

## Waste Services Agreement

THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN \_\_\_\_\_, (CUSTOMER), LOCATED AT \_\_\_\_\_ AND RED ARC ENVIRONMENTAL, INC., LOCATED AT 2901 FM 741, CRANDALL, TX 75114 ("RedArc"). CUSTOMER AND RedArc, COLLECTIVELY REFERRED TO HEREIN AS "THE PARTIES", HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS EFFECTIVE ON \_\_\_\_\_.

### 1. Waste Services:

- a. **Accepted Waste:** Red Arc Environmental, Inc. ("Red Arc") may collect, transport, store, treat, dispose, or otherwise handle Accepted Waste generated by the customer in Red Arc's offering of services under this agreement. The term "Accepted Waste", as used in this agreement, means any waste material the customer offers for transportation by Red Arc that is a Hazardous Waste (as defined in 40 CFR §261.3), industrial process waste, Universal Waste (as defined in applicable federal or state laws), recyclable material or non-hazardous waste; and for which (1) Red Arc has received written approval from the destination facility in the form of a signed waste profile, where required and (2) Red Arc has provided a quote for transportation or disposal of the material. Red Arc may require the customer to provide a sample of the offered material for laboratory analysis before it is deemed an Accepted Waste. The customer understands it is the customer's sole responsibility to accurately represent the contents of Accepted Waste to Red Arc and its partners. Accepted Waste may include other types of waste not described above, as accepted by Red Arc in its sole discretion and in accordance with this agreement.
- b. **Non-conforming waste:** Accepted Waste shall not include, and Red Arc may decline to provide services to the customer for any offered material that is non-conforming. "Non-conforming Waste" for the purposes of this agreement means medical or biohazardous waste (as defined by applicable federal, state and local laws), DEA controlled substances, radioactive material, explosives or any other material that would cause Red Arc to be in noncompliance with any laws, permits or authorizations governing Red Arc's provision of services. Any waste that is offered for transportation and that is misrepresented by the customer, as well as any waste rejected by the destination facility for discrepancy, shall be considered Non-conforming Waste. The customer agrees to pay all penalties, fees and expenses incurred by Red Arc in handling Non-conforming Wastes.
- c. **Service Procedures:** Upon request for services, the customer shall provide Red Arc with the information necessary to perform the services, as required by Red Arc in its sole discretion. This may include but is not limited to detailed information about waste materials that are offered for transportation and their constituents. Red Arc shall provide a price quote for services following the receipt of a Waste Survey from the customer and the approval of a waste stream profile from the destination facility, if applicable. A service date shall be agreed upon by both parties following the acceptance of the price quote and agreement to these Terms and Conditions. If recurring services are required, both parties shall agree to a recurring service schedule. Red Arc may provide the customer, at the customer's request, with containers, labels, shipping papers, and other supplies relating to services. It is the customer's responsibility to ensure that all Accepted Waste is correctly labeled and prepared for shipment prior to offering it for transportation by Red Arc. Any assistance offered by Red Arc or its employees in labeling, packaging, or otherwise preparing shipping documents for Accepted Waste shall not be construed as relieving the customer of its responsibilities as a waste generator and offeror of the material for transport. Red Arc, to protect the safety of its employees, may in its sole discretion decline to collect containers that are improperly labeled, packaged or are otherwise unfit for shipment. The customer agrees to compensate Red Arc in accordance with this agreement.
- d. **Transportation and Title of Waste:** Red Arc shall transport Accepted Waste to a disposal facility licensed and authorized to receive, store, treat or consolidate the Accepted Waste. Title of, and responsibility for, the transportation of Accepted Waste collected from the customer shall transfer to and vest in Red Arc at the time such Accepted Waste is loaded onto Red Arc's vehicle. The customer shall retain title to Accepted Waste at all times prior to such waste being loaded onto Red Arc's vehicle. Red Arc shall not have, and the customer shall retain, title to any and all Non-conforming Waste at all times, whether such Non-conforming Waste is loaded onto Red Arc's vehicle, refused for collection or returned to the customer for proper disposal by the customer after the initial collection unless Red Arc expressly agrees, in writing, to accept such Non-conforming Waste.
- e. **Modification to Services:** Red Arc may, from time to time and in its sole discretion, modify services (referred to herein as "Modifications") in response to changing job conditions. Reasons for Modifications may include, but are not limited to concerns about employee safety, changes in regulations, unexpected job-related expenses, and Non-conforming waste. Red Arc shall notify the customer in writing, including electronic communication, of any Modifications within a reasonable amount of time. Modifications due to concerns about worker safety shall not require notice. Customer is taken to have accepted Modifications if Customer accepts services after receiving notice of the Modifications.

### 2. Fees and Invoicing:

- a. **Fees for Services:** In exchange for providing services, Customer agrees to pay Red Arc the fees at the rate(s) set forth in the price quote together with any taxes assessed thereon (collectively, the "Fees"). If Customer is exempt from any relevant tax obligations, Customer shall provide Red Arc a valid tax exemption certificate at the time this agreement is executed. The termination of this agreement shall not affect Customer's obligation to pay Fees for services already provided under this agreement. Because disposal, fuel, and transportation costs constitute a significant portion of the cost of Red Arc's services provided hereunder, Customer agrees that Red Arc may increase the Fees hereunder proportionally to adjust for any increase in such costs, including charges for demurrage, where applicable. Customer agrees that Red Arc may also increase rates from time to time to adjust for increases in the Consumer Price Index, and Customer agrees that Red Arc may also proportionally pass through to Customer any increases in taxes, fees or other governmental charges assessed against or passed through to Red Arc (other than income or real property taxes). Red Arc may make Modifications to the services, as provided above. Increases in the Fees resulting from Modifications shall be presented to Customer in the form of a quote revision, change order form or other written communication. Customer's acceptance of service will after constitute Customer's consent to said Modifications and the fees resulting thereof.
- b. **Invoicing and Payments:** Red Arc shall provide Customer with invoices for the Fees, each of which are due within thirty (30) days from the date of the invoice. Interest on any past due amount of Fees shall accrue at the rate of one- and one-half percent (1.5%) per month or at the maximum rate allowed by law, whichever is lower. Customer shall bear any and all costs that Red Arc may incur in collecting overdue amounts from Customer, including, without limitation, reasonable attorney fees and costs.

### 3. Term and Termination:

- a. The term (the "Term") of the agreement shall begin on the date a Price Quote is executed and continue for an Initial Term of 36 months, unless earlier terminated as provided herein. Upon expiration of the Initial Term or a Renewal Term (as defined herein) each Term shall automatically renew for subsequent 36-month periods unless either party gives the other written notice of termination at least thirty (30) days prior to expiration of the then-current Term.
- b. Either party may terminate this agreement for any reason given thirty (30) days' notice to the other party in writing. Electronic communication, such as email, is sufficient to meet the requirements of notice.

### 4. Indemnification:

- a. Red Arc shall indemnify and hold Customer harmless from any claims arising from the gross negligence or willful misconduct of Red Arc in the performance of its obligations under this agreement.

b. CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS RED ARC AND ITS AFFILIATES AND THEIR OWNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS, INCLUDING ANY REPRESENTATIVES, FROM ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, DEMANDS, LIABILITIES OR LOSSES, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES AND COSTS, ARISING FROM THE NEGLIGENCE, GROSS NEGLIGENCE, OR INTENTIONAL MISCONDUCT OF CUSTOMER, WHICH SHALL INCLUDE, WITHOUT LIMITATION, FAILURE TO PROPERLY STORE, PACKAGE, LABEL, OR SEGREGATE ACCEPTED HAZARDOUS WASTE OR PROPERLY PREPARE THE REQUIRED MANIFEST APPLICABLE TO ACCEPTED HAZARDOUS WASTE, AND ANY CLAIMS, LIABILITIES OR LOSSES RELATING TO EXCLUDED WASTE, WHETHER OR NOT COLLECTED, TRANSPORTED, TREATED, RECYCLED, STORED, OR DISPOSED OF BY RED ARC.

**5. Compliance with Laws:**

- a. Red Arc has now and shall maintain any insurance coverage required by state or federal law applicable to the performance of the services and will use its best efforts to confirm that its Representatives also maintain such insurance coverage, where applicable. Red Arc represents and warrants to Customer that Red Arc is properly licensed and has all necessary permits to perform the services in each jurisdiction in which the services are to be performed. Further Red Arc will use its best efforts to confirm that its Representatives are properly licensed and maintain all necessary permits, where applicable.
- b. Customer represents and warrants to Red Arc that all hazardous waste identified as Accepted Waste is properly classified, marked, labeled, and otherwise identified in accordance with applicable federal, state, and local laws. Customer shall indemnify and hold harmless Red Arc, its Representatives and affiliates, and their owners, officers, managers, directors, employees, contractors and agents from any and all claims, liabilities or losses, including, but not limited to reasonable attorney fees and costs, arising from Customer's determination of services frequency.
- c. Each of Red Arc and Customer shall keep and retain adequate books and records and other documentation as required by federal, state, and local laws applicable to the provision of such services.

**6. Independent Contractor:**

The Agreement does not, and shall not be construed to, provide that either party in any manner controls the operations of the other party or the manner in which such party complies with its obligations hereunder. For all purposes, Red Arc is an independent contractor. Nothing herein is intended to or shall be construed to constitute or establish a joint venture or partnership between the parties. Each party is responsible for its own business expenses generally, including, without limitation, expenses of performing its obligations under the Agreement and these Terms and Conditions, and for the payment of all taxes relating to its own business activities.

**7. Limitation on Liability:**

Red Arc shall not be liable for any consequential, punitive, special, or exemplary damages or losses of Customer relating to this agreement, regardless of the foreseeability or cause thereof.

**8. Force Majeure:**

Red Arc shall not be liable for any loss, failure, or delay in performing services, and Red Arc's performance hereunder shall be further excused or suspended, as the case may be, for any cause beyond the control of Red Arc or its Representatives, including, without limitation, the following: fires, explosions, floods, storms, acts of God, governmental acts, orders or regulations, hostilities, acts of war, acts of terrorism, civil disturbances, strikes, riots, labor difficulties, machinery breakdowns, transportation contingencies, undue hardship or difficulties in obtaining parts or supplies, delays of carriers, or any other cause beyond the control of Red Arc or its Representatives. In such instance, Red Arc shall promptly provide written notice to Customer of such delays and, if practicable in Red Arc's sole discretion, Red Arc agrees to use its commercially reasonable efforts to resolve such delay. Red Arc shall further provide written notice to Customer when Red Arc is, or reasonably expects to, be able to resume provision of the services.

**9. Governing Law; Venue:**

This agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to any principle of conflict-of-laws that would require the application of the substantive or procedural law of any other jurisdiction. EACH PARTY HEREBY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN DALLAS COUNTY, TEXAS, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ALL CLAIMS IN RESPECT OF THE ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. EACH PARTY ALSO AGREES NOT TO BRING ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY OTHER COURT. EACH PARTY HERETO WAIVES ANY DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**10. Entire Agreement:**

This agreement constitutes the entire understanding between the parties with respect to the subject matter contained herein. This agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto. This agreement may not be amended except in a writing executed by the parties hereto or their duly authorized representatives; provided, that these Terms and Conditions may be unilaterally amended by Red Arc upon thirty (30) days' notice to Customer, or immediately upon the mutual written consent of the parties. Any subsequent quotes provided to the Customer by Red Arc are presumed to be addendums to this Agreement.

**11. Effect on Successors in Interest:** The Agreement and these Terms and Conditions shall inure to the benefit of and be binding upon the heirs, administrators, executors and successors of each of the parties hereto.

**12. Severability:**

If any provision of the Agreement or these Terms and Conditions is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement and these Terms and Conditions shall remain in full force and effect. Any provision of the Agreement and these Terms and Conditions held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

**13. Survivability:**

Notwithstanding any termination or expiration of this Agreement, all rights and remedies available to the parties under the Agreement and these Terms and Conditions that are not performed or cannot be performed during the Term shall survive the termination of the Agreement.

**14. Assignment:**

Customer shall not assign the rights or obligations of Customer under this agreement and these Terms and Conditions without the prior written consent of Red Arc.

**15. Counterparts:**

The Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same Agreement.

**16. Acknowledgement and Authority:**

By entering into this agreement, the parties hereby represent that they agree on the Fees listed in the price quote and have read these Terms and Conditions, understand them, and agree to all the terms and provisions contained herein. Additionally, each party warrants and represents that each party and their signed representative below have the full right, power, and authority to enter into this agreement.

**FOR RedArc:**

**FOR CUSTOMER:**

By \_\_\_\_\_,

By \_\_\_\_\_,

**Zechariah Wilson**

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

**CEO**

**Title:** \_\_\_\_\_