing Law, Submission to Jurisdiction and Survival.
- (f) *Including; Severability.* Unless the context requires otherwise, the term "including" means "including but not limited to." If any part of this Agreement is for any reason held to be unenforceable, the rest of it remains fully enforceable.
- (g) *Notices.* All notices and other communications required or permitted under this Agreement must be in writing and must be sent to the Party at that Party's address set forth below and or at whatever other address the Party specifies in writing: To Blackmore: 2150 Oakland Industrial Court, Lawrenceville, GA 30044 or [support@blackmore-enterprises.com](mailto:support@blackmore-enterprises.com); and to Customer, as set forth in the attached Order Confirmation. All notices shall be delivered by personal delivery, e-mail (if such e-mail is identified in this Agreement) or by certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.
- (h) *Governing Law; Submission to Jurisdiction.* Georgia law applies to this Agreement without regard to any choice-of-law rules that might direct the application of the laws of any other jurisdiction. All disputes arising out of or in connection with this Agreement will be brought in the courts of Gwinnett County, Georgia or the U.S. District Court for the Northern District of Georgia, and the parties consent to the jurisdiction of such courts.
- (i) *Counterparts.* This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.