

# WATER GATE SYSTEMS LLC

Fort Myers, Florida | Veteran-Owned | Aqua-Cade™ Flood Barrier Systems

## AQUA-CADE™ SEASONAL DEPLOYMENT & BREAKDOWN Master Service Agreement

<b>Document Number</b>	WGS-MSA-001
<b>Title</b>	Aqua-Cade Seasonal Deployment & Breakdown Master Service Agreement
<b>Revision</b>	2.0 — Substrate, Warranty & Liability Amendment
<b>Supersedes</b>	WGS-MSA-001 V3 in its entirety
<b>Companion Documents</b>	WGS-WAR-001 Rev. 2.0 Performance Standards & Warranty Terms; SOP-INS-002 Substrate Assessment
<b>Approved By</b>	Kenneth G. Roy, CEO   James McCoy, Co-Owner

### REVISION 2.0 — SUMMARY OF CHANGES

- 1. Performance & Warranty alignment.** Section 8 expressly incorporates WGS-WAR-001 Rev. 2.0 by reference; clarifies that seasonal deployment does not extend, renew, or revive the System performance warranty.
- 2. New Section 8 — Substrate & System Condition.** Annual substrate re-assessment, customer disclosure obligation, and system performance disclaimer for substrate-conducted moisture.
- 3. Strengthened liability protections.** Mandatory pre-suit notice and cure period; jury trial waiver; class action waiver; binding arbitration option; one-year contractual limitations period.
- 4. Customer acknowledgments.** Express acknowledgments at execution that meet Florida “clear and conspicuous” standards.
- 5. Internal inconsistencies corrected.** Deployment and breakdown windows harmonized across Sections 1 and 2.

**THIS AQUA-CADE SEASONAL DEPLOYMENT AND BREAKDOWN MASTER SERVICE AGREEMENT (“Agreement”)** is entered into as of \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”), by and between:

**WATER GATE SYSTEMS, LLC**, a Florida limited liability company (“**Service Provider**” or “**WGS**”), with a principal place of business at 16750 Link Court, Unit 203, Fort Myers, FL 33912;

and

\_\_\_\_\_ (“**Customer**” or “**Owner**”), with a property address (“**Property**”) located at:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Service Provider and Customer are each referred to individually as a “Party” and collectively as the “Parties.”

## RECITALS

**WHEREAS**, Service Provider has previously installed an Aqua-Cade flood barrier system (the “**System**”) at the Property pursuant to a separate installation agreement;

**WHEREAS**, the performance and warranty obligations of WGS with respect to the System are set forth exclusively in the WGS Performance Standards & Warranty Terms (WGS-WAR-001 Rev. 2.0, as amended from time to time), which the Parties acknowledge are incorporated into this Agreement by reference;

**WHEREAS**, Customer desires to retain Service Provider to provide seasonal deployment and breakdown services for the System, which services are distinct from the original installation and from the performance warranty applicable to the System; and

**WHEREAS**, the Parties wish to set forth the terms and conditions governing such seasonal services.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## AGREEMENT

### 1. Scope of Services

**(a) Deployment Services.** Service Provider shall deploy the System at the Property once (1) per calendar year covered by this Agreement, by installing all panels, posts, hardware, gaskets, and caulking in accordance with WGS specifications and industry best practices. Deployment shall include:

- (i) Inspection of all System components to WGS standards;
- (ii) Repair or replacement of damaged or worn components as necessary, subject to additional charges where outside warranty coverage;
- (iii) Replacement of panel location labels as required;
- (iv) Substrate condition assessment in accordance with Section 8 of this Agreement; and
- (v) Proper installation of all panels and components per WGS specifications.

**(b) Breakdown Services.** Service Provider shall remove the System from the Property once per calendar year and prepare it for storage. Breakdown shall include:

- (i) Careful removal of all panels, posts, hardware, and components;
- (ii) Cleaning of all components;
- (iii) Inspection for damage or wear;
- (iv) Organization and labeling of components; and
- (v) Placement and securing of components in Customer-designated storage area.

**(c) No Emergency Deployment.** Service Provider does *not* provide storm-triggered, hurricane-triggered, or other emergency deployment services. Customer is solely responsible for understanding the seasonal deployment schedule and for ensuring the System is deployed by Customer’s desired date in advance of any anticipated flood event. Service Provider shall have no liability for any flood damage or loss occurring at the Property at any time when the System is not deployed, whether or not such non-deployment is the result of seasonal scheduling, weather conditions affecting Service Provider’s ability to perform, or any other cause.

**(d) Services Not Included.** Unless expressly set forth in the Quote, the Service Fees do not include: substrate sealing or remediation services; structural modifications to the Property; replacement of components missing or damaged due to causes other than normal wear and tear; or services responsive to changes in the Property occurring after the original installation. Such services, if requested, are billed separately at then-current rates.

**(e) Relationship to Original Installation.** The seasonal services provided under this Agreement constitute deployment and breakdown of an existing System and do not constitute a new installation. Performance of services under this Agreement does **not** extend, renew, restart, or revive any warranty period applicable to the original installation, and does not waive or modify any term or exclusion of WGS-WAR-001 Rev. 2.0 or its successor.

## 2. Service Schedule and Timing

**(a) Deployment Period.** Unless otherwise specified in writing by both Parties, Service Provider shall deploy the System between May 1 and June 30 of each calendar year covered by this Agreement (the “**Deployment Period**”).

**(b) Breakdown Period.** Unless otherwise specified in writing by both Parties, Service Provider shall break down and store the System between October 15 and November 15 of each calendar year covered by this Agreement (the “**Breakdown Period**”).

**(c) Scheduling Notice.** Customer must provide Service Provider with at least ten (10) business days’ advance written notice of the desired date for deployment or breakdown services. Service Provider shall confirm the scheduled date within three (3) business days of receiving Customer’s request.

**(d) Rescheduling.** If Customer requests rescheduling with less than seventy-two (72) hours’ notice, Customer may be subject to a rescheduling fee as specified in the Quote. Service Provider reserves the right to reschedule services due to severe weather, equipment failure, employee unavailability, or other circumstances beyond its reasonable control, without liability.

## 3. Property Access

**(a) Access Grant.** Customer hereby grants Service Provider, its employees, agents, and contractors the right to enter upon the Property for the sole purpose of performing the services described in this Agreement, including: (i) entry to all areas where System components are installed; (ii) access to storage areas designated by Customer; (iii) use of electrical outlets and water supply as necessary; (iv) reasonable space for placement of equipment and materials during service performance; and (v) passage through common areas, driveways, and walkways.

**(b) Access Procedures.** Service Provider shall provide Customer with reasonable advance notice (normally twenty-four (24) to forty-eight (48) hours) of the specific date and estimated time of arrival. Customer is not required to be present unless Customer elects to be.

**(c) Access Obstacles.** Customer shall ensure that all areas requiring access are reasonably clear of obstacles, furniture, or other items that would prevent or substantially impede Service Provider’s performance of services. If Service Provider encounters access obstacles preventing completion of services, Customer shall be notified, and additional fees may apply for return visits.

**(d) Security and Keys.** If Customer will not be present and access codes, keys, or other security credentials are required, Customer shall provide such credentials to Service Provider in advance. Service Provider shall maintain the confidentiality of all access credentials and shall return any physical keys or devices upon completion of services or termination of this Agreement.

**(e) Pets and Animals.** Customer shall secure all pets and animals during service performance to ensure the safety of Service Provider’s personnel and to facilitate unobstructed completion of services.

## 4. Customer Obligations

**(a) Storage Area.** Customer shall designate and maintain a suitable storage area at the Property for all System components during the off-season. The storage area must be: (i) dry and protected from the elements; (ii) accessible to Service Provider’s personnel; (iii) of sufficient size to accommodate all System components; and (iv) secure from theft or vandalism.

**(b) Maintenance of Property.** Customer shall maintain the Property in a condition that permits Service Provider to perform services safely and effectively, including clear access paths, adequate lighting, and stable ground conditions around installation areas.

**(c) Substrate Maintenance.** Customer is solely responsible for ongoing maintenance of the Substrate (as defined in WGS-WAR-001 Rev. 2.0), including without limitation: (i) periodic application of penetrating substrate sealer per the sealer manufacturer's schedule on Permeable Substrates; (ii) repair or replacement of cracked, missing, or deteriorated grout, mortar, or joint material along the seal path; and (iii) repair of cracks, voids, or surface deterioration in the Substrate within the seal contact band. Customer's failure to maintain the Substrate is not a defect in the System and does not give rise to a claim against Service Provider.

**(d) Notification of Property Changes.** Customer shall promptly notify Service Provider of any changes to the Property that may affect the System or its installation, including without limitation: (i) replacement, removal, or modification of flooring or paving along the seal path; (ii) structural modifications to the openings protected by the System; (iii) re-grouting, re-sealing, or refinishing of the Substrate; (iv) landscaping changes affecting drainage or grade at the seal path; and (v) any condition reasonably likely to affect substrate permeability or System performance. **Failure to provide such notification shall void any related warranty claim and shall be deemed a material breach of this Agreement.**

**(e) Prohibited Modifications.** Customer shall not modify, alter, or tamper with System components, fasteners, gaskets, or sealants without prior written authorization from Service Provider. Any unauthorized modification voids all applicable warranties and may result in additional charges for repair, replacement, or restoration.

## 5. Compensation and Payment Terms

**(a) Service Fees.** Customer shall pay Service Provider the fees set forth in the Quote attached hereto and incorporated herein by reference ("Service Fees"). Service Fees cover one deployment and one breakdown per calendar year.

**(b) Payment Schedule.** Unless otherwise specified in the Quote: (i) one hundred percent (100%) of the annual Service Fee is due upon execution of this Agreement; (ii) all invoices for non-warranty work are due and payable within ten (10) days of the invoice date.

**(c) Additional Services.** Services not included in the base Service Fees, including but not limited to repairs beyond normal wear and tear, replacement of missing or damaged components, substrate sealing or remediation, and additional deployment or breakdown services requested during a single calendar year, shall be billed separately at Service Provider's then-current rates.

**(d) Late Payment.** Accounts not paid within thirty (30) days of the invoice date shall be subject to a late payment fee of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum), or the maximum rate permitted by Florida law, whichever is less. Service Provider reserves the right to suspend services until all outstanding amounts are paid in full.

**(e) Payment Methods.** Payment may be made by check, credit card, ACH transfer, or other methods acceptable to Service Provider. All payments shall be in United States Dollars.

**(f) Taxes.** All amounts stated in this Agreement are exclusive of applicable federal, state, and local taxes, duties, tariffs, and similar charges. Customer shall be responsible for payment of all such taxes, excluding taxes based on Service Provider's net income.

## 6. Term and Renewal

**(a) Initial Term.** This Agreement shall commence on the Effective Date and shall continue for a period of one (1) year ("Initial Term"), unless earlier terminated in accordance with the provisions herein.

**(b) Automatic Renewal.** Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term") unless either Party provides written

notice of non-renewal to the other Party at least sixty (60) days prior to the end of the then-current term.

**(c) Price Adjustments.** Service Provider reserves the right to adjust Service Fees for any Renewal Term by providing Customer with written notice of the adjusted fees at least sixty (60) days prior to the commencement of such Renewal Term. Customer may decline the price adjustment by providing written notice of termination within thirty (30) days of receiving notice of the adjustment.

## 7. Insurance and Liability

**(a) Service Provider Insurance.** Service Provider shall maintain, at its own expense, general liability insurance with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, plus workers' compensation insurance as required by Florida law. Upon request, Service Provider shall provide Customer with a certificate of insurance evidencing such coverage.

**(b) Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY FLORIDA LAW, SERVICE PROVIDER'S TOTAL AND AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SYSTEM, OR THE SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES ACTUALLY PAID BY CUSTOMER TO SERVICE PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY.

**(c) Exclusion of Consequential Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, FLOOD DAMAGE TO THE PROPERTY, INTERIOR DAMAGE, MOLD REMEDIATION, COST OF ALTERNATE LODGING, OR DIMINUTION IN PROPERTY VALUE, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**(d) Failure of Essential Purpose.** The limitations set forth in Sections 7(b) and 7(c) shall apply notwithstanding any failure of essential purpose of any limited or exclusive remedy provided for herein.

**(e) Property Damage During Service.** Service Provider shall exercise reasonable care to avoid damage to Customer's Property during performance of services. In the event Service Provider damages Customer's Property through negligence or willful misconduct, Service Provider's liability shall be limited to the reasonable cost of repair or replacement, subject to the limitations set forth in this Section 7.

**(f) Customer Insurance and Acknowledgment.** Customer acknowledges that Service Provider provides deployment and maintenance services only under this Agreement, and makes no representations or warranties under this Agreement regarding the System's ability to prevent or mitigate flood damage, all such representations and warranties being set forth exclusively in WGS-WAR-001 Rev. 2.0. **Customer is strongly encouraged to maintain appropriate homeowner's insurance, including separate flood insurance where applicable, and to not rely on the System as a substitute for insurance.**

## 8. Substrate and System Condition

**(a) Incorporation of WGS-WAR-001 Rev. 2.0.** The terms of WGS-WAR-001 Rev. 2.0, including without limitation the definitions of Permeable Substrate, Seepage, Active Water Flow, and Substrate-Conducted Moisture, the Seepage Standard (0.5 fluid ounces per minute over any continuous 36-inch span), and the warranty exclusion for Substrate-Conducted Moisture set forth in Section 6.4 thereof, are hereby incorporated into this Agreement by reference and are binding on Customer with respect to all services performed hereunder.

**(b) Annual Substrate Re-Assessment.** At each annual deployment, Service Provider shall conduct a visual inspection of the Substrate along the seal path and may perform a water bead test at its discretion. If Service Provider determines that the Substrate condition has materially changed since the prior installation or deployment (including without limitation through expiration of substrate sealing, changes in flooring or paving, deterioration of grout, or new visible voids or cracks), Service Provider shall notify Customer in writing.

**(c) Updated Disclosure Required.** Following a notification under Section 8(b), Customer shall, prior to or contemporaneously with deployment, execute an updated Substrate Disclosure & Acknowledgment Form (Schedule A to WGS-WAR-001 Rev. 2.0) reflecting the then-current Substrate classification. Customer's execution of the updated disclosure is a condition precedent to Service Provider's obligation to deploy the System for that calendar year on the affected portions of the seal path.

**(d) Customer Election Following Re-Assessment.** Where re-assessment indicates Class B or Class C Substrate condition, Customer shall elect, in the updated Schedule A, one of: (i) WGS pre-deployment substrate sealing services at the additional cost specified by Service Provider; (ii) independent substrate sealing by Customer with documentation provided to Service Provider; or (iii) deployment as-is, with Customer's express acceptance of the risk of Substrate-Conducted Moisture.

**(e) Disclaimer for Substrate-Conducted Moisture.** Customer acknowledges and agrees that the System forms a water-resistant seal at the interface between the Aqua-Sill and the Substrate, and is not engineered to alter, remediate, or compensate for the inherent permeability of the Substrate. **Service Provider shall have no liability under this Agreement, under WGS-WAR-001 Rev. 2.0, or under any other theory, for Substrate-Conducted Moisture as defined in WGS-WAR-001 Rev. 2.0, regardless of when such moisture is observed and regardless of the volume of such moisture.**

**(f) No Reaffirmation by Deployment.** Performance of seasonal deployment under this Agreement does not constitute a representation, warranty, or reaffirmation by Service Provider as to the current condition of the Substrate, the absence of Permeable Substrate conditions, or the future performance of the System under flood conditions. The performance warranty applicable to the System is set forth exclusively in WGS-WAR-001 Rev. 2.0 and is governed by the Warranty Period defined therein.

## 9. Warranties and Disclaimers

**(a) Service Workmanship Warranty.** Service Provider warrants that the deployment and breakdown services performed under this Agreement will be performed in a professional and workmanlike manner in accordance with WGS specifications and industry standards. If Customer provides Service Provider with written notice of any deficiency in service performance within thirty (30) days of service completion, Service Provider shall, at its sole option, re-perform the deficient services or refund the corresponding portion of the Service Fees. The remedies set forth in this Section 9(a) are Customer's sole and exclusive remedies for breach of the service workmanship warranty.

**(b) Component Inspection.** Service Provider warrants that it will inspect System components in accordance with WGS standards and will identify components requiring repair or replacement. Service Provider does not warrant the condition of components beyond normal wear and tear, nor against damage caused by factors outside Service Provider's control.

**(c) System Performance Warranty.** All warranties applicable to System performance, including the Seepage Standard, Active Water Flow remedy procedure, and substrate-related exclusions, are set forth exclusively in WGS-WAR-001 Rev. 2.0 and are not modified, extended, or supplemented by this Agreement. **No statement, representation, or course of conduct by any employee, agent, or representative of Service Provider in connection with services performed under this Agreement shall be construed to extend or expand the System performance warranty.**

**(d) Disclaimer of Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND IN WGS-WAR-001 REV. 2.0, SERVICE PROVIDER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF**

**MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. SERVICE PROVIDER DOES NOT WARRANT THAT THE SYSTEM WILL PREVENT ALL FLOOD DAMAGE OR WATER INTRUSION. THE EFFECTIVENESS OF THE SYSTEM DEPENDS ON NUMEROUS FACTORS INCLUDING BUT NOT LIMITED TO PROPER INSTALLATION, SUBSTRATE CONDITION, WATER LEVELS, WATER PRESSURE, DURATION OF FLOODING, STRUCTURAL INTEGRITY OF THE PROPERTY, AND SOIL CONDITIONS, MANY OF WHICH ARE BEYOND SERVICE PROVIDER'S CONTROL.**

**(e) No Guarantee Against Flooding. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SYSTEM IS DESIGNED TO MITIGATE, NOT FULLY ELIMINATE, THE RISK OF FLOOD DAMAGE, AND THAT SERVICE PROVIDER MAKES NO GUARANTEE THAT THE PROPERTY WILL NOT EXPERIENCE FLOODING OR WATER DAMAGE EVEN WHEN THE SYSTEM IS PROPERLY DEPLOYED.**

## 10. Indemnification

**(a) By Service Provider.** Service Provider shall indemnify, defend, and hold harmless Customer from and against third-party claims for personal injury or third-party property damage to the extent caused by Service Provider's negligence or willful misconduct in the performance of services under this Agreement. The indemnification obligation in this Section 10(a) is subject to the limitations of liability set forth in Section 7.

**(b) By Customer.** Customer shall indemnify, defend, and hold harmless Service Provider, its members, managers, officers, employees, agents, and contractors from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and costs of defense) arising out of or related to: (i) personal injury or property damage caused by dangerous conditions at the Property known to Customer but not disclosed to Service Provider; (ii) Customer's breach of this Agreement, including without limitation Customer's failure to maintain the Substrate or to disclose Property changes under Section 4; (iii) Customer's unauthorized modification of System components; (iv) any claim by an occupant, guest, tenant, neighbor, insurer, or other third party at or related to the Property arising from flood or water damage that is not caused by Service Provider's negligence or willful misconduct; and (v) any claim arising from Substrate-Conducted Moisture as defined in WGS-WAR-001 Rev. 2.0.

## 11. Termination

**(a) Termination for Convenience.** Either Party may terminate this Agreement for convenience upon sixty (60) days' prior written notice to the other Party. If Customer terminates this Agreement, Customer shall pay for all services performed through the effective date of termination. Pre-paid Service Fees for services not yet performed shall be refundable on a pro-rata basis less any costs already incurred by Service Provider in preparation for performance.

**(b) Termination for Cause.** Either Party may terminate this Agreement immediately upon written notice if: (i) the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; (ii) the other Party becomes insolvent, files for bankruptcy, or makes an assignment for the benefit of creditors; or (iii) the other Party ceases to conduct business in the normal course.

**(c) Effect of Termination.** Upon termination: (i) Customer shall pay all amounts due and owing for services performed through the effective date of termination; (ii) Service Provider shall return any keys, access codes, or security credentials provided by Customer; (iii) if the System is deployed at the time of termination, Service Provider shall provide one final breakdown service for which Customer shall pay the applicable fee; and (iv) all provisions that by their nature should survive termination shall survive, including without limitation payment obligations, warranties, indemnification, limitation of liability, dispute resolution, and limitations period provisions.

## 12. Force Majeure

Neither Party shall be liable for any failure or delay in performance under this Agreement to the extent such failure or delay is caused by circumstances beyond the reasonable control of such Party, including but not limited to acts of God, natural disasters, hurricanes, tropical storms, floods, earthquakes, fires, war, terrorism, civil unrest, labor disputes, epidemics, pandemics, government actions, supply chain disruptions, or utility failures (each a "Force Majeure Event"). The affected Party shall promptly notify the other Party of the Force Majeure Event and shall use commercially reasonable efforts to resume performance as soon as practicable. If a Force Majeure Event prevents performance for more than thirty (30) days, either Party may terminate this Agreement upon written notice to the other Party. Without limiting the generality of the foregoing, Service Provider shall have no liability for inability to deploy or break down the System, in whole or in part, due to a Force Majeure Event.

### 13. Dispute Resolution

**(a) Mandatory Pre-Suit Notice and Right to Cure.** As a condition precedent to commencing any action, arbitration, or other proceeding arising out of or relating to this Agreement, the System, or the services, the asserting Party shall provide the other Party with written notice ("**Pre-Suit Notice**") describing in reasonable detail: (i) the nature of the alleged breach or claim; (ii) the alleged date, location, and circumstances of the claim; (iii) the alleged damages or relief sought; and (iv) all supporting documentation then available. The receiving Party shall have sixty (60) days from receipt of the Pre-Suit Notice to investigate, inspect, test, and, in its discretion, cure or offer to cure the matters described therein. **No action, arbitration, or other proceeding may be commenced before expiration of the sixty-day period, and any action commenced in violation of this Section shall be subject to dismissal with prejudice.**

**(b) Informal Resolution.** Following the Pre-Suit Notice period, the Parties shall attempt to resolve the dispute through good faith negotiations between senior representatives of each Party for a period of not less than thirty (30) days.

**(c) Mediation.** If the Parties are unable to resolve the dispute through informal negotiations, the Parties agree to submit the dispute to non-binding mediation before a mutually acceptable mediator in Lee County, Florida, with each Party bearing its own costs and splitting the mediator's fees equally.

**(d) Binding Arbitration (Optional Election).** If the dispute is not resolved through mediation within sixty (60) days after initiation, the Parties may, by mutual written agreement, elect to submit the dispute to final and binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules in Lee County, Florida, before a single arbitrator. Judgment on the award may be entered in any court of competent jurisdiction. *If the Parties do not jointly elect arbitration, the dispute may be pursued through litigation as set forth below.*

**(e) Litigation Forum.** Subject to the foregoing, any litigation arising out of or relating to this Agreement shall be brought exclusively in the state or federal courts located in Lee County, Florida, and the Parties hereby consent to the exclusive jurisdiction and venue of such courts.

**(f) Jury Trial Waiver. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SYSTEM, OR THE SERVICES.**

**(g) Class Action Waiver. EACH PARTY AGREES THAT ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT SOLELY IN THE PARTY'S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, OR REPRESENTATIVE PROCEEDING. NO ARBITRATOR OR COURT SHALL HAVE AUTHORITY TO CONSOLIDATE THE CLAIMS OF MORE THAN ONE PARTY OR TO PRESIDE OVER ANY FORM OF CLASS PROCEEDING.**

**(h) Attorneys' Fees.** In any action, arbitration, or other proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party, to the extent permitted by Florida law.

#### 14. Contractual Limitations Period

**ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SYSTEM, THE SERVICES, OR THE PERFORMANCE STANDARDS, REGARDLESS OF FORM OR THEORY, MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION ACCRUES, OR IT SHALL BE FOREVER BARRED. THE PARTIES INTEND BY THIS SECTION TO SHORTEN THE OTHERWISE APPLICABLE STATUTE OF LIMITATIONS, AS PERMITTED BY APPLICABLE LAW.**

#### 15. Customer Acknowledgments

Customer acknowledges and agrees that, prior to executing this Agreement, Customer has:

- (a) **Read and Understood.** carefully read this Agreement and the WGS-WAR-001 Rev. 2.0 Performance Standards & Warranty Terms incorporated herein, and understands the rights, obligations, limitations, exclusions, and risk allocations contained in each;
- (b) **Opportunity for Counsel.** had a full and reasonable opportunity to consult independent legal counsel and is not relying on Service Provider for legal advice;
- (c) **Knowing Waiver.** is knowingly, voluntarily, and intentionally waiving the right to a trial by jury, the right to participate in any class or collective proceeding, and the longer statute of limitations otherwise available, in each case as provided herein;
- (d) **Substrate Disclosures.** where the Property includes a Permeable Substrate as defined in WGS-WAR-001 Rev. 2.0, Customer has executed (or will execute prior to deployment) the Substrate Disclosure & Acknowledgment Form (Schedule A to WGS-WAR-001 Rev. 2.0), and understands the warranty exclusion for Substrate-Conducted Moisture; and
- (e) **No Reliance.** is not relying on any oral statement, sales representation, marketing material, or course of conduct outside the four corners of this Agreement and WGS-WAR-001 Rev. 2.0 in deciding to enter into this Agreement.

#### 16. General Provisions

- (a) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of laws principles.
- (b) **Entire Agreement.** This Agreement, together with the Quote and WGS-WAR-001 Rev. 2.0, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written. In the event of any conflict between this Agreement and the Quote, this Agreement shall control. In the event of any conflict between this Agreement and WGS-WAR-001 Rev. 2.0 on a matter of System performance, testing, or warranty, WGS-WAR-001 Rev. 2.0 shall control.
- (c) **Amendments.** No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.
- (d) **Assignment.** Customer may not assign this Agreement without the prior written consent of Service Provider. Service Provider may assign this Agreement to any successor or affiliate without Customer's consent. Any purported assignment in violation of this provision shall be void.
- (e) **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, or if such modification is not possible, such provision shall be severed from this Agreement, and the remaining provisions shall continue in full force and effect.
- (f) **Waiver.** No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

**(g) Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand with written confirmation of receipt; (ii) when received if sent by a nationally recognized overnight courier; (iii) on the date sent by email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Notices to Service Provider shall be sent to the address set forth in the preamble or to such other address as Service Provider may designate. Notices to Customer shall be sent to the Property address or to such other address as Customer may designate.

**(h) Independent Contractor.** Service Provider is an independent contractor and not an employee, agent, partner, or joint venturer of Customer. Service Provider shall have sole control over the manner and means of performing the services, subject to the specifications and requirements set forth in this Agreement.

**(i) Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy delivered by facsimile, email, or other means of electronic transmission (including DocuSign or similar) shall be deemed to have the same legal effect as delivery of an original signed copy.

**(j) Compliance with Laws.** Each Party shall comply with all applicable federal, state, and local laws, regulations, and ordinances. Service Provider represents and warrants that it holds all licenses and permits required to perform the services under this Agreement.

**(k) Florida Construction Lien Law.** To the extent applicable, Service Provider shall comply with all requirements of Florida's Construction Lien Law, Chapter 713, Florida Statutes, including any required notices to Customer.

**(l) Headings; Construction.** Headings are for convenience only and shall not be used to interpret this Agreement. The Parties have participated jointly in negotiation and drafting of this Agreement; the rule of construction that ambiguities are resolved against the drafting party shall not apply.

**(m) Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and their permitted successors and assigns, and is not intended to confer any rights or remedies upon any other person or entity.

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## EXECUTION

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date first written above. By signing below, Customer expressly acknowledges and agrees to the provisions of this Agreement, including without limitation the limitation of liability (Section 7), substrate provisions (Section 8), warranty disclaimers (Section 9), indemnification (Section 10), dispute resolution and waivers of jury trial and class action (Section 13), one-year contractual limitations period (Section 14), and Customer acknowledgments (Section 15).

**SERVICE PROVIDER:**

**WATER GATE SYSTEMS, LLC**

**By:** \_\_\_\_\_

Kenneth G. Roy, CEO

**Date:** \_\_\_\_\_

**CUSTOMER:**

**Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHED EXHIBITS / INCORPORATED BY REFERENCE:**

- Quote dated \_\_\_\_\_, 20\_\_
- WGS-WAR-001 Rev. 2.0 Performance Standards & Warranty Terms
- Schedule A to WGS-WAR-001 (Substrate Disclosure & Acknowledgment), where applicable