

## **MEDWASTE TRACKER TERMS AND CONDITIONS**

NOTICE TO CUSTOMER: USE OF THE MEDWASTE TRACKER<sup>SM</sup> CONTAINER CONSTITUTES ACCEPTANCE OF THE TERMS AND CONDITIONS LISTED BELOW, EVEN IF THIS DOCUMENT IS NOT SIGNED AND RETURNED. THIS IS A LEGALLY BINDING AGREEMENT. PLEASE REVIEW THE TERMS AND CONDITIONS CAREFULLY. IF YOU HAVE ANY QUESTIONS ABOUT HOW TO COMPLY PLEASE CONTACT YOUR WM REPRESENTATIVE FOR FURTHER DETAIL.

THESE TERMS AND CONDITIONS, consisting of the terms and conditions set forth herein and Exhibit A, and definitions in Exhibit B (all of the foregoing being collectively referred to as the "Terms"), are made as of the Effective Date shown above by and between the Customer named above, ("Customer" or "You") and WM Healthcare Solutions, Inc. ("WMHS"). Sections 4, 6, 7, 9, 10, 11, 12, 13, 14, 15 and 17 shall survive any termination of these Terms.

### **TERMS AND CONDITIONS**

These Terms govern (a) your use of the WM Healthcare Solutions MedWaste Tracker<sup>SM</sup> container (the "Container") in connection with the treatment and disposal of medical waste programs (each a "Program"); and (b) the relationship between WMHS and the Customer as a user of the Container and Program. Under the Program, WMHS sells proprietary Containers. Acceptable Waste (also referred to as Medical Waste (as defined in Exhibit B) may be placed in the Container and mailed to the facility designated on the Container or by WMHS. WMHS provides treatment and disposal services for Acceptable Waste pursuant to these Terms and Conditions. If you have any questions regarding these Terms, consult WMHS' MedWaste Tracker<sup>SM</sup> Web Site (currently: [www.MedWaste.wm.com](http://www.MedWaste.wm.com), the "Web Site") or call WM Healthcare Solutions at 1-866-931-6321.

- 1. RETURNS.** Customer may return the unused Container within ten (10) days (the "Return Period") from the day Customer received the Container by doing one of the following during the Return Period: (a) return the Container to the place of purchase; or (b) contact WMHS and promptly complete all return instructions. No refund will be provided unless agreed to by WMHS in writing.
- 2. LIMIT ON PROGRAM AVAILABILITY.** The Program is not available to Customers located outside of the continental United States.
- 3. MEDICAL WASTE TREATMENT AND DISPOSAL SERVICES.** Subject to these Terms, upon receipt and acceptance of a Container and subject to limits set forth in Section 9 herein, WMHS will: (a) treat and dispose of Acceptable Waste, which is solely Medical Waste as defined in Exhibit B (examples of which are listed on the Web Site) in accordance with federal, state and local laws and regulations, and (b) provide required documentation of receipt and treatment and disposal of Acceptable Waste.
- 4. TITLE TO CONTAINER.** Until WMHS receives and accepts the Container subject to Section 9 herein: (a) title to and risk of loss of the Container and its contents will remain with Customer; and (b) Customer is solely responsible for the contents of the Container.
- 5. UNUSED CONTAINERS.** Unless otherwise agreed by WMHS in writing, WMHS will not be obligated to give a refund for unused Containers.
- 6. PACKAGING.** Customer shall pack and seal the Container strictly in accordance with the instructions included with the Container (the "Packing Instructions").
- 7. SHIPPING.** Customer shall comply with all shipping instructions. Shipping instructions are included with each Container. They may also be obtained on the Web Site. If you have purchased prepaid shipping with your Container, you will either have received a prepaid return shipping label (the "Prepaid Label") with your Container or you may obtain one via the Web Site.
- 8. ADDITIONAL SHIPPING CHARGES.** (a) You remain responsible for all charges of shipping the Container to WMHS, including, without limitation, increases imposed by the shipper after you purchase a Prepaid Label. If the shipper identified on the Prepaid Label will not ship the Container, WMHS' sole obligation will be to refund the actual shipping charge received by WMHS. This obligation is conditioned upon receipt of written request for such refund prior to six months from the Effective Date of this Agreement as shown on the first page of this Agreement. (b) You remain responsible for all charges in excess of weight limits set forth on Exhibit A. If you select a monthly charge, additional charges will be applied should weights or frequency of shipments exceed limitations of a monthly service agreement set forth as Exhibit A. (c) You agree to allow WMHS to charge your credit card or bill you monthly for services should you select a monthly service agreement or a one-time purchase of a Container.

9. NON-CONFORMING WASTE. The Container may only be used for mailing Medical Waste (the "Acceptable Waste") via the United States Postal System, to WMHS. Examples of Acceptable Waste are provided on the Web Site. Waste will be considered non-conforming if it has constituents, characteristics, components or properties not included within the definition of Acceptable Waste. All such materials will be referred to as "Non-Conforming Waste." If WMHS determines that any Container contains Non-Conforming Waste, WMHS may, in its sole discretion, and at Customer's sole cost and expense: (a) reject the Container and return the Non-Conforming Waste to Customer; or (b) treat and dispose of the contents of the Container and Customer shall pay for any and all costs associated with treating and disposing of the Non-Conforming Waste. WMHS will never take title to Non-Conforming Waste, and title to such waste shall remain with Customer.

10. CHARGES FOR FAILURE TO COMPLY WITH TERMS AND INSTRUCTIONS; NON-CONFORMING WASTE; CHANGED CONDITIONS; AND ADDITIONAL SERVICES. WMHS reserves the right to bill additional amounts for any of the following: (a) any Container exceeding its specified maximum weight; (b) costs associated with handling any Non-Conforming Waste; (c) shipping materials in the wrong Container or mixing materials in a Container; (d) additional shipping charges beyond the amounts prepaid for any Prepaid Label; (e) any costs or expenses incurred by WMHS caused by Customer's failure to comply with these Terms and Conditions; or (f) any costs related to changes in applicable law occurring after the date of purchase of the Container.

11. PAYMENT TERMS. Payments are due within thirty (30) days of the invoice date. WMHS reserves the right to charge a late fee no greater than that allowed by law on balances not paid within thirty (30) days of the date of the invoice. Prices are subject to change at any time without notice; provided however, that Customers under automatic or periodic replenishment shall receive prior notice of any price changes.

12. WARRANTY. WMHS warrants: (a) the design of the Container complies with the USPS mailability standards DMM 601; (b) if the Container is packed, sealed and shipped strictly in accordance with the Packing Instructions, it is adequate to transport Acceptable Waste to WMHS' facility from points within the continental United States under ordinary commercial shipping conditions; and (c) that it will handle, manage, treat, process and dispose of the Acceptable Waste in a safe and workmanlike manner and in full compliance with all valid and applicable statutes, ordinances, orders, rules and regulations of the federal, state and local governments in whose jurisdictions such activities are performed under these Terms. Within a reasonable time after receipt of the Container, WMHS will, upon request, provide written confirmation, via e-mail or on the Web Site, of the Acceptable Waste. Other than as expressly warranted herein, the Container is provided "as is," and WMHS disclaims all warranties, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose.

13. INDEMNITY. Provided Customer complies with these Terms, WMHS will indemnify, defend and hold harmless Customer from and against any and all claims and damages, causes of action, costs, reasonable attorneys' fees, losses, or liability arising out of WMHS' breach of these Terms or violation of law. Customer will indemnify, defend (with counsel as reasonably approved by WMHS) and hold harmless, WMHS and its directors, shareholders and employees from and against any and all claims and damages, causes of action, costs, reasonable attorneys' fees, losses, or liability arising from the use, packing and/or shipping of the Container (prior to acceptance by WMHS), any contents packaged in the Container, breach of these Terms, violation of any applicable city, county, state or federal law, rule or regulation by Customer or any carrier shipping the Container or any matter related to Non Conforming Waste. This Section will survive any termination of the parties' relationship.

14. LIMITATION ON LIABILITY. Other than the obligations of WMHS set forth in these Terms: (a) neither WMHS nor its suppliers, officers, agents, affiliates, shippers, contractors and employees shall be re-sponsible or liable with respect to the Container, or any use thereof, under any theory of contract, negligence, strict liability or other theory; (b) in no event shall WMHS be liable or responsible for any matter beyond WMHS' reasonable commercial control; and (c) in no event shall WMHS be liable to Customer for any amount in excess of the amount received by WMHS for the purchase of this Container.

15. GOVERNING LAW AND VENUE. The Terms will be interpreted in accordance with the laws of the State of Texas, without regard to its choice of law provisions, as though all acts and omissions occurred in the State of Texas. All disputes arising under these Terms will be brought in a state or federal court in Houston, Texas, and, in such instance, Customer: (a) waives any objection which it might have now or hereafter to the exclusive venue of any such litigation, action or proceeding, (b) irrevocably submits to the exclusive jurisdiction of any such court, (c) waives any claim or defense of inconvenient forum; and (d) waives any right to trial by jury of any claim or cause of action by or against WMHS.

16. FORCE MAJEURE. WMHS shall not be in default for its failure to perform or delay in performance caused by events or significant threats of events beyond its reasonable control, whether or not fore-seeable, including, but not limited to, strikes, labor trouble, riots, imposition of laws or governmental orders, fires, acts of war or terrorism,

acts of God, and the inability to obtain equipment acts or omissions of shippers or carriers, and WMHS shall be excused from performance during the occurrence of such events.

17. ENTIRE AGREEMENT; CONSTRUCTION. These Terms and any exhibits or attachments hereto constitute the entire agreement between Customer and WMHS with respect to the purchase and use of any Container, superseding all prior communications, agreements or correspondence between the parties or their representatives for the Program; provided, however, obligations which apply to users of Containers set forth on or in the Containers, in the Packing Instructions or on the Web Site are hereby incorporated herein. If any provision in these Terms is determined to be illegal, invalid or unenforceable, the remainder of these Terms will nonetheless survive and govern the rights and obligations of the parties hereto. No provision of these Terms will be deemed waived, amended, or modified by either party unless such waiver, amendment, or modification is in writing signed by the party against whom enforcement is sought. Any additional or different terms or conditions contained in any document furnished by Customer are hereby objected to and rejected by WMHS. No representation or statement made by any employee, agent, or representative of WMHS shall be binding on WMHS to the extent such representation or statement differs from these Terms.