

INDUSTRIAL WASTE SURCHARGE AGREEMENT

THIS AGREEMENT, made in quadruplicate this [redacted] day of [redacted], 201[redacted]

BETWEEN:

CITY OF TORONTO
(hereinafter called the "City")

Of The First Part

- and -

[redacted]
[redacted name of Company]

(hereinafter called the "Company")

Of The Second Part

WHEREAS Toronto Municipal Code Chapter 681, Sewers, ("Chapter 681") regulates the discharge of sewage in the City of Toronto and prohibits the discharge of water originating from a source other than the City water supply, including storm water or groundwater, directly or indirectly to a sanitary sewer or combined sewer by Chapter 681;

The discharge of water originating from a source other than the City water supply, including storm water or groundwater, directly or indirectly to a sanitary sewer or combined sewer is prohibited, unless

WHEREAS Chapter 681 provides that the City may permit the discharge of sewage which would otherwise be prohibited by Chapter 681 to the extent fixed by agreement with the City on such terms and conditions as deemed appropriate by the City;

WHEREAS the Company carries on an industrial activity within the City at the Premises which produces a sewage discharge in which the quantity of one or more of Total Suspended Solids, Biochemical Oxygen Demand ("B.O.D.") or Total Phosphorus or Phenolic Compounds (4AAP) is above the permissible limits set out in Chapter 681;

WHEREAS the sewage discharge by the Company results in materially adding to the cost of treatment at the municipal sewage works and Chapter 681 provides that an additional sewage service rate may be charged by the City to compensate the City for its additional costs of operation, repair and maintenance of the sewage works; and

WHEREAS this Agreement sets out the terms and conditions with respect to the discharge of the sewage within the requirements of Chapter 681.

IN CONSIDERATION of the mutual covenants herein contained, the parties agree as follows:

1. Interpretation

"Agreement" means this agreement between the City and the Company.

"B.O.D." means biochemical oxygen demand and has the same meaning as defined in Chapter 681.

"Chapter 441" means the City of Toronto Municipal Code Chapter 441 – Fees and Charges, as amended from time to time.

"Chapter 681" means the City of Toronto Municipal Code Chapter 681 – Sewers, as amended from time to time.

"City" means the City of Toronto and as the context requires includes any of its designated personnel who are authorized to represent the City and also includes an employee authorized and designated to exercise a discretion on behalf of the City;

"Claims" or "Claim" means any demands, claims, actions, causes of action, suits, proceedings, executions, liens and otherwise for, without limitation, liabilities, damages and loss of any kind and any nature whatsoever including but not limited to property damage or loss, bodily injury and death, loss of reputation, loss of opportunity, economic loss, royalties, judgments, fines, penalties, interest, charges, expenses and costs (including legal costs on a substantial indemnity basis);

"Contaminant" has the same meaning as in the *Environmental Protection Act*, R.S.O. 1990;

"Dangerous Goods" has the same meaning as in the *Transportation of Dangerous Goods Act, 1992* (Canada);

"Effective Date" is the date this Agreement commences upon execution of this Agreement by both parties.

"EM&P" means the Environmental Monitoring & Protection Unit of Toronto Water, City of Toronto or its successor.

"General Manager" means the General Manager of the Toronto Water Division of the City of Toronto or such person's

designate and means the General Manager as defined in Chapter 681.

"Hazardous Waste" has the same meaning as in the *Canadian Environmental Protection Act, 1999* (1999, c. 33) and *Environmental Protection Act, R.S.O. 1990*.

"including" means "including but not limited to" and "includes" means "includes but is not limited" and neither shall be construed as expressing a limited group or class, unless expressly stated to do so.

"Law" or "Laws" means all applicable statutes, laws, orders-in-council, by-laws, regulations, codes, ordinances, notices, rulings, orders, directives, requirements, policies and controls of the federal, provincial and municipal governments, including a by-law of the municipal council of the City, and all applicable court orders, judgments and declarations of a court or tribunal of competent jurisdiction; and a reference to any Law or to a provision thereof shall be deemed to include a reference to any Law or provision enacted in substitution therefor or amendment thereof.

"MOE" means the Ontario Ministry of the Environment.

"Premises" means the lands and premises municipally known as:

(** ENTER one of the following 2 applicable statements re: owned or leased, as applicable)

which are *owned by the Company*.

which are *leased by the Company* from _____ (**also ENTER legal name of owner**)

"Prohibited Waste" means those wastes which are prohibited from discharge under this Agreement and, save and except those discharges permitted by this Agreement, under Chapter 681 and includes a Contaminant, a Toxic Substance, Dangerous Goods and Hazardous Waste.

"Toxic Substance" has the same meaning as in the *Canadian Environmental Protection Act, 1999* (1999, c. 33);

Any reference to an officer or representative of the City shall be construed to mean the person holding that office from time to time, and the designate or deputy of that person, and shall be deemed to include a reference to any person delegated, in accordance with any applicable by-laws and policies of the City, the authority of that person, officer or representative of the City so referenced or otherwise duly authorized as a representative of that person to the extent of such authorization.

A reference to any bylaw, policy, rule or procedure or to a provision thereof shall be deemed to include a reference to any bylaw, policy, rule or procedure or provision enacted in substitution thereof or amendment thereof.

2. Chapter 681 Agreement

This Agreement constitutes an agreement under section 6.A.(1) of Chapter 681 and is subject to any restrictions on agreements under Chapter 681. The terms and conditions for the discharge or deposit of sewage, to the extent permissible under Chapter 681, are set out in this Agreement. In all other respects, Chapter 681 shall apply.

3. Term

(a) This Agreement shall commence on _____, 201█ and continue until _____, 201█ (the "Term").

(b) Provided that:

- (i) this Agreement has not been terminated early, for any reason, in accordance with its terms and conditions;
- (ii) notice of termination of this Agreement has not been provided under subsection 3(c); and
- (iii) neither the City nor the Company has provided the other with written notice, no later than thirty (30) days prior to the end of the current Term, of its intent to terminate this Agreement at the end of its current Term, this Agreement herein shall be automatically renewed for a further Term of one (1) year and renewed annually thereafter, on the same terms and conditions as contained in this Agreement, subject to the following exceptions:
 - (i) the length of the subsequent Term shall be one (1) year if the original Term is otherwise; and
 - (ii) the discharge rates payable under this Agreement shall be adjusted to then prevailing City rates.

All other provisions contained in this Agreement, shall remain the same including the right to renew for subsequent Terms, unless expressly amended in accordance with the terms of this Agreement.

(c) Without limiting the provisions of section 11, 12 or 13, in the event that the General Manager determines that the Company is not in good standing under this Agreement, the General Manager may notify the Company accordingly at or before the end of the current Term and this Agreement shall end at the earlier of:

- (i) the termination date established under section 11; or
- (ii) the end of the current Term.

Provided, however, where the notification herein has not been mailed within three (3) business days of the end of the then current Term, the Term shall continue until the effective date of notification as determined by section 19.

- (d) For further clarity and in no way limiting the discretion of the General Manager, “not in good standing” shall include where the Company has an outstanding amount (including any rate, charge, fee or fine) due and owing to the City or has otherwise, in any manner, breached or contravened this Agreement.

4. Authorization to Discharge

The authority of the Company to discharge sewage into the City's wastewater system is subject to the following conditions:

- (a) the Company is and continues to remain in good standing under this Agreement; and
- (b) the sewage shall be in strict compliance all terms and conditions of this Agreement and, subject to subsection 5(b) of this Agreement, Chapter 681; and
- (c) the sewage does not contain any Prohibited Waste.

Failure to comply with any of the above conditions shall constitute a material default under this Agreement and, in addition to any privileges, rights or remedies of the City under this Agreement or otherwise in contract, at Law or in equity, the City may immediately suspend, terminate or revoke any discharge privileges granted under this Agreement.

5. Discharge Limits

- (a) Provided that the Company is in compliance with section 4 of this Agreement, the Company shall be permitted to discharge sewage from the Premises to the City's sanitary sewer or combined sewer system to the extent permitted under subsection 5(b).
- (b) During the Term of this Agreement only, the quality and properties of the sewage discharged by the Company from the Premises to the sanitary sewer or combined sewer system may exceed the limits set by Chapter 681, in respect to the parameters set out in Schedule 1 of this Agreement, provided that:
 - i. it does not exceed the maximum discharge limits set out in Schedule 1 at any time; and
 - ii. such parameters and exceedances are permitted by agreement under Chapter 681.

The maximum discharge limits set out in Schedule 1 may be revised from time to time by mutual written agreement between the parties.

- (c) Determination of the exceedances and compliance with the discharge limits set out herein will be determined by means of composite sampling randomly selected by EM&P over a 24 hour period, provided that there is appropriate access to the Premises, security of sampling equipment and availability of City resources to carry out same, as determined by EM&P. Where EM&P reasonably determines that access to the Premises, security of sampling equipment or availability of City resources do not permit such a sampling method, the City may use such other method or methods as the General Manager determines appropriate and practical in the circumstances.
- (d) In the event of any disagreement between the General Manager and the Company as to the water quality of effluent samples, the determination of the General Manager shall govern.
- (e) The General Manager reserves the right to change the maximum discharge limits set out in this section, from time to time, provided that the General Manager shall provide the Company thirty (30) days written notice of such change prior to the implementation of same. Notwithstanding the foregoing, where the maximum discharge limits are changed by the Council of the City of Toronto, notice to the Company shall be deemed to have been given by the City of the change in maximum discharge limits upon the passage of such resolution by Council. The maximum discharge limits provided in this section shall be deemed adjusted in accordance with the notice so provided and this Agreement amended accordingly.

6. Prohibited Discharge

- (a) The discharge of sewage by the Company from the Premises containing parameters or properties of sewage in excess of the limits set out in section 5 is prohibited and shall constitute a default under this Agreement and may constitute a contravention of the Chapter 681.
- (b) The Company shall notify the General Manager by telephone forthwith, and in writing as soon as possible thereafter, upon discovering a breach by the Company of subsection (a) of this section or any other unauthorized discharge by the Company. The Company shall notify the General Manager in writing prior to any change in its process and wastewater flows that may affect its compliance with the discharge limits and prohibitions under this Agreement.

- (c) At any time, the General Manager may notify the Company that the wastewater concentration discharged by the Company has exceeded the permitted limits set out in section 5 of this Agreement. The General Manager may, but is not obliged to, adjust the discharge limits set out in section 5, upon the written request of the Company, where the General Manager in the exercise of a sole discretion considers it appropriate and not harmful to the City's water system. Where such an adjustment of discharge limits is authorized by the General Manager, the discharge limits set out in Schedule 1 of this Agreement shall be amended accordingly by written agreement.
- (d) Without limiting or prejudicing, and in addition to, any other right or remedy the City may have under this Agreement, in Law or equity in respect to a prohibited discharge, the City may charge the Company a reasonable amount, as determined by the General Manager, to compensate the City for its administrative and enforcement costs and additional costs of treatment and control of the sewage and of operation, repair and maintenance of the sewage works in respect to or as a result of a prohibited discharge.

7. Discharge Rates

- (a) The Company hereby covenants and agrees to pay to the City, for the discharge of sewage permitted under this Agreement, an amount calculated by the General Manager from time to time and based on the following formula:

$$\text{Surcharge} = \$ (V \times C \times F \times R)$$

V = annual volume of discharge, in cubic metres *

- * The annual volume of discharge shall be equivalent to the volume of water consumed by the Company and supplied by the City, as determined by meter or sub-meter readings or, where not metered, in accordance with Chapters 851, 849 and 441 of the Toronto Municipal Code; plus the annual volume of any private water supplied to the Company, as determined by Company records or otherwise by the General Manager.

C = excess parameter(s) or properties of sewage permitted under Schedule 1 of this Agreement, in g/m³

For further clarity, "excess" means the amount by which the actual discharge of the above parameters exceeds the limit for the above parameters set out in Table 1 of Chapter 681 as determined in accordance with section 5(c) of this Agreement.

Note: g/m³ = mg/L

F = 10⁻³, factor to convert g to kg

R = the rate for sewage treatment, in \$/ kg excess, as established by the City from time to time under Chapter 681 and/or Chapter 441

- (b) Notwithstanding subsection 7.(a) above, the Company agrees that, in the event that the City establishes or revises a minimum quarterly discharge rate (surcharge) for industrial waste surcharge agreements under Chapter 681 and/or Chapter 441 or other resolution of Council and the surcharge amount calculated in accordance with subsections 7.(a) is less than such minimum quarterly discharge rate, the amount payable for the discharge of sewage permitted by this Agreement shall be increased to such minimum quarterly discharge rate.
- (c) The annual volume of discharge ("V" set out in subsection 7(a) above) shall be reduced by an amount equal to that portion of the annual volume of the water that is directly consumed or used on the Premises by the Company for their industrial or commercial processes; provided that:
- (i) It is not discharged to the sanitary or combined sewer system; used, consumed or released outdoors, whether for irrigation purposes or otherwise; or used, consumed or released off site of the Company's Premises; and
 - (ii) The Company provides to the City's EM&P an engineering report, signed by an independent professional engineer licensed in the Province of Ontario and satisfactory to the City's EM&P, which sets out the Company's water consuming processes, the annual volume of water consumed or used from public and private sources, the annual volume of the water that is directly consumed or used on the Premises by the Company for their industrial or commercial processes, and the amount of water discharged in a manner set out in subsection 7(b)(i), if any; and which certifies the annual water balance between water consumption/ usage and discharge for the year in which the reduction is sought.
- (d) Where the Company is located within a multi-unit building, it shall install a sub meter on the water line, at the head of any process or water use, as a condition of the City entering into this Agreement and report the readings of the water meter on the 1st of each month, in writing, to the City's EM&P. Proof of the installation of the sub-meter shall be provided to the City's EM&P on or before the execution of this Agreement.
- (e) Where the Company obtains water from a private source other than the City, the volume of such water shall be metered and the Company shall retain, at its own expense, an independent 3rd party expert to validate the accuracy of the meter readings or, where applicable, sub-meter readings every quarter. The accuracy validation of the meter or sub-meter shall be carried out

within five (5) days from the end of the quarter. The Company shall submit a validation report in respect to the accuracy of the meter or sub-meter in writing to the City's EM&P within ten (10) days after the end of each applicable quarter. The Company shall make available and submit to the City's EM&P, upon request, records (including copies of same) of the meter readings of such private sourced water.

- (f) The amount payable pursuant to this section shall be billed by the City on a quarter yearly basis for the periods ending March 31st, June 30th, September 30th and December 31st in each year of the Term.
- (g) Notwithstanding subsections 7(f) and (h), on execution of this Agreement, the Company shall pay the City in advance the amount payable for the discharge of sewage permitted under this Agreement for the first quarter, based on the maximum discharge limits set out in Schedule 1 and a volume estimated by the City based on the Company's prior quarter year's consumption of water or, where no record of consumption is available, based on the consumption of similar operations in the City to those of the Company as determined by the City. In the event that the actual discharge for the first quarter is less than the estimated volume and maximum discharge limits set out in Schedule 1, any remaining credit balance shall be applied against the second quarter amount payable. For further clarity, this pre-payment for the discharge of sewage in accordance with this Agreement shall only apply in respect to the first payment during the initial Term of this Agreement and does not apply in respect to a renewal or extension of this Agreement.
- (h) All invoices, issued by the City, for the discharge of sewage and any other charges imposed pursuant to this Agreement or Chapter 681 must be paid by the Company within 30 days from the date of the invoice.
- (i) Late payment charges shall be added to all rates and charges that are due and payable under this Agreement at the rate of 1.25% on the first day of default, and every 30 days thereafter during such time as the default continues (15% per annum).
- (j) The Company agrees to pay for the discharge of sewage permitted under this Agreement in accordance with the prevailing rates set by the City, from time to time. The General Manager reserves the right to change the discharge rates and charges set out in this section, at any time, provided that the General Manager shall provide the Company thirty (30) days' written notice of such change prior to the implementation of same. Notwithstanding the foregoing, where the discharge rates and charges are changed by resolution of the Council of the City of Toronto, notice of the change in discharge rates and charges shall be deemed to have been given by the City to the Company upon the passage of such resolution by the City Council. The discharge rates and charges provided in this section shall be deemed adjusted in accordance with the notice so provided and this Agreement amended accordingly.

8. Warranties of Company

The Company expressly warrants as follows:

- (a) The Company is not prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted by the Company under this Agreement by any agreement (including any lease), constating documents, constitution, legislation, statute, act, regulation, order or otherwise.
- (b) To the best of the Company's information and belief and after making diligent inquiries, the Company is not aware of any material facts or circumstances having a bearing upon its ability to perform or comply with its obligations under this Agreement.
- (c) The Company shall comply with section 681-6E of Chapter 681 at all times.

9. Operating Data and Production Records

- (a) The Company covenants and agrees, upon the request of the General Manager, to provide such records and documents, including operating data, meter readings and production records, in its possession or control which are reasonably necessary for the purpose of determining the volume of the sewage discharged and compliance with the terms and conditions of this Agreement and the City shall have a right to retain copies of all such records and documents.
- (b) Without limiting the General Manager's powers under Chapter 681, the Company agrees that the City shall have the right to inspect, test and sample the discharge from the Premises and any discharge measuring device or meter at any time and to enter on and in the Premises to do so. The Company shall not open, alter, tamper with, damage or remove or cause or permit, unless otherwise expressly authorized by the City, the opening, alteration, tampering, damage or removal of any City sampling equipment at the Company's Premises and the Company shall protect such equipment from opening, alteration, tampering, damage or removal while at its Premises.

10. Indemnification

For the purposes of this section, "City" means the City of Toronto, as well as any and all of its elected officials, representatives, officers, employees, servants, consultants, agents and contractors and "Company" means the Company as well as any officer, employee, servant, member, contractor, subcontractor, consultant, agent, permitted assign, invitee, contractor of the Company or of any person permitted or allowed by the Company to engage in any of the activities of the Company under this Agreement.

The Company agrees at all times to defend and indemnify and save the City harmless from and against any and all Claims that are caused to or incurred by, sustained or suffered by, occasioned to or imposed upon or made or instituted against, any of them or to which any of them may be liable by reason of any neglect or default on the part of the Company or by reason of the Company carrying out or failing to carry out any obligation or responsibility to which it is subject, or by reason of any breach, violation or non-performance of any covenant, term, warranty, condition or provision in this Agreement by the Company, except to the extent that the same are caused by the gross negligence or deliberate wrong-doing of the City.

The right to indemnity provided for in this Agreement and, in particular, this section shall survive the expiration or any termination of this Agreement.

11. Default and Termination

(a) Without restricting any other privilege, right or remedy of the City provided in this Agreement, by Law or in equity, in the event that the Company has:

- (i) made a misrepresentation in this Agreement;
- (ii) discharged Prohibited Waste or exceeded the maximum discharge limits provided under this Agreement or otherwise discharged sewage into the City wastewater system not in strict compliance with the requirements of this Agreement, Chapter 681 and the Law;
- (iii) failed to make a payment, as required, under this Agreement; or
- (iv) breached any of the terms, covenants and/or conditions of this Agreement or failed to perform any of its covenants, responsibilities or obligations in this Agreement,

the General Manager may, in the exercise of a sole and unfettered discretion and upon ten (10) days' prior written notice, terminate this Agreement immediately or suspend the authorization of the Company to discharge immediately until further notice and reinstate such authorization only upon satisfaction of such terms and conditions as the City deems appropriate to remedy such breach and prevent a reoccurrence of same; and any loss, expense, costs, charges, damages, and/or liability, which may be sustained, paid or incurred by the Company or any other person or persons, by reason of such termination or suspension by the City shall be solely borne by the Company.

(b) (i) Notwithstanding the foregoing subsection 11(a) and provided that there has not been more than one (1) occurrence of such non-payment during the Term, where the Company has failed to make a payment within the time required under this Agreement but remedies such default to the complete satisfaction of the General Manager within five (5) business days of the required time for payment then the General Manager shall not suspend or terminate this Agreement.

(ii) Notwithstanding the foregoing subsection 11(a) and provided that there has not been more than three (3) occurrences of such an exceedance during the Term, where the City has determined that the Company has exceeded a parameter set out in subsections 5(a) or (b) by less than twenty percent (20%) but has completely remedied the default, including payment of any discharge rate and City costs (administrative, enforcement, treatment and control measures, capital, operational and otherwise) related to such excess discharge to the satisfaction of the General Manager within Ten (10) Working Days of the EM&P's determination of such occurrence of the exceedance, then the General Manager shall not suspend or terminate this Agreement.

(c) In addition to and without limiting the foregoing, if the General Manager in the exercise of a sole discretion determines that one or more of the following events may occur, is occurring or has occurred:

- (i) the discharge may cause or contribute to or is causing or contributing to a nuisance or otherwise is interfering with the reasonable use and enjoyment of public or private property or any part thereof;
- (ii) the discharge may cause or contribute to or is causing or contributing to damage to the City's sewers or any part thereof, materially increasing their maintenance costs or causing a dangerous condition;
- (iii) the discharge may cause or contribute to or is causing or contributing to damage to a City sewage treatment plant or process or any part thereof; or
- (iv) the discharge may cause or contribute to or is causing or contributing to:

- a. the biosolids from the City's sewage works to fail to meet any applicable Federal or Provincial Laws or guidelines or affect the quality of the biosolids such that the marketability, sale or general usage of the biosolids for any purpose deemed appropriate by the General Manager may be adversely affected;
- b. the sewage works effluent to contravene any Laws including the *Ontario Water Resources Act*, the *Environmental Protection Act (Ontario)*;
- c. a threat, danger or hazard to any person, property, plant or animal life,

the General Manager may, in the exercise of a sole and unfettered discretion and upon written notice, terminate this Agreement immediately; or suspend the authorization of the Company to discharge immediately until further notice and reinstate such authorization only upon satisfaction of such terms and conditions as the City deems appropriate to remedy such breach and prevent a reoccurrence of same; and any loss, expense, costs, charges, damages, and/or liability, which may be sustained, paid or incurred by the Company or any other person or persons, by reason of such termination or suspension by the City shall be solely borne by the Company.

- (d) The Company acknowledges and agrees that due to the environmental and health and safety nature of the subject matter of this Agreement, in the event of a breach of this Agreement by the Company, the immediate termination of this Agreement is fair and reasonable.
- (e) All costs, expenses and expenditures of the City herein shall be deemed an additional charge due to the City and shall be paid by the Company upon demand and, if not so paid, shall bear interest at the rate of 1.25% on the first day of default, and every 30 days thereafter during such time as the default continues (15% per annum).
- (f) If the Company is in default of any of its payment obligations pursuant to this Agreement, termination of this Agreement by the General Manager shall not relieve the Company from its liability to make any payments, including interest, which are due and outstanding to the City at the date of the termination.
- (g) The Company acknowledges that the Ontario Ministry of Environment will be notified where the Company's discharge of sewage contains Hazardous Waste or is otherwise in contravention of discharge restrictions contained in Chapter 681. Such violations will become a public record of the City and the record of same may be disclosed pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*.
- (h) Nothing in this Agreement shall limit or otherwise prejudice the City's right to enforce the provisions of Toronto Municipal Code Chapter 681 in the event of non-compliance with such by-law.

12. Emergency Suspension of Discharge

- (a) If the General Manager, in the exercise of a sole discretion, determines that an emergency situation exists which:
 - (i) may pose an immediate threat, danger or hazard to any person, property, plant or animal life, or the City's water or sewage works or a part thereof; or
 - (ii) the continued discharge permitted under this Agreement either alone or in combination with any or all other discharges into the City's wastewater system, whether permitted, by environmental causes or otherwise, together with all circumstances of the emergency, may in any way or manner and notwithstanding whether it may be minimal or not, impair the City's ability to address to the threat, danger or hazard or contribute to the threat, danger or hazard, or
 - (iii) a combination of 12.(a)(i) and (ii).

the General Manager may at any time suspend this Agreement or any part or parameter thereof immediately and without prior notice for such time as the General Manager deems appropriate and until otherwise notified by the City.

- (b) The General Manager will provide notice to the Company of the suspension thereafter as soon as practical for the City in the circumstances in the event of such suspension.
- (c) Where such suspension continues for a continuous period of more than thirty (30) days, this Agreement shall terminate on the thirty-first (31st) day of such suspension.

13. Termination by City Without Cause

This Agreement may be terminated by the General Manager, without cause,

- (a) at any time on ninety (90) days' written notice sent to the Company; or
- (b) at the end of the current Term of this Agreement provided that written notice is provided to the Company no later than sixty (60) days prior to the end of the Term.

14. Termination by Company

- (a) This Agreement may be terminated by the Company, without cause,
 - (i) at any time on ninety (90) days' written notice sent to the General Manager; or
 - (ii) at the end of the current Term of this Agreement provided that written notice is provided to the General Manager no later than sixty (60) days prior to the end of the Term.
- (b) Notwithstanding the foregoing, in the event that the General Manager or Council of the City provides public notice of an increase in discharge rates and charges, the Company may terminate this Agreement by written notice to the General Manager delivered no later than thirty (30) days after the receipt or deemed receipt of the notice of an increase in discharge rates and charges which termination shall be effective on the last day of such notice period.
- (b) The Company shall provide no less than ninety (90) days' prior written notice to the General Manager of any cessation of operations at the Premises. If the Company fails to give any such notice, it shall continue to be bound to make all payments required to be made under this Agreement and to be bound by all other of its obligations under this Agreement until such time as the required notice is received by the City.

15. Full Effect of Chapter 681 upon Termination or Expiration

- (a) Upon the termination or expiration of this Agreement, the terms and conditions for the discharge of sewage permitted under this Agreement shall cease to apply immediately and Chapter 681 shall apply in all respects.
- (b) If the Company is in default of any of its payment obligations pursuant to this Agreement, termination of this Agreement by the General Manager shall not relieve the Company from its liability to make any payments, including interest, which are due and outstanding to the City at the date of the termination.

16. Notice of Contamination

The Company shall give immediate notice, and written notice with complete details thereof, to the City of any spill or escape of Prohibited Waste or contaminant, originating from its Premises, which has entered or may enter the City's wastewater system, including its sewage and stormwater systems.

17. Observance of Laws, Statutes and Regulations

The Company shall comply at its own expense with, and conform to, all applicable Laws from time to time in effect during the Term of this Agreement.

18. Non-Waiver

No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent is express and in writing and signed by an authorized representative of the City. No waiver or consent shall be inferred from or implied by anything done or omitted by the City save only by express waiver or consent in writing by the City. No delay or omission by the City in exercising any right or remedy shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. No condoning, excusing or overlooking by the City of any default, breach or non-observance by the Company at any time or times in respect of any term or provision herein contained shall operate as a waiver of the City's right hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of the City herein in respect of any such continuing or subsequent default or breach. Any consent by any party to, or waiver of, a default or breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any subsequent default, whether similar or not.

19. Notices

Any demand or notice to be given pursuant to this Agreement shall be duly and properly made and given if made in writing and delivered to the party for whom it is intended at the address as set out below, either personally, by facsimile or by means of prepaid first class mail addressed to such party as follows:

- (a) in the case of the City:

General Manager of Toronto Water, City of Toronto
30 Dee Avenue, Toronto, Ontario M9N 1S9
Attention: Toronto Water, Environmental Monitoring & Protection

Phone Number: (416) 392-9940

Facsimile Number: (416) 392-9338

(b) in the case of the Company:

[insert head office address of Company and contact person]	
Attention:	
Phone Number:	Facsimile Number:

or to such other address as the parties may from time to time notify in writing, and any demand or notice so made or given shall be deemed to have been duly and properly made or given and received on the day on which it shall have been personally delivered or, if delivered by facsimile, shall be deemed to be delivered as of the next business day following the date of transmission or, if mailed, then, in the absence of any interruption in postal service in the City of Toronto affecting the delivery or handling thereof, on the day following three (3) clear business days following the date of mailing.

20. Successors and Assigns

This Agreement and all terms, covenants, conditions and provisions herein shall be binding upon and shall enure to the benefit of the City and the Company and their respective successors and legal representatives. This Agreement is not assignable or transferable by the Company. The Company shall not assign, transfer or encumber this Agreement in any manner or part. In the event that the Company assigns, transfers or encumbers this Agreement in contravention of this section, the Company's rights under this Agreement shall terminate immediately, without prejudice to the City's rights and remedies under this Agreement, in Law or in equity.

21. Entire Agreement

This Agreement and any amendments thereto in accordance with the terms of this Agreement contains the entire agreement between the parties hereto with respect to the subject matters hereof. No verbal arrangement or agreement relating to this Agreement or the subject matter of this Agreement and no amendment, modification or supplement to this Agreement shall be valid or binding unless set out in writing and signed by duly authorized representative of the City. The City shall not be bound by any oral communication or representation whatsoever, including but not limited to any instruction, amendment or clarification of this Agreement or any document comprising this Agreement, or any representation, information, advice, inference or suggestion, from any person (including but not limited to an elected official, employee, agent or any other person acting on the behalf of or at the direction of the City) concerning this Agreement, any document comprising this Agreement, or any other matter concerning this Agreement. The Company expressly waives and releases the City from any claims in negligence or otherwise in respect to any oral communication or representation. The documents comprising this Agreement are complementary and what is required by any part thereof shall be considered as being required by the whole.

22. Governing Law

This Agreement shall be governed by, subject to and construed in accordance with the laws of the Province of Ontario and the laws of Canada, as applicable to the matters herein. Any action or other legal proceeding arising under or with respect to this Agreement (including any motion or other interlocutory proceeding) shall be brought in a Court or a tribunal, whichever may be applicable, sitting in Toronto, Ontario. The Company and the City each irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario in accordance with the foregoing.

23. Severance Where Provision Illegal, Etc.

If any provision or provisions of this Agreement or parts thereof or any of any document comprising this Agreement or the application thereof to any person or circumstances shall be found is/are found to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such provision or provisions or parts thereof shall be deemed severable and all other provision or provisions or parts of this Agreement shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found void and/or unenforceable. The remaining terms and provisions of this Agreement and its application to any person or circumstances shall not be affected thereby, but this provision shall apply only insofar as the effect of that severance is not to change the fundamental nature of the obligations assumed respectively by each of the City and Company.

24. Further Assurances

The Company agrees that it will do all such acts and execute all such further documents and will cause the doing of all such acts and the execution of all such further documents as are within its power to cause the doing or execution of, as the City may from time to time reasonably request, in writing, and as may be necessary or desirable to give full effect to this Agreement.

Schedule 1 – Maximum Discharge Limits

The quality and properties of the sewage discharged by the Company from the Premises to the sanitary sewer or combined sewer system shall not exceed the following limits at any time:

2011 INDUSTRY UPDATE FORM
Revised Industrial Waste Surcharge Agreement
City of Toronto Toronto Water Environmental Monitoring and Protection

Industry Name
(current legal name) *see note below

Address

Own Property yes no

Property Leased yes no

If Leased
(legal name of property owner)

Do you want to sign the revised INDUSTRIAL WASTE SURCHARGE AGREEMENT prior to
January 1, 2012 ? yes no

If yes, which effective date: _____

Name: _____

Title : _____

Date : _____

Signature: _____

please
print

*note: Each corporation is required to attach a true copy of its letters of incorporation, letters patent or similar instrument of incorporation and any amendments to such instruments of incorporation.

