

**ADS ENVIRONMENTAL TECHNOLOGIES INC.  
EQUIPMENT AND/OR PROFESSIONAL OR TECHNICAL SERVICES AGREEMENT**

Orders for ADS Environmental Technologies, Inc. (“ADS”) products or services shall be subject to the terms and conditions contained herein, whether or not specifically referred to. No other terms or conditions or any modifications, changes, or amendments shall be recognized unless specifically agreed to in writing by an authorized official designee of ADS. The lack of objection by ADS to any modifying provisions communicated by Client shall not be construed as an acceptance by ADS.

**ARTICLE 1 – RESPONSIBILITIES OF THE PARTIES**

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**1.01 ADS**

A. ADS shall provide to Client the Services set forth herein and in the ADS Proposal (the “Proposal”) which is incorporated as if fully set forth herein.

B. The standard of care for all services performed or furnished by ADS under this Agreement will be the care and skill ordinarily used by members of ADS’ profession practicing under similar circumstances at the same time and in the same locality. ADS makes no warranties, express or implied, under this Agreement or otherwise, in connection with ADS’ services, except as provided in section 4.03.

**1.02 Client**

A. Client shall have the responsibilities set forth herein and in the Proposal.

**1.03 Orders and Specifications**

A. All orders placed with ADS for equipment must be in writing, signed, contain definitive prices, delivery dates, quantities and complete descriptions of products being purchased. Specifications applicable to items sold hereunder shall be those furnished by ADS, or those furnished by Client and agreed to in writing by ADS.

**ARTICLE 2 - PRICING, PAYMENT AND INVOICES**

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**2.01 Pricing**

A. Price quotations, unless otherwise stated, shall automatically expire thirty (30) days from the date issued and may be cancelled or amended within said period upon written notice to Buyer.

B. The prices set forth in the Proposal are subject to being adjusted due to extraordinary market conditions. As used herein, “extraordinary market conditions” means any increase in the cost of materials caused by changes in the market or for any other reason that is outside of ADS’ control such as tariffs, surcharges, increased logistics costs and fluctuations in currency and raw materials, which results in a price increase of the prices set forth in a contract, quote, purchase order or order acknowledgement.

**2.02 Payment**

A. Client shall pay ADS in accordance with the schedule set forth in the Proposal.

**2.03 Invoices**

A. Invoices will be prepared in accordance with ADS’ standard invoicing practices, unless otherwise stated in the Proposal. Invoices are due and payable within thirty (30) days

after the date they are issued by ADS. If Client fails to make any payment due ADS for services and/or reimbursable expenses within thirty (30) days after issuance of ADS’ invoice, the amounts due ADS will be increased at the rate of one and one-half percent (1.5%) per month (or the maximum rate of interest permitted by law) from said thirtieth day. ADS reserves the right to establish and/or change the credit and payment terms extended to Client, including but not limited to requiring pre-payment or Irrevocable Letter of Credit, when in ADS’ sole opinion Client’s financial condition or previous payment record warrants such action. Furthermore, on delinquent accounts, ADS may divert shipments or reschedule deliveries of products on unfilled orders. All invoices shall be payable in CAD Funds, drawn on a Canadian Bank.

**ARTICLE 3 – TERMINATION**

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**3.01 Termination**

**A. For Cause**

1. The obligation to provide further services under this Agreement may be terminated by either party for cause upon thirty (30) days written notice in the event of a substantial failure by either party to perform in accordance with the terms of this Agreement through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the Party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof.

2. In the event of termination by ADS for cause, ADS will be entitled to invoice Client and will be paid for all services rendered and all reimbursable expenses incurred through the effective date of termination.

**B. For Convenience**

1. Either party may terminate this Agreement for its convenience upon sixty (60) days written notice to the other party. If this Agreement is terminated by the Client for its convenience, ADS shall be paid a reasonable amount for expenses directly attributable to termination, both before and after the effective date of termination, including, but not limited to demobilization expenses and costs associated with terminating subcontract agreements.

**ARTICLE 4 - GENERAL CONSIDERATIONS**

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**4.01 Remedies**

A. In the event (a) Client defaults in the payment of any monies due to ADS hereunder beyond the tenth (10th) day after the same is due or (b) Client files or suffers a petition of bankruptcy or insolvency or for reorganization or for the

appointment of a receiver or trustee or makes an assignment for the benefit of creditors or enters into an arrangement with creditors and Client fails to secure a discharge thereof within thirty (30) days, then in any such event ADS may at its option do any or all of the following: (i) collect from Client a service charge on all monies due; (ii) terminate the sale; (iii) whether or not this sale is terminated, take immediate possession of any or all of the equipment wherever situated and for such purpose enter upon any premises without liability for so doing; and (iv) sell, dispose of, hold, use or lease all or any of the equipment as ADS in its sole discretion may decide without any duty or account to Client. Client shall in any event remain fully liable for damages as provided by law and for all costs and expenses incurred by ADS on account of such default including all court costs and reasonable attorney's fees. The rights afforded ADS under this paragraph shall not be deemed to be exclusive but shall be in addition to the rights or remedies provided by law.

#### **4.02 Delivery, Title and Risk of Loss**

A. Title and risk of loss of items sold hereunder shall pass to the Client upon delivery of the items by ADS to a public carrier Incoterms FCA. In no event shall ADS be liable for any delay in delivery or assume any liability in connection with shipment, nor shall the carrier be deemed an agent of ADS. Insurance associated with goods during transit shall be Client's responsibility. All products shall be deemed accepted upon Client's confirmation or within three (3) days of date of delivery, whichever occurs first.

#### **4.03 Warranty, Returns, Alterations to Equipment**

A. All new products manufactured by ADS will be free from defects in material and workmanship for up to one (1) year following the date of shipment from ADS, except that ADS ECHO™ monitors will be free from defects in material and workmanship for two (2) years following date of shipment from ADS. During this warranty period, upon satisfactory proof of a defect, the product may be returned for repair or replacement, at ADS' sole option. Warranty repairs and replacements will be performed only by ADS or its authorized representative. Any unauthorized repair or replacement, use, installation or incorporation of unauthorized parts or accessories, including without limitation opening up a monitor, will void this product warranty. Warranty for ADS products covers repair or replacement, at the discretion of ADS, if the product is found to be defective due to faulty materials, workmanship, or function within the warranty period and will not extend the original product warranty period. No product may be returned without Seller permission and authorization. This warranty is available to the Client as the original purchaser of the product and only if it has been installed, operated, and maintained in accordance with ADS' standards. This warranty does not apply to damage by catastrophes of nature, fire, explosion, acts of God (including, but not limited to, lightning damage and power surges), accidents, improper use or service, damage during transportation, or other similar causes beyond ADS' control. The cost of shipping the equipment from Buyer's facility back to Seller shall be paid by the Buyer.

B. To the extent allowed by law, ADS hereby expressly excludes any warranty for design defect. While products

manufactured by ADS are designed and manufactured to meet published specifications, ADS may from time to time improve products currently in the market. However, purchased hardware manufactured to a previous design will be replaced or upgraded at ADS' discretion.

C. Authorization must be obtained from ADS prior to return of any items, including those for repair. Client's right to repair or replacement is governed by the items in this Article 4.03. Issuance of credit for returned items shall be made at ADS' discretion upon Client's request. All returns accepted by ADS may be subject to a restocking fee.

D. It is understood and agreed that any modification or alteration to purchased equipment by Client, other than that specifically authorized by this Agreement or by ADS, shall VOID AND NULLIFY, in its entirety, all warranty conditions as set forth herein.

E. THE ABOVE WARRANTIES AND REMEDIES ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES OFFERED BY COMPANY WITH RESPECT TO PRODUCTS, ACCESSORIES AND PARTS AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, CONDITIONS AND REMEDIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **4.04 Use of Documents**

A. If required, ADS shall provide Client with a printed hard copy of the deliverable agreed upon in the Proposal. All other deliverables shall be in the appropriate electronic media format.

B. Client agrees that it will perform acceptance tests or procedures on electronic files within thirty (30) days of receipt of same, after which the Client shall be deemed to have accepted the data thus transferred. Any errors detected within the thirty (30)-day acceptance period will be corrected by ADS.

C. Any reuse or modification of the Documents without written verification or adaptation by ADS, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to ADS or to ADS' Subcontractors. Client shall indemnify and hold harmless ADS and ADS' Subcontractors from all claims, damages, losses, and expenses, including attorneys' fees arising out of such use.

#### **4.05 Changes, Modifications and/or Amendments**

A. All changes, modifications and/or amendments to this Agreement or the Proposal hereto shall be made in writing and shall be signed by both Parties.

#### **4.06 Insurance**

A. During the term of this Agreement, ADS shall at all times procure and maintain at a minimum the following insurance coverage:

- *General Liability \$1,000,000 CSL and annual aggregate*

- *Automobile Liability \$1,000,000 CSL and annual aggregate*
- *Workers Compensation as required by statute*

ADS will provide Evidence of Insurance upon request.

#### **4.07 Controlling Law, Venue and Dispute Resolution**

A. The Parties shall endeavor to resolve any disputes through informal negotiations between the Parties. If the dispute cannot be resolved within sixty (60) days after first notice of the dispute, the Parties agree that the dispute may be submitted to a court of competent jurisdiction. This Agreement shall be governed by, and construed by the laws of the Province of Ontario, and the federal laws of Canada applicable therein without reference to the principles of conflict or choice of law, and each of the Parties irrevocably submits itself to the jurisdiction of the Province of British Ontario, and hereby waives any defense or objection in the nature of venue or forum non conveniens. The United Nations Convention on Contracts for the International Sales of Goods is hereby expressly excluded from application to this Agreement.

B. THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT.

C. In the event of any dispute and/or legal action arising from an interpretation and/or the performance of any of the provisions of this Agreement, the Parties hereby agree that the prevailing Party shall be awarded reasonable attorney's fees and costs, including but not limited to, the cost of paralegals, accountants and attorney's fees and costs of appellate proceedings, if applicable.

#### **4.08 Export Compliance**

A. Client shall be prohibited from re-selling, exporting and/or re-exporting the products purchased hereunder without the written consent of ADS. If Client should re-sell, export or re-export said products, Client must comply with all applicable export regulations, export licensing requirements and anti-bribery and anti-corruption laws.

#### **4.10 Successors, Assigns, and Beneficiaries**

A. Neither party shall assign this Agreement without the prior written consent of the other, which shall not be unreasonably withheld, except that without securing such prior consent either party shall have the right to assign this Agreement, and all obligations hereunder, to any successor by way of merger or consolidation or the acquisition of all or substantially all of the business and assets of the party relating to the subject matter of these terms. This right shall be retained provided that such successor shall expressly assume all of the obligations and liabilities of the assigning party under the Agreement. Any assignment in violation of this paragraph shall

be void. The terms and conditions of this Agreement shall be binding upon and enforceable by the successor and permanent assign of the assigning party.

B. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and ADS and not for the benefit of any other third Party.

#### **4.11 Limitation of Liability**

A. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ADS, OR ANY OF ITS AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS OR PARENT CORPORATIONS, BE LIABLE TO ANY PERSON, FIRM OR ENTITY, INCLUDING, BUT NOT LIMITED TO CLIENT, FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE AND/OR LOST SAVINGS, EVEN IF CLIENT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE OR IF SAME WERE REASONABLY FORESEEABLE. ADS' LIABILITY, IS LIMITED TO THE ACTUAL DAMAGES PROVEN UP TO THE OVERALL VALUE OF THE CONTRACT.

#### **4.12 Force Majeure**

A. Neither Client nor ADS shall hold the other responsible for damages or delays in performance caused by Force Majeure or other events beyond the control of the other Party which could not reasonably have been anticipated or prevented. Force Majeure shall include, but not be limited to, unusually severe weather, floods, power outages, epidemics, war, acts of terrorism, riots, strikes, lockouts, exercise of police power, condemnation or eminent domain. The foregoing shall not give rise to any claims or damages or be considered a waiver by either Party of the obligations of this Agreement.

#### **4.13 Acceptance Testing**

A. The successful execution of the ADS standard test procedures for final test and checkout shall constitute Client acceptance testing of all products under this Agreement. Client may witness ADS-manufactured equipment acceptance testing on a non-interference basis upon thirty (30) days advance written request to ADS.

#### **4.14 Engineering Changes**

A. ADS reserves the right to make progress and design changes in standard product items ordered without prior approval or notification to Client.

#### **4.15 Cancellation**

A. ADS may at its option, cancel an order in the event, (a) Client's payments are in default or Client breaches any material provision hereto; (b) substantial changes in raw materials occur; (c) causes beyond ADS' reasonable control as specified in Article 4.11 (Force Majeure); (d) Client becomes insolvent or a petition of bankruptcy is filed.

#### **4.16 Taxes**

A. Client shall be responsible for payment of all applicable sales, use or other taxes whether local, state, or

federal, which are chargeable in connection with the sale of the items hereunder unless specifically provided for otherwise in writing.

#### **4.17 Confidentiality and Non-disclosure**

A. Both Parties acknowledge that, in the course of performing this Agreement, certain employees, agents or representatives may be exposed to or acquire information which is proprietary or confidential. Such proprietary and confidential information may include without limitation information related to research, development, designs, plans, reports, investigations, materials, data, pricing, trade secrets, customer lists, salaries, or business information (“Confidential and Proprietary Information”).

B. Both Parties agree to hold each other’s Proprietary and Confidential Information in strict confidence and not to make each other’s Proprietary and Confidential Information available in any form to any third party or to use each other’s Proprietary and Confidential Information for any other purpose than for the performance of work under the implementation of this Agreement.

#### **4.19 Notices**

A. Any notice required under this Agreement shall be in writing, addressed to the appropriate Party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

#### **4.20 Survival**

A. All express representations, indemnifications, limitations of liability, and assurances of confidentiality included in this Agreement shall survive its completion or termination for any reason.

#### **4.21 Severability**

A. Any provision or part of this Agreement held to be void or unenforceable under any Laws or Regulations shall be

deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and ADS, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### **4.22 Waiver**

A. Non-enforcement of any provision by either Party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

#### **4.23 Headings**

A. The headings used in this Agreement are for general reference only and do not have special significance.

#### **4.24 Entire Agreement**

A. This Agreement constitutes the entire agreement between the Parties and exclusive statement of the terms between the Parties with respect to equipment sold and services to be performed hereunder. The Proposal incorporated into this Agreement and the specifications and drawings referenced therein are a part of this Agreement with the same force and effect as if fully set forth herein. No alteration, modification, or amendment of any of the provisions hereof shall be binding unless in writing and signed by duly Authorized Representatives of the Parties. In the event of an inconsistency between the terms, conditions, and provision of this Agreement and those of Client’s purchase order, then in accordance with the usage of trade, Client’s assent to the terms and conditions herein shall be conclusively presumed from Client’s failure to reasonably object in writing and from Client’s acceptance of all or any part of the material and/or Services ordered.