



SMART WASTE TERMS AND CONDITIONS

1. Regulated Medical Waste Services: In accordance with the terms and conditions contained herein, Daffenberg, LLC d/b/a **Smart Waste** ("Smart Waste") shall collect, transport, treat and dispose of all Regulated Medical Waste (as defined herein), excluding Non-conforming Waste, generated by Customer during the term of this Agreement. Smart Waste may refuse containers that are determined to be Non-conforming Waste at any time. Responsibility for transportation of Regulated Medical Waste collected from Customer shall transfer and vest in Smart Waste at the time the Regulated Medical Waste is loaded into a vehicle designated by Smart Waste. Customer shall have title to Regulated Medical Waste at all prior times, and shall hold all title to any Non-Conforming Waste at all times, whether the Non-Conforming Waste is refused for collection or returned to the customer for proper disposal after collection. All Regulated Medical Waste must be provided with a properly completed Manifest pursuant to 49 CFR 172.202. For the purposes of this Agreement, "Regulated Medical Waste" means waste or reusable material derived from the medical treatment of animals or humans, which includes diagnosis and immunization, or from biomedical research, which includes production and testing of biological products. Regulated Medical Waste is assigned to UN 3291, except for Regulated Medical Waste containing Category A infectious substances, which must be classified as Division 6.2 material described as an infectious substance and assigned to UN 2814 or UN 2900 as appropriate. No Category A materials may be discarded in the Regulated Medical Waste containers per 49 CFR 173.134. As defined in 29 CFR 1910.1030 and all other applicable laws, rules, regulations and guidelines; and trace chemotherapy discarded items which may have been contaminated provided that such items, including vials and syringes, shall be "empty" as defined in applicable laws, regulations and guidelines. For the purposes of this Agreement, "Non-Conforming Waste" shall mean any waste or other material not falling within the definition of Regulated Medical Waste including, but not limited to: (i) complete human remains; (ii) radioactive wastes; (iii) any listed or characteristic hazardous wastes, chemotherapeutic hazardous waste and substances as defined in any applicable laws regulations and guidelines; (iv) pharmaceutical waste, except as allowed under Smart Waste's waste acceptance policy; (v) any device, solution or waste containing mercury including dental wastes (amalgam and products, chair side traps, amalgam sludge or vacuum pumps); (vi) improperly segregated, labeled or packaged waste, including sharps not in designated sharps container; (vii) containers that are leaking, damaged or likely to create risk of exposure to employees or the general public; and (viii) any other material which Smart Waste may not collect, transport, treat or dispose in accordance with applicable laws, regulations or guidelines. Customer shall be liable for all injuries, losses and damages that result from any Non-Conforming Waste, due to packaging or contents, being collected, transported, treated or disposed by Smart Waste. For further clarification see Smart Waste's Waste Acceptance Policy attached as Exhibit B hereto, which may be updated from time to time at Smart Waste's sole discretion.

2. Term and Pricing: The term ("Term") of this Agreement shall be sixty (60) days from the date of this Agreement, and it shall automatically renew for successive terms equal to the original Term (each an "Extension Term") unless either party has given thirty (30) days written notice of intent to terminate prior to the next renewal date for this Agreement. All Extension Terms shall be subject to the terms and conditions hereunder. Smart Waste reserves the right to adjust the pricing attached as Exhibit A with thirty (30) days written notice to account for operational changes it implements to comply with documented changes in law, to cover increases in the cost of fuel, insurance, or residual disposals, or to otherwise address cost escalations. Smart Waste may charge Customer a fee to cover its administrative costs in the event that Customer changes its service requirements during the Term or any Extension Term. Smart Waste may change the price of any of its goods or services not covered by this Agreement at any time, without prior notice to Customer. In the event Customer terminates this Agreement prior to expiration of the term or any Extension Term, or fails to perform any of its obligations under this Agreement, Smart Waste shall have, without limitation, all rights and remedies provided by law or in equity, as well as the right to recover from Customer an amount, which the parties hereby acknowledge constitutes Smart Waste's liquidated damages and not a penalty, equal to fifty percent of the Customer's average monthly charge. Smart Waste shall have the right to terminate this Agreement at any time by giving Customer at least sixty (60) days written notice that it is unable to continue performing its obligations under this Agreement due to the suspension, revocation, cancellation or termination of any permit required to perform this Agreement or in the event that a change in any law or regulation makes it impractical or uneconomical, in Smart Waste's sole discretion, to continue performing services under this Agreement.

3. Billing: Smart Waste shall provide Customer with invoices that are due upon receipt. Customer agrees to pay a late charge on any amount owed to Smart Waste that is more than thirty (30) days old, at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by law. Customer shall bear any and all costs that Smart Waste may incur in collecting overdue amounts from Customer, including, but not limited to, reasonable attorneys' fees and court costs. Should any amounts due pursuant to this Agreement remain unpaid for more than thirty (30) days from the date of the debt's first invoice, Smart Waste shall have the option, at its sole discretion, to suspend service under this Agreement until the overdue amounts, including late charges and collection fees, are paid in full. In the event that Smart Waste suspends services under this Agreement for any reason, Smart Waste may remove all containers belonging to it from Customer's premises and assess a \$150.00 pick-up fee for such removal. Any non-compliant containers will be billed an additional container charge at the current container rate. Non-compliant containers include containers that are overweight, or in excess of 40 pounds, or holding Non-Conforming Waste.

4. Surcharge: Smart Waste may also impose a surcharge of \$100 in the event that Smart Waste attempts to pick-up Regulated Medical Waste at a Customer location, on either a scheduled pick-up or in response to a Customer request, and through no fault of Smart Waste, either (a) there is no Regulated Medical Waste for Smart Waste to pick up, (b) waste is not ready for pick-up or (c) the Customer location is closed.

5. Liability for Equipment: Customer shall have the responsibility for the care, custody and control of containers and other equipment owned by Smart Waste that is placed at Customer's premises, and Customer accepts the responsibility for the liability for any damage to the containers, equipment and its contents except when it is being physically handled by employees of Smart Waste. Customer further agrees to defend, indemnify and hold harmless Smart Waste from and against any and all claims for loss or damage to property, personal injury or death, resulting from or arising in any manner out of Customer's use, operation or possession of any containers and other equipment furnished under this Agreement. Any damage or loss to such containers and equipment, other than normal wear and tear, will be charged to Customer at full replacement value.

6. Indemnification: Smart Waste shall indemnify and hold Customer harmless from any liabilities arising from the gross negligence or willful misconduct of Smart Waste in the performance of its obligations under this Agreement. Customer shall indemnify and hold harmless Smart Waste from any liabilities arising from the gross negligence or willful misconduct of Customer, which shall include, but not be limited to, failure to properly store, package, label, or segregate Regulated Medical Waste and any liabilities relating to Non-Conforming Waste, whether or not collected, transported or treated by Smart Waste. Each party agrees to pay the reasonable attorneys' fees and costs incurred by the other in bringing a successful indemnification claim under this Paragraph. Customer agrees to pay Smart Waste's reasonable attorney's fees incurred for any successful defense by Smart Waste of a suit for indemnification brought against Smart Waste by Customer.

7. Compliance Materials: To the extent that Smart Waste provides Customer with any electronic or printed materials (the "Compliance Materials") it provides these materials subject to a limited license to Customer to use the Compliance Materials for Customer's own, non-commercial use. Smart Waste may revoke this license at its sole discretion at any time. Customer (1) may not copy or distribute the Compliance Materials in any manner, and (2) may not use or republish the Compliance Materials for or to any third party or audience, including but not limited to business/trade groups or associations, chambers of commerce, professional, fraternal or educational associations or reciprocating or cooperating service providers. Customer further acknowledges the prejudice that it causes to Smart Waste by its violation of the foregoing terms as well as the difficulty in calculating economic damage to Smart Waste as a result thereof, and therefore Customer agrees to pay to Smart Waste the sum of \$7,500.00 for each violation of those terms. Customer agrees to return all Compliance Materials to Smart Waste at Customer's expense at the expiration or termination of this Agreement. Smart Waste may charge Customer a fee for the failure to return Compliance Materials at the expiration of the Term of the Agreement.

8. Compliance with Laws: Smart Waste and any vendor or supplier will carry the necessary General Liability, Automobile Liability and Worker's Compensation Insurance as required by applicable State Law, and to comply with all federal and state laws, rules and regulations applicable to Smart Waste's performance under this Agreement. As of the

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date of this Agreement, Smart Waste and its vendors and suppliers have all necessary permits, licenses, zoning and other federal, state or local authorizations required to perform the services under this Agreement and will furnish copies of these documents to Customer upon request. Customer hereby agrees to comply with all federal and state laws, rules and regulations applicable to its handling of Regulated Medical Waste and its performance under this Agreement, including, without limitation, all applicable record keeping, documentation and manifesting requirements. Customer acknowledges that Customer has determined its desired frequency for services independent of Smart Waste. Therefore, Customer agrees to indemnify and hold Smart Waste harmless for any decisions around service frequency by Customer that do not comply with state regulations. Smart Waste and Customer shall keep and retain adequate books, records and other documentation and records consistent with applicable federal and state law, regulations, and guidelines pertaining to storage or handling of Regulated Medical Waste and the services to be performed under this Agreement.

9. Exclusivity: Customer agrees to use only Smart Waste for Regulated Medical Waste services during the Term of this Agreement and any Extension Terms.

10. Performance Limitations: Smart Waste shall not be responsible if its performance under this Agreement if the interruption or delay is caused by contingencies beyond Smart Waste's control, including, without limitation, acts of God, war, terrorism, blockades, riots, explosion, strikes, lockouts or other labor or industrial disturbances, fires, accidents to equipment, or injunctions or compliance with laws, regulations, guidelines or orders of any governmental body or instrumentality thereof.

11. Independent Contractor Status: Smart Waste's relationship with Customer under this Agreement is that of an independent contractor, and nothing in this Agreement shall be construed to designate Smart Waste as an employee, agent or partner of Customer, or in a joint venture with Customer.

12. Amendment and Waiver: Amendments to this Agreement, other than as provided in paragraph 2, shall be effected only by a written agreement signed by Customer and Smart Waste. No waiver shall be effective unless submitted in writing by the party granting such waiver. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement and no waiver of any breach or duty under this Agreement shall be deemed a waiver of any other breach or later instances of the same duty.

13. Severability: In the case any provision(s) contained in this Agreement is deemed to be invalid, illegal or unenforceable, that provision shall not affect the enforceability of any other provisions of this Agreement, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein. If that determination impairs the rights or increases the obligations of Smart Waste under the Agreement, then Smart Waste may in its sole discretion terminate this Agreement.

14. Entire Agreement: This Agreement, including any attachments, exhibits and amendments made in accordance with Paragraph 12, and Exhibit A Pricing attached hereto (which may be modified per Paragraph 2), constitutes the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with, respect to the subject matter of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns legal representative and heirs of the parties hereto provided, however, that Customer may not assign its rights or delegate its obligations under this Agreement without the prior written consent of Smart Waste, which consent of Smart Waste shall not unreasonably withhold.

15. Governing Law and Jurisdiction: This Agreement shall be governed by and in accordance with the laws of the State of Texas without regard to the conflicts of laws or rules of any jurisdiction, and any dispute regarding or arising from this Agreement shall be brought in a court of competent jurisdiction in Harris County, Texas, and Customer and Smart Waste agree to venue and jurisdiction in Harris County, Texas.

16. Notices: All required notices, or those which the parties may desire to give under this Agreement shall be in writing and sent to the parties at the addresses set forth below:

Smart Waste
P.O. Box 2783
Houston, TX 77252
Tel: 713-515-6007
info@smartwasteservices.com

Name: _____
Address: _____
City/St/Zip: _____
Phone: _____
Email: _____

17. Originals: A copy, PDF or facsimile of this Agreement shall be effective as an original.

18. Purchase Orders: Any terms or conditions contained in any Purchase Order, Purchase Order Agreement, or other invoice acknowledgment, Order by Customer or proposed at any time by Customer in any manner, which vary from, or conflict with time terms and conditions in the Smart Waste Service Agreement are deemed to be material alterations and are objected to by Smart Waste without need of further notice of objection, shall be of no effect, and in no circumstance binding upon Smart Waste unless expressly accepted in writing by Smart Waste. If Customer's standard purchase order form is provided to Smart Waste in connection with this Agreement, the terms and conditions for that Purchase Order will be superseded by the provisions of this Agreement and the use of the purchase order shall be only to facilitate Customer's payment of fees to Smart Waste. Written acceptance or rejection by Smart Waste of any such terms or conditions shall not constitute an acceptance of any other additional terms or conditions unless expressly accepted by Smart Waste in writing.

Agreed to by:

_____ **Date:** _____

_____ **Date:** _____

Printed Name: _____

Printed Name: _____



Sales Representative _____

Title: _____



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Exhibit A: Pricing Information

Boxes are approximately 28 gallons and can hold a maximum of 42 pounds per OSHA regulations.

The rates below do not include any sales tax or franchise fees, where applicable. Any additional applicable taxes or fees that arise during the term of the agreement will be added to the invoice. Smart Waste will notify customers prior to adding these additional taxes or mandated fees. Smart Waste does not charge Fuel Fees, Environmental Fees, or Document Fees.

PRICING INFORMATION INSERTED HERE

Any additional mandated taxes or fees that arise during the term of the agreement will be added to the invoice. Smart Waste will notify customers prior to adding these additional taxes or mandated fees. **Smart Waste DOES NOT CHARGE FUEL FEES, ENVIRONMENTAL FEES, OR DOCUMENT FEES.**

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EXHIBIT B: Regulated Medical Waste Acceptance Policy

Smart Waste Regulated Medical Waste Acceptance Policy (the “Policy”) requires compliance with all applicable laws, regulations or guidelines regarding the collection, transportation and treatment of Regulated Medical Waste as described in the Smart Waste Terms and Conditions. Federal Department of Transportation (“DOT”) Regulations require that a generator of Regulated Medical Waste certify that the documentation and packaging for transported Regulated Medical Waste complies with DOT Regulations regarding waste the identification, classification, packaging, labeling, shipping and manifest documentation. To ensure that neither Smart Waste nor the waste generator of Regulated Medical Waste violates any applicable laws, regulations or guidelines it is important that the parties understand the rules regarding the identification, classification, packaging, segregation, labeling, shipping, treatment and manifesting of Regulated Medical Waste. This Policy summarizes the minimum requirements for preparing your Regulated Medical Waste for collection, transportation and treatment by Smart Waste. This Policy may be updated from time to time at the sole discretion of Smart Waste, for a current version of this Policy, contact your Smart Waste representative.

Regulated Medical Waste

Smart Waste accepts Regulated Medical Waste generated in medical, diagnostic, therapeutic or research activities regarding humans and animals as well as sharps from various activities. As defined in the Smart Waste Terms and Conditions, “Regulated Medical Waste” means waste or reusable material derived from the medical treatment of animals or humans, which includes diagnosis and immunization, or from biomedical research, which includes production and testing of biological products. Furthermore, Regulated Medical Waste excludes complete human remains, pharmaceuticals, all DEA scheduled drugs, bulk chemotherapy, waste containing mercury and/or heavy metals, batteries of any type, cauterizers, non-infectious dental waste, solvents, reagents, corrosives, ignitable materials, bulk liquids, radioactive materials, and all hazardous waste as defined by Federal, State, or EPA laws, rules, guidelines, or regulations (collectively, “Excluded Materials”). Smart Waste cannot accept Excluded Materials even if packaged as Regulated Medical Waste. Separate protocols and policies apply for the disposal of Excluded Materials, and you need to contact your Smart Waste representative to discuss options for the collection, transportation, treatment, and/or disposal of Excluded Materials.

Waste Segregation, Preparation and Packaging

The generator of Regulated Medical Waste is solely responsible for the segregation, preparation and packaging of Regulated Medical Waste to avoid any mischaracterization, handling, treatment, exposure or accidental release into the environment. DOT regulations require that the containers used for Regulated Medical Waste must be rigid, leak proof, impervious to moisture, of sufficient strength for handling and transportation, sealed, and puncture resistant to any sharps contained in the Regulated Medical Waste. All Regulated Medical Waste must be accompanied by a Manifest as defined in the Smart Waste Terms and Conditions.

If containers are non-conforming because of either the contents, packaging or there is a concern of risk of exposure to Smart Waste employees or the general public, Smart Waste’s policy is to refuse to collect, transport, treat or dispose of non-conforming waste. If at any time after Smart Waste takes possession of materials from the generator of waste that are determined to be either excluded Materials or non-conforming, Smart Waste may return the materials to the generator for proper identification, segregation and packaging.

Accepted Regulated Medical Waste	Segregated and Identified Accepted Regulated Medical Waste	Unaccepted Regulated Medical Waste
Sharps including needles, syringes, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic materials, dental wires and other materials capable of penetrating the skin used in the treatment of humans and animals.	Trace Chemotherapy Contaminated Materials	Untreated Category A Infectious Substances
	Human or animal body parts, organs, tissues, and/ or surgical specimens.	Hazardous pharmaceutical waste and any DEA controlled substances
Waste or other materials generated in the treatment, diagnosis, or immunization of humans or animals or as a result of testing or research of biological materials	Non-hazardous pharmaceutical wastes certified by the generator.	Bulk chemicals, including but not limited to, formaldehyde, formalin, acids, alcohol, waste oil, solvents, reagents, and fixing agents
		Hazardous waste as defined by Federal or State laws, regulations, rules or guidelines
		Complete human remains
		Bulk chemotherapy waste
		Compressed gas containers, cylinders, inhalers, or aerosol cans
		Any mercury containing materials, devices, dental waste including thermometers, medical devices or instruments, any materials containing or in contact with amalgam