

## **TERMS AND CONDITIONS FOR AQUATICONTROL WEBSITE USAGE**

© 2006 AquatiControl Technology, Inc. All rights reserved.

### **Website Usage Agreement (the “Agreement”) between AquatiControl Technology, Inc. (“AquatiControl”) and the User (“You” or “User”)**

Your access to the AquatiControl Website (the “Site”) constitutes Your agreement with the following terms and conditions. **If You do not agree with this Agreement, do not access or use the Site.** If you breach any of the terms and conditions contained in this Agreement, your authorization to access and use the Site immediately terminates and any Materials that you have downloaded or printed must be destroyed.

AquatiControl reserves the right to change this Agreement from time to time and any modification to this Agreement by AquatiControl will be effective upon posting to the Site. Your continued use of the Site after the posting of a modification to this Agreement constitutes Your acceptance of the modification. Your use of the Site will be subject at all times to the most current version of this Agreement. It is important that You review this Agreement regularly to ensure that You are aware of any modifications to this Agreement.

#### **1. Operator**

The Site is operated by AquatiControl Technology, Inc., a company incorporated under the laws of Colorado whose principal business address is 3820 S Federal Blvd, Sheridan, CO 80110. AquatiControl makes no representation that the Site, or Materials available through it, are appropriate or available for use at other locations outside the United States, and access to the Site from territories where the Site or Materials are illegal is prohibited. If You access the Site from a location outside the United States, You are responsible for compliance with all local laws.

#### **2. Intellectual Property Rights**

a. Reservation of Rights. The information and materials provided on and through the Site, including any data, text, graphics, images, audio and video clips, and logos, (collectively the “Materials”), as well as their arrangement are protected by international copyright, trademark, patent and/or other intellectual property laws. The Materials are provided for informational purposes only. Except as expressly provided for in this Agreement, AquatiControl and/or its licensors and suppliers retain any and all right, title and interest in and to the Materials. You may not remove or alter any proprietary notices, labels, or trademarks/service marks contained on the Materials or in the Site. You may not copy, modify, translate, publish, perform, broadcast, transmit, distribute, display, prepare derivative works of, sell or otherwise exploit any Materials appearing on or through the Site for public or commercial purposes without our prior written consent and that of our licensors or suppliers if required. In addition, You agree not to use any data mining, robots, or similar data gathering and extraction methods in connection with the Site. Use of the Materials in violation of this Section 2 is expressly prohibited and may subject you to civil and criminal penalties.

b. Trademarks. AquatiControl and the AquatiControl Logo are trademarks of AquatiControl Technology, Inc. All other trademarks are the property of their respective owners. You are not permitted to use any trademark displayed on this Site without the prior written consent of AquatiControl or the owner of such trademark.

c. Any rights granted to You by AquatiControl or its suppliers or licensors to the Materials will not apply to the design, layout or look and feel of the Site or the Materials. Each of the foregoing is protected by trademark, trade dress, unfair competition and other laws and may not be copied or imitated in whole or in part.

### **3. Acceptable Use Policy**

While using the Site, You agree to comply with all applicable laws, rules and regulations and agree not to engage in unacceptable use of the Site. You agree not to:

- a. transmit or otherwise make available in connection with the Site:
  - any material that to a reasonable person may be abusive, obscene, pornographic, offensive, defamatory, libelous, unlawful, threatening, harassing, vulgar, an invasion of privacy or publicity rights or otherwise objectionable, or would give rise to civil or criminal liability;
  - any materials that actually or potentially infringe the copyright, trademark, patent, trade secret or other intellectual property right or moral right of any person;
  - any unsolicited or unauthorized advertising, promotional materials, junk mail or spam; or
  - any content or information that encourages conduct that constitutes a criminal offense or that encourages or provides instructional information about illegal or potentially illegal activities.
- b. create a false identity or to otherwise attempt to mislead any person as to the identity or origin of any communication;
- c. upload, post or otherwise transmit through the Site any material, including but not limited to viruses, worms, Trojan horses or other harmful or disruptive files, that is likely to cause harm to AquatiControl's or anyone else's computer systems;
- d. engage in spamming or flooding;
- e. collect, harvest, mine or obtain by any other manner information about others, including but not limited to, phone numbers, email addresses, and other personal information;
- f. restrict or inhibit other users from visiting the Site, including without limitation, by means of "hacking" or defacing any portion of the Site;
- g. "frame" or "mirror" any part of the Site without our prior written consent; or
- h. use any Materials in a manner that infringes the intellectual property rights or other rights of any third party.

You further agree not to (i) interfere with or disrupt any other user's quiet enjoyment of the Site; or (ii) interfere with or disrupt or attempt to interfere with or disrupt the security of the Site or otherwise cause harm to the Site.

### **4. Your Information**

While AquatiControl does provide You with an opportunity to provide comments or ask questions regarding the Materials posted on the Site or our business, we do not want nor do we solicit confidential or proprietary information from You. Any unsolicited

information you provide, including but not limited to feedback, suggestions, data, or plans or ideas for products or services, shall be deemed non-proprietary and non-confidential and AquatiControl shall have no obligation to protect such information from further disclosure or distribution. By providing us with such information, You are granting us an unrestricted and irrevocable right to reproduce, use, publish, broadcast, disclose, display, perform, modify, transmit, distribute or otherwise use and exploit the information without restriction and without compensation.

## **5. Availability**

AquatiControl makes reasonable efforts to ensure that the Site is available 24 hours a day 7 days a week. You agree that from time to time the Site or portions thereof may be inoperable or inaccessible for any reason, including, without limitation, (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which AquatiControl may undertake from time to time; or (iii) causes beyond the control of AquatiControl or which are not reasonably foreseeable by AquatiControl. Some Materials on the Site may have been created in file formats which are not error-free and AquatiControl does not guarantee that the Site will not be affected by such errors. You are responsible for all costs and charges that you may incur in order to access and use the Site and the Materials.

## **6. Linking**

As a convenience to You, the Site may contain links to other websites (“Linked Sites”) that may not be owned or operated by AquatiControl. The provision of such links does not constitute an endorsement by AquatiControl of the Linked Sites or their content. AquatiControl has no control over the Linked Sites and accepts no responsibility for the contents of a Linked Site or to any problems which may arise as a result of such linking, including, but not limited to, computer viruses and service interruptions.

## **7. Third Party Suppliers**

References on the Site to any products or services provided by third parties (“Third Party Suppliers”) or the posting on the Site of Materials provided by Third Party Suppliers regarding their products or services does not constitute the approval, endorsement or sponsorship of such products or services by AquatiControl. Third Party Suppliers are solely responsible for the information they provide. Any correspondence or business dealings between You and such third parties, including any related terms and conditions, warranties or representations related to such dealings are solely between You and the Third Party Supplier(s). Please see our Warranty Policy for additional information.

## **8. DISCLAIMER OF WARRANTIES**

THE SITE, AND ALL MATERIALS ACCESSIBLE THROUGH THIS SITE, ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. WITHOUT LIMITING THE

FOREGOING, AQUATCONTROL MAKES NO WARRANTY THAT: (i) THE SITE AND MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (ii) ANY ERRORS OR DEFECTS IN THE SITE, OR MATERIALS, WILL BE CORRECTED; OR (iii) THE QUALITY OF THE SITE OR ANY PRODUCTS OR SERVICES PURCHASED BY YOU OR ACCESSIBLE THROUGH THE SITE WILL MEET YOUR REQUIREMENTS AND EXPECTATIONS.

THE USE OF THE SITE AND MATERIALS IS AT YOUR OWN DISCRETION AND RISK AND WITH YOUR AGREEMENT THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM SUCH ACTIVITIES. AQUATCONTROL ASSUMES NO LIABILITY FOR ANY COMPUTER VIRUS OR OTHER SIMILAR SOFTWARE CODE THAT IS DOWNLOADED TO YOUR COMPUTER FROM THE SITE OR IN CONNECTION WITH ANY SERVICES OR MATERIALS OFFERED THROUGH THE SITE OR THE LINKED SITE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM AQUATCONTROL OR THROUGH OR FROM THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT OR IN AQUATCONTROL'S WARRANTY POLICY. THE SITE AND MATERIALS MAY INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES OR TYPOGRAPHICAL ERRORS. AQUATCONTROL MAY MAKE CHANGES TO THE SITE OR THE MATERIALS, INCLUDING PRICES, AT ANY TIME AND IN ITS SOLE DISCRETION WITHOUT NOTICE. THE SITE AND MATERIALS MAY BE OUT OF DATE. AQUATCONTROL MAKES NO COMMITMENT TO UPDATE THE SITE OR THE MATERIALS.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED TO NINETY (90) DAYS.

#### **9. LIMITATION OF LIABILITY**

IN NO EVENT, INCLUDING NEGLIGENCE, WILL AQUATCONTROL, ITS AFFILIATES, SUBSIDIARIES, PARTNERS, LICENSORS OR SUPPLIERS, NOR OUR OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS, LOST TIME, LOST SAVINGS, LOST DATA, LOST FEES, OR EXPENSES OF ANY KIND IN ANY MANNER, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THESE LIMITATIONS WILL APPLY, WHETHER OR NOT FORESEEABLE, EVEN IF AQUATCONTROL HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES AND ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR TORT, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE SITE AND MATERIALS, THE

STATEMENTS OR ACTIONS OF ANY THIRD PARTY ON OR THROUGH THE SITE, ANY DEALINGS WITH VENDORS OR OTHER THIRD PARTIES, ANY UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, ANY INFORMATION THAT IS SENT OR RECEIVED OR NOT SENT OR RECEIVED, ANY FAILURE TO STORE OR LOSS OF DATA, FILES, OR OTHER CONTENT, ANY SERVICES AVAILABLE THROUGH THE SITE THAT ARE DELAYED OR INTERRUPTED, OR ANY WEB SITE REFERENCED OR LINKED TO FROM THIS SITE. Some jurisdictions, states, or provinces do not allow the exclusion or limitation of incidental or consequential damages, so the limitations or exclusions included in this Agreement may not apply, but shall be construed to the greatest extent possible under applicable law. All other limitations provided under applicable law, including statutes of limitation, shall continue to apply.

#### **10. Privacy**

When you request additional information or purchase products via the Site, You must provide us with certain information, including Your name, business address, contact information and payment information. To understand how we use that information, please review AquatiControl's Privacy Policy, the terms of which are incorporated into this Agreement by reference.

#### **11. Indemnification**

You agree to indemnify, defend and hold AquatiControl, its licensors, suppliers, affiliates and subsidiaries, and their respective officers, agents, directors, employees and assigns, harmless from any loss, liability, damages or claim, including reasonable attorneys' fees and costs, that arise directly or indirectly from (i) your activities in connection with the Site, (ii) a breach of this Agreement, including, but not limited to, any violation of the acceptable use policy, or (iii) any allegation that any information that You provide via the Site infringes or otherwise violates the copyright, trademark, trade secret or other intellectual property, privacy or other rights of any third party. You also agree to reimburse on demand any and all indemnified parties for any losses incurred by such indemnified parties to which this indemnification provision relates.

#### **12. Governing Law, Jurisdiction and Venue**

This Site is controlled by AquatiControl Technology, Inc. from its offices within the State of Colorado. Your use of the Site and this Agreement shall be governed in all respects by the laws of the United States of America and the State of Colorado, U.S.A., without regard to conflict of laws principles. The District Court for the City and County of Denver, State of Colorado, and the United States District Court for the District of Colorado shall have sole and exclusive jurisdiction and venue over any dispute arising out of or in connection with this Agreement, and You hereby submit to the jurisdiction of said courts.

#### **13. Copyright Infringement Policy**

In accordance with the requirements set forth in the Digital Millennium Copyright Act, Title 17 United States Code Section 512(c)(2) ("DMCA"), AquatiControl will investigate notices of copyright infringement and take appropriate remedial action. If

You believe that any Materials on the Site or on Linked Sites have been used or copied in a manner that infringes your work, please provide a written notification of claimed copyright infringement to the Designated Agent for the Site containing the following elements as set forth in the DMCA:

- a physical or electronic signature of the owner of the copyright interest that is alleged to have been infringed or the person authorized to act on behalf of the owner;
- identification of the copyrighted work(s) claimed to have been infringed;
- identification of the Material(s) that You claim to be infringing and which You request be removed from the Site or access to which is to be disabled along with a description of where the infringing Materials are located;
- information reasonably sufficient to allow us to contact You, such as a physical address, telephone number and an email address;
- a statement by You that you have a good faith belief that the use of the Materials identified in your written notification in the manner complained of is not authorized by You or the copyright owner, its agent or the law; and
- a statement by You that the information in your written notification is accurate and that, under penalty of perjury, You are the copyright owner or authorized to act on behalf of the copyright owner.

AquatiControl designated agent for the written notification of claims of copyright infringement is:

AquatiControl Technology, Inc.  
3820 S Federal Blvd  
Sheridan CO 80110.  
Fax: (303) 761-1499  
Email: info@aquaticontrol.com

#### **14. Miscellaneous**

This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof. The failure by AquatiControl to enforce any provision of this Agreement shall not operate as a waiver of such provision. Section headings are for convenience only and have no legal effect. If any provision of this Agreement is unenforceable, such provision may be modified or limited in its effect to the extent necessary to cause it to be enforceable. If any provision cannot be so modified or limited, then such provision shall be severed, and the remainder of the Agreement shall remain in full force and effect.