

This document contains our terms and conditions for rental and of equipment, materials, parts, and service.

TERMS AND CONDITIONS OF RENTAL

1. **Billing:** Billing for rental of equipment will be monthly on the rental agreement date until termination of rental; billing for service—including mobilization, setup, demobilization, technician services, and transportation—will be upon rendering of service; billing for sales of consumables or replacement parts will be as provided. Unless specified otherwise in the proposal, all billings are due 30 days from the date of Clear Creek Systems, Inc. (CCS) invoice, a Finance Charge at the rate of 1.5% per month, (18% annual rate) will be added to amounts not paid when due. CCS will not accept “pay when paid” or “paid if paid” payment terms. Rental begins when the equipment leaves CCS’s facility and ends when equipment is returned. Unless stated otherwise, two weeks’ notice is required for demobilization of treatment systems.

2. **Operating Schedule:** A monthly rental rate is based upon a 28 day rental cycle. Unless stated otherwise, a week is one third of a monthly billing cycle and a day is one third of a weekly billing rate. The rates for generators and diesel pumps are based upon single shift rates of an average of up to 40 hours per week. If the generator or pump averages between 40 and 80 hours per week then the rate is 1.5 times the listed rate. If the generator or pump averages more than 80 hours per week then the rate is 2.0 times the listed rate. Servicing generators and diesel pumps is not included in this proposal. They need to be serviced every 150 hours of operation. We will provide this service at cost plus 15% profit if requested to do so.

3. **Equipment Supply:** Unless stated otherwise in the proposal scope of work, the quoted rates do not include electrical connections to the equipment, electrical power supply, for the equipment, internal piping between the equipment components, piping to and from the equipment, or equipment to off load and load the equipment at the site such as forklifts or cranes. The equipment will be returned to CCS in the same condition less normal wear and tear and at least as clean as delivered to the Rentee. The Rentee is responsible for the removal and proper disposal of all media, solids, filters, water and decontamination as needed unless specified otherwise in the proposal. Equipment not properly cleaned or damaged will remain on rent until it is properly cleaned and/or repaired. In addition, labor rates will apply to clean or recondition equipment to a serviceable condition. Equipment is subject to availability at the time of the order. Any requests to hold material will be done with the rent starting on the date of the request to hold the equipment. The Rentee is responsible to provide an acceptable pad base and size for the equipment and access for the types of vehicles and equipment normally used in these types of operations. Unless specifically stated in the proposal, freeze protection for equipment is EXCLUDED from all pricing and proposals.

4. **Service:** CCS will furnish a technical representative to monitor the equipment if it is requested to do so. Labor billing is portal to portal, including mileage, from the designated CCS facility. Saturday work and work over 8 hours per weekday or past normal work hours if not scheduled in advance will be billed at 1.5 times the regular labor rate for that person. Sunday, holiday, work past 12 hours on a weekday or 8 hours on a Saturday will be billed at 2.0 times the regular labor rate for that person. Per diems will be applicable for all personnel traveling outside of their standard service areas at our standard per diem rates unless other rates are listed in the proposal. All travel costs such as air fare, hotels, and rental cars will be billed at cost plus 15%. Labor will be billed at our current labor rates at the time of the proposal unless other rates are provided in the proposal. Labor rates are subject to change annually or when prevailing rates and/or union rates change, if applicable. Equipment technicians provided by CCS for monitoring are not considered a covered trade for prevailing wage, union staffing requirements, or certified payroll unless otherwise stated in the proposal. CCS must be informed of any applicable prevailing wage, union, and/or certified payroll requirements in writing prior to the preparation of the proposal. If proper notification of union workers, prevailing wages, and/or certified payroll is not provided our listed rates including mobilization, monitoring and demobilization are subject to change to reflect the additional costs.

5. **Client Operations:** If Rentee elects to provide their own equipment technician(s), the Rentee; 1. is responsible for operating the equipment in accordance with the Operation & Maintenance manuals (O & M manuals) for the equipment—including but not limited to any operating parameters; 2. Shall monitor, inspect, maintain, and keep adequate records as per the O & M manuals and any inspection and/or maintenance logs provided by CCS; 3. Replace any normal wear items at their own costs for the parts and labor. Examples of normal wear items include pH sensor probes, grease and lubricating oils, pump impellers, and oil filters. If the Rentee elects to provide equipment technicians, CCS reserves the right to send its technicians to the site to review equipment operations and maintenance practices. Such site visits will be conducted at CCS’s costs if not part of a service agreement, and in no way relieve the Rentee from their responsibility to operate and maintain the equipment as per the O & M manuals.

6. **Materials:** All filtration media and/or consumable items such as polymer and filter bags or cartridges are sold on a no return/no refund basis. Any agreement to take back any unused materials must be agreed to in writing prior to the time of proposal acceptance/agreement including material condition requirements and any restocking fees.

7. **Site Access:** CCS personnel will have unrestricted access to and from our area of operation during, monitoring, mobilization, and demobilization. If there are any safety training requirements that are greater than one half hour for each person and notice of the safety requirements are not provided prior to the proposal, additional time for safety training will be an additional charge at the personnel labor rate and category for the project.

8. **Warranty:** CCS warrants that the equipment leased hereunder, when properly used and maintained, shall be free from defects of material and workmanship. **THE FOREGOING IS THE EXCLUSIVE WARRANTY GIVEN BY CCS TO RENTEE WITH RESPECT TO THE CONDITION AND OPERATION OF THE EQUIPMENT AND IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IN NO EVENT WILL CCS BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, WITH THE ONLY EXCEPTION BEING FOR THE NEGLIGENT ACTIONS OF CCS’S MONITORING PERSONNEL THAT RESULT IN ANY REGULATORY FINES DUE TO UNAUTHORIZED DISCHARGES UNDER CCS’S CONTROL AND THEN THE LIABILITY WILL BE LIMITED TO AMOUNT OF THE FINE MULTIPLIED BY THE PERCENTAGE RESPONSIBILITY OF CCC’S MONITORING PERSONNEL’S FOR THE FINES.** Upon termination of this agreement due to breach hereof by Rentee, this warranty shall thereupon become void and of no further force and effect. CCS shall be allowed reasonable time to make any necessary repairs due to equipment failure covered in this section. The Rentee has the option of renting backup components to avoid any potential downtime due to equipment failure if such an equipment failure could cause material delays or other issues for the Rentee.

9. **Risk of Loss/Return:** Rentee will purchase at CCS’s standard sales prices then in effect any equipment not returned within (7) days of the termination of the rental. Rentee assumes and shall bear the entire risk of loss and damage to the equipment from any and every cause whatsoever, normal wear and tear excepted. In the event of loss or damage to the equipment, Rentee, at the option of CCS, shall: (a) pay to CCS the cost of placing the equipment in good repair, condition and working order, or (b) pay to CCS its standard sales price then in effect for such equipment. On such payment this rental agreement shall terminate with respect to such items of equipment so paid for and Rentee shall become entitled to such equipment in its as-in-condition without any warranty, express, implied, or statutory, with respect to any matter whatsoever.

10. **Indemnification:** Rentee will indemnify CCS and hold CCS harmless from any liability, damage, expense or judgment arising from injury to any person or damage to any property caused by the equipment arising from Rentee’s possession use or operation of the equipment or arising from any failure of Rentee to perform any covenant condition or term of this rental agreement to be performed by Rentee. The indemnities and assumptions of liability by Rentee in this paragraph shall continue in full force and effect notwithstanding the termination of the Lease Agreement; whether by expiration by the term or otherwise. CCS shall give the Rentee notice of any claim or liability hereby indemnified against, and Rentee shall be entitled to control the defense thereof; in this regard, Rentee agrees to furnish legal counsel to CCS to defend against any such claim or liability hereby indemnified against. Rentee is required to give CCS immediate notice of litigation initiated against Rentee or any of its agents, servants, employees or assigns, involving the equipment rented hereunder.

11. **Personal Property;** Unless and until Rentee purchases the equipment pursuant to paragraph 6, the equipment will remain CCS’s personal property at all times, irrespective of its location or attachment to real estate and may be removed by CCS at any time after termination of this rental agreement. Rentee will maintain on the equipment at all times signs provided by CCS showing that CCS is the owner thereof, and will keep such equipment free and clear from all levies, liens, encumbrances and other claims of its creditors or other persons asserting claims against Rentee. Rentee shall execute and deliver to CCS upon CCS’s request a statement in respect of the equipment, in a form satisfactory to CCS, setting forth CCS’s and Rentee’s respective interests therein. CCS may file either this rental agreement or such statement in the appropriate governmental office for purposes of giving notice to the public of CCS’s and Rentee’s respective interests in the equipment.

12. **Cancellation and Termination:** This rental agreement may be terminated by CCS at any time and upon such termination CCS may take possession of and remove all equipment. Upon cancellation or termination of this contract under the terms hereof, all obligation that are still executory on both sides are discharged, but any right of

CCS based on prior default or performance of Rentee survive, and CCS shall also retain all remedies for default of the whole rental agreement or any unperformed and/or unpaid balances.

13. **Law:** All questions concerning the validity and operation of this rental agreement and performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of California, U.S.A.

14. **Taxes:** Rentee shall keep the equipment free and clear of all levies, liens and encumbrances and, for the term of this agreement, shall pay all licenses, fees, registration fees, assessments, charges and taxes (municipal, state and federal), which may now or hereafter be imposed upon the equipment; provided however, that the termination of this rental agreement by reason of Rentee's default hereunder shall not excuse Rentee from any of Rentee's obligations under this rental agreement, including but not limited to the obligations of Rentee under this paragraph. Unless specifically stated otherwise in the proposal, prices do not include any applicable sales/use taxes, HST or GST. Any applicable sales/use taxes will be an additional amount added to invoices unless a valid reseller's certificate is provided to CCS prior to invoicing.

15. **Insurance:** Rentee shall provide and maintain insurance against loss, theft, damage or destruction of the equipment in an amount sufficient to replace any equipment leased or rented at full replacement value with blanket coverage, with loss payable to CCS and its successors or assigns. Such insurance shall not be invalidated by any act, omission or neglect of Rentee. CCS must be named as Loss Payee with respect to rented, leased, or borrowed equipment. Rentee shall promptly furnish proof of such insurance to CCS. This proposal is based upon our existing insurance terms and amounts being sufficient for the project. If any additional levels of insurance (including L&I) or Owner Controlled Insurance Program (OCIP) or WRAP insurance are required then the costs for the additional insurance or administrative compliance will be an additional cost to the Rentee.

16. **Retention or Bonding:** Proposals exclude retention. If retention is deducted from invoices then the prices and invoices will be increased by an equal amount of the retention. At the end of the project, the outstanding retention amount will then be credited to the Rentee when all other bills have been satisfactorily paid. CCS will not provide any bonding.

17. **Controlling Terms:** This proposal excludes any terms of Master Contract Agreements between the Rentee and their clients. If there are any conflicts between a Master Agreement and these Terms and Conditions then these CCS Terms and Conditions will take precedence. CCS will not accept settlements negotiated or change orders negotiated by Rentee with others or unilaterally determined by Rentee nor will CCS be required to Rentee or Rentee's clients (or other entities) decisions if CCS does not agree to them in writing prior to any negotiation.

18. **Payments by CCS:** In the event Rentee fails to procure or maintain Insurance or fees, assessments, charges and taxes, all as hereinbefore specified, CCS shall have the right, but shall not be obligated, to effect such insurance, or pay such fees and assessments, charges and taxes, as the case may be and in such event, the cost thereof shall be repaid by Rentee to CCS with the next ensuing installment of rental coming due hereunder. Rentee's failure to promptly repay CCS shall carry with it the same consequence, including interest at the highest legal rate, as a failure to pay any installment of rent hereunder.

19. **Remedies:** No right or remedy herein conferred upon or reserved to CCS is exclusive of any other right or remedy herein, or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given to CCS.

20. **Assignment:** Without the prior written consent of CCS first obtained, Rentee shall not (a) assign, transfer or pledge (i) this lease, or (ii) the equipment or any part subject of this lease, or (iii) any interest in this lease or the equipment subject hereof; nor shall Rentee sublet or lend the equipment or any part hereof, or permit the equipment or any part thereof to be used by anyone other than Rentee or Rentee's employees.

21. **Modification:** This instrument constitutes the entire agreement between CCS and Rentee and shall not be modified, amended altered, or changed except by a written agreement first signed by the parties hereto. Waiver by CCS of any provisions hereof in one or more instances shall not constitute a waiver as to any other instance.

22. **Limitations / Time to Bring Suit:** Rentee must bring any cause of action for the breach of this agreement by CCS within one year from the date the cause of action accrued.

23. **Default:** If Rentee with regard to any item or items of equipment fails to pay any rent or other amount herein provided with fifteen (15) days after the same is due and payable, or if Rentee with regard to any item or items of equipment fails to observe, keep or perform any other provision of this contract required to be observed, kept or performed by Rentee, CCS, in addition to any other remedies provided by law, shall have the right to exercise any one or more of the following remedies:

- a. Declare the entire amount of rent hereunder immediately due and payable as to any or all items of equipment, without notice or demand to Rentee; and/or
- b. Sue for and recover all rents, and other payments, then accrued or thereafter accruing, with respect to any or all items of equipment: and/or
- c. Take possession of any or all items of equipment, without demand or notice, wherever same may be located, without any court order or other process of law; in this regard Rentee authorizes CCS, its agents, servants, employees and assignees, to enter upon the premises of Rentee for the purpose of taking possession of such equipment. Rentee hereby waives any and all damages occasioned by such taking of possession. Any said taking of possession shall not constitute a termination of this lease as to Rentee's obligations and liabilities as to any or all items of equipment unless CCS expressly so notifies Rentee in writing; and/or
- d. Terminate this lease as to any or all items of equipment; and/or
- e. Pursue any other remedy at law or in equity

24. **LATE PAYMENT AND COLLECTION:** The Buyer agrees to pay in full any and all late charges as outlined below and in any manner reasonably requested by the Seller or the Seller's agents:

- a. Accounts will accrue late charges in the amount of 1 1/2 percent per month (or portion thereof) that the complete sale price (including freight) has not been executed
- b. All delinquent accounts shall be forwarded to **Dun and Bradstreet Receivables Management Service** for collection
- c. The Purchaser shall be solely responsible for any and all outstanding invoice amount plus any and all reasonable collection charges as stated herein.
- d. Collection charges shall be determined by the following fee schedule:

<u>Collection Rate</u>	<u>Age (Days) of Oldest Invoice</u>
8%	60-119
14%	120-179
22%	180-269
30%	270-359
33 1/3%	360 plus

- e. The minimum charge is \$100.00.
- f. In the event that attorney intervention is required in the collection of the account, additional charges set by Dun and Bradstreet will apply.

Notwithstanding any repossession, or any other action which CCS may take, Rentee shall be and remain liable for the full performance of all obligations on the part of Rentee to be performed under this rental agreement.