

**NORTH BEACH WATER DISTRICT
PACIFIC COUNTY, WASHINGTON**

RESOLUTION NO. 05-2012

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF NORTH
BEACH WATER DISTRICT, PACIFIC COUNTY, WASHINGTON,
ENTER INTO A MASTER PURCHASE AGREEMENT FOR THE
PURCHASE OF WATER METERS.**

WHEREAS, the Board of Commissioners of North Beach Water District approved a pilot program to install AMR (radio read) service meters at a special meeting on the 9th of April 2010; and

WHEREAS, the pilot program was completed and there are 250 AMR meters installed and operating satisfactorily; and ‘


WHEREAS, The Board of Commissioners desires to replace the balance of the aging service meters with AMR meters at the rate of 250 meters per year for nine (9) years (replacement period); and

WHEREAS, the Board of Commissioners desires to secure the most advantageous price and terms for the duration of the replacement period; now, therefore

BE IT RESOLVED by the Board of Commissioners of North Beach Water District as follows:

The Board of Commissioners of North Beach Water District that the Master Purchase Agreement with HD Supply Waterworks attached as Exhibit A to this Resolution, is approved and the General Manager is authorized to execute the agreement.

ADOPTED by the Board of Commissioners of North Beach Water District, Pacific County, Washington, at its regular meeting held on the 16th day of January, 2012.


Owen Brake, Commissioner


R D Williams, Commissioner



Brian Sheldon, Commissioner

Exhibit "A"



Master Purchase Agreement

HD Supply Waterworks, Ltd.

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Master Purchase Agreement

This Master Project Agreement (as hereinafter defined, this "Agreement") dated as of _____, 2011 between HD Supply Waterworks, Ltd. a limited partnership consisting of HD Supply Waterworks Group, Inc. (Limited Partner) and HD Supply GP & Management, Inc. (General Partner) (as hereinafter defined, "HD Supply Waterworks"), and North Beach Water District (as hereinafter defined, "Client").

1. **Purpose and Scope:** The Agreement is a Master Purchase Agreement to provide certain materials to Client. HD Supply Waterworks agrees to undertake the necessary actions as specified in this Agreement, and Client agrees to take all actions that are identified in this Agreement and to pay HD Supply Waterworks in the manner contemplated by this Agreement. This Agreement consists of the text set forth herein and the text set forth in each Appendix to this Agreement that is executed and delivered by the Parties. The Appendices checked below are the only Appendices that have been executed and delivered by the Parties as part of this Agreement (provided, however, that Exhibits that are part of a stated Appendix also shall be part of this Agreement):

☒ Appendix A—Material Supply

☒ Appendix B--Warranty

2. **Definitions and Terminology:** When used in this Agreement or in any of its attachments, the following capitalized terms shall have the respective meanings as follows:

"Agreement" shall mean this Master Purchase Agreement, to include all Appendices and Exhibits.

"AWWA" shall mean the American Water Works Association

"AMR" shall mean Automatic Meter Reading

"Client" shall mean North Beach Water District.

"Factory Installation Recommendation" shall mean guidelines for installation procedures given by the manufacturer of the equipment.

"Force Majeure" shall mean conditions beyond the reasonable control, or not the result of willful misconduct or negligence of the Party, including, without limitation acts of God, storms, extraordinary weather, acts of government units, strikes or labor disputes, fire, explosions, thefts, vandalism, riots, acts of war or terrorism, non-price related unavailability of Project Materials and Supplies, and unavailability of fuel.

"Hazardous Materials" are any materials, substances, chemicals, and wastes recognized as hazardous or toxic (or other interchangeable terms of equal meaning) under applicable laws, regulations, rules, ordinances, and any governmental or authoritative body having jurisdiction over the execution of this Agreement and its attachments.

"HD Supply Waterworks" shall mean HD Supply Waterworks, Ltd., a limited partnership, together with its successors.

"Material Supply Contract" shall mean the Supply of specific material pricing, as well as material attached to this Agreement as Appendix A, but only to the extent that the Parties have executed and delivered such Appendix A.

"Manufacturer Defect" shall mean any fault or defect in materials or workmanship that manifests itself during the Warranty Period and is covered by the manufacturer's warranty.

"Manufacturer's Warranty Period" shall have the meaning set forth in Appendix B to this Agreement.

"Party" shall mean either HD Supply Waterworks or Client.

"Project" shall mean the sale and delivery of meters as specified in Appendix A to the District for use by the District customers of customers of water system that are operated and maintained by the District. HD Supply Waterworks shall sell and supply to the Project Materials and Supplies.

"Project Materials and Supplies" shall mean the materials and equipment specified in Appendix A.

"RF" shall be interchangeable with the term Radio Frequency.

"State" shall mean the State of Washington in which Client is bound to execute the awarded Project.

"Third Party" shall mean a person or entity other than Client or HD Supply Waterworks.

"Utility Service Area" shall mean the geographic area where the Project will be installed and the Work (and, if applicable, the Services) will be performed by North Beach Water District. This geographic area shall be specifically defined as the North Beach Water District's Water System Service Area and any other geographic areas including the North Beach Water District's Water System Service Area water distribution system that HD Supply Waterworks, in its discretion, shall approve in writing for inclusion in the Utility Service Area.

"Warranty Period" shall have the meaning set forth in Appendix B to this Agreement.

3. **Term:** The term of this agreement commences on the effective date hereof and extends through December 31, 2021. Notwithstanding the foregoing, either party may terminate this Agreement and the Services and Work described herein by giving the Client sixty (60) days prior written notice of its termination of this Agreement.

4. **Pricing:** The pricing is firm from commencement of this contract and shall be valid until client is provided with notice of a price change. Any price change shall be effective thirty (30) days after the date of said notice. Any orders less than \$20,000 will be subject to shipping fees. HD Supply Waterworks will only raise prices when it receives a global price increase from Neptune Technology Group, Inc. for the products identified in Appendix A-1. The price increase will not be greater than the global price increase identified by Neptune Technology Group, Inc. Client will be provided notice, not less than 30 days, to place an order prior to the price increase effective date.

5. **HD Supply Waterworks' Responsibility:** HD Supply Waterworks shall provide Project Materials and Supplies, and do all other Work as described in this Agreement. Any Work beyond the scope of the Work agreed to herein shall not be considered as part of this Agreement. There shall be no implied or verbal agreements between the Parties relating to the subject matter of this Agreement.

6. **Client's Responsibility:** Client shall be responsible for cooperating with HD Supply Waterworks, providing accurate information in a timely manner, and making payment per agreement requirements for Project Materials and Supplies furnished. Client shall designate a representative who will be fully acquainted with the Work and will be reasonably accessible to HD Supply Waterworks and will have the authority to make decisions on behalf of Client. Client shall provide to HD Supply Waterworks all information regarding legal limitations, utility locations and other information reasonably pertinent to this Agreement and the Project. Client shall be required to give prompt notice should it become aware of any fault or defect in the Project or any related information provided.

7. **Default of Client:** The following events shall be considered events of Default of Client: (a) The failure of Client to make payments to HD Supply Waterworks in accordance with the terms of this Agreement; (b) any representation or warranty provided by Client that proves to be materially false or misleading when made; (c) any material failure of Client to comply with or perform according to the terms of this Agreement or to correct such failure to perform within any cure period specified in this Agreement. If an event of Default by Client occurs, HD Supply Waterworks will exercise any and all remedies available to it under this Agreement.

8. **Default of HD Supply Waterworks:** The following events shall be considered events of default on the part of HD Supply Waterworks: (a) failure of HD Supply Waterworks to provide equipment and supplies in accordance with the provisions and specifications of this Agreement, (b) the failure of HD Supply Waterworks to deliver its Work and Services free and clear of any lien or encumbrance by any subcontractor, laborer, material man, or other creditor of HD Supply Waterworks, (c) any representation or warranty (other than a warranty as contemplated by Section 11 of this Agreement) provided by HD Supply Waterworks proves to be materially false or misleading when made, (d) any material failure of HD Supply Waterworks to comply with or perform according to the terms of this Agreement or to correct such failure to perform within any cure period specified in this Agreement. In the event of default by HD Supply Waterworks, Client may exercise any and all remedies available to it under this Agreement.

9. **Insolvency:** In the event that either Party becomes insolvent or makes an assignment for the benefit of creditors or is adjudicated bankrupt or admits in writing that it is unable to pay its debts, or should any proceedings be instituted under any state or Federal Law for relief of debtors or for the appointment of a receiver, trustee, or liquidator of either Party, or should voluntary petition in bankruptcy or a reorganization or any adjudication of either Party as an insolvent or a bankrupt entity be filed, or should an attachment be levied upon either Party's equipment and not removed within five (5) days therefrom, then upon the occurrence of any such event, the other Party shall thereupon have the right to cancel this Agreement and to terminate immediately all work hereunder without further obligation.

10. **Taxes, Permits, and Fees:** Client shall be responsible for obtaining all permits and related permit fees associated with the Project. Client shall pay sales, use, consumer, and like taxes, when applicable. Client shall be responsible for securing at its sole expense any other necessary approvals, easements, assessments, or required zoning changes. Client shall be responsible for personal property taxes and real estate taxes on the Project.

11. **Warranty:** The warranty shall be provided by the manufacturer of Project Materials and Supplies and shall be as set forth in Appendix B.

12. **Indemnity:** Subject to Sections 14 and 15 of this Agreement:

(a) Except as otherwise expressly provided in Section 12(b) below, Client assumes all liability and risk associated with the use, operation, and storage of the Project Materials and Supplies and for property damage, injuries, or deaths associated with or arising out of the use and operation of the Project unless said damage, injury, or death is the direct result of negligence in behalf of HD Supply Waterworks, its employees, and agents.

(b) HD Supply Waterworks shall indemnify Client, Agent's, and employees against claims of subcontractors or material men hired by HD Supply Waterworks for Work relating to the Project as described in the following sentence. HD Supply Waterworks and Client agree that HD Supply Waterworks is responsible only for damages that result from the intentional misconduct or the negligent act or omission of HD Supply Waterworks or its subcontractors.

13. **Safety:** It shall be the responsibility of Client, to assure that the sites controlled by the North Beach Water District at which HD Supply Waterworks is expected to make deliveries are safe sites.

14. **Liability and Force Majeure:** HD Supply Waterworks' liability under this Agreement shall not exceed the amounts listed in its primary general comprehensive policy limits mandated in Section 15. Neither HD Supply Waterworks nor Client shall be responsible to each other for any indirect, consequential, or special damages resulting in any form from the Project. Neither HD Supply Waterworks nor Client shall be responsible to each other for injury, loss, damage, or delay that arise from Force Majeure. HD Supply Waterworks shall not be responsible for any equipment or supplies other than Project Equipment and Supplies.

15. **Insurance:**

(a) During the Term of this Agreement HD Supply Waterworks shall maintain insurance as follows:

- (1) workers' compensation insurance (or self-insurance) in accordance with applicable law;
- (2) Comprehensive general liability insurance, \$1,000,000 per occurrence and \$2,000,000 aggregate.
- (3) Motor vehicle liability insurance, \$1,000,000 per accident.

Such coverage may be provided under primary and excess policies.

(b) Client shall assume full responsibility for any risk of loss except to the extent that (1) the damages are the result of negligence, failure to act, or willful or intentional act of HD Supply Waterworks as provided in Section 12(b) above, or (2) the loss is covered by the insurance contemplated by Section 15(a) above.

16. **Hazardous Materials:** The Project and the Work expressly excludes any Work or Services of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of Hazardous Materials or substances. Client warrants and represents that, to the best of Client's knowledge, there is no asbestos or other hazardous materials in the Project premises in areas that HD Supply Waterworks shall be required to make deliveries that in any way will affect HD Supply Waterworks' ability to complete the Project. If HD Supply Waterworks is made aware or suspects the presence of Hazardous Materials, HD Supply Waterworks reserves the right to stop work in the affected area and shall immediately notify Client. It shall remain Client's responsibility to correct the condition to comply with local and federal standards and regulations. Client shall remain responsible for any Claims that result from the presence of the Hazardous Materials.

17. **Delays and Access:** If conditions arise that delay the commencement, completion, or servicing of the Project as a consequence of Force Majeure or failure of Client to perform its obligation that prevents HD Supply Waterworks or its agents from performing work, then HD Supply Waterworks will notify Client in writing of the existence of delay and the nature of the delay. Client and HD Supply Waterworks will then mutually agree upon any new completion dates. Nothing in the foregoing sentence shall be deemed to relieve Client from its obligation to provide HD Supply Waterworks and its subcontractors reasonable and safe access to facilities that are necessary for HD Supply Waterworks to complete the Work, nor delay of payment for materials and services previously provided.

18. **Quality of Materials:** HD Supply Waterworks will supply the Project Materials and Supplies specified in Appendix A. Where brand names and part numbers are specified HD Supply Waterworks will supply the items listed in Appendix A unless specified items are unavailable or discontinued. In this instance HD Supply Waterworks will work with Client to choose a substitute. Where brand names are not specified, HD Supply Waterworks will choose Project Materials and Supplies that are within industry norms and standards. Should Client require Project Materials and Supplies with specific requirements, Client should make these specifications known in a timely manner. Examples of Client specific requirements include but are not limited to country or state of origin, union manufactured, specific brand, or manufacturing process.

19. **Legal Governance:** The laws of the State of Washington shall govern this Agreement and the relationship of the Parties contemplated hereby.

20. **Dispute Resolution:**

(a) The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either Party may initiate negotiations by providing written notice to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within three business days from receipt with a statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by these negotiations within 15 business days following the date of the initial written notice, the matter will be submitted to mediation in accordance with Section 20(b) below.

(b) Except as provided herein, no civil action with respect to any dispute, claim, or controversy arising out of or relating to this Agreement may be commenced until the Parties have attempted in good faith to resolve the matter through a mediation proceeding, under the mediation procedure of the CPR Institute for Dispute Resolution ("CPR"), JAMS/Endispute, the American Arbitration Association ("AAA"), or as otherwise agreed upon by the Parties. Either Party may commence mediation by sending a written request for mediation to the other Party, within 45 business days following the expiration of the 15-business day period under subsection (a) above, setting forth the subject of the dispute and the relief requested. Unless the Parties agree otherwise in writing, a single mediator shall conduct the mediation, and the mediator shall be selected from an appropriate CPR, JAMS/Endispute, AAA or other panel as agreed upon by the Parties. The mediation shall be conducted in the county of the State in which Client has its principal office. Each Party may seek equitable relief prior to or during the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after the completion of the internal mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the Parties so desire.

(c) The Parties further agree that in the event any dispute between them relating to this Agreement is not resolved under Section 20(a) or (b) above, exclusive jurisdiction shall be in the trial courts located within the county of the State in which Client has its principal office, any objections as to jurisdiction or venue in such court being expressly waived. In the event of a breach or threatened breach by Client of this Agreement, HD Supply Waterworks in its sole discretion may, in addition to other rights and remedies existing in its favor and without being required to post a bond or other security, apply to any court for specific performance and/or injunctive or other relief in order to enforce, or prevent the violation of, this Agreement. BOTH CLIENT AND HD SUPPLY WATERWORKS HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATIONS, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

(d) All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State or any other jurisdiction) that would cause the application hereto of the laws of any jurisdiction other than the laws of the State.

21. **Attorney's Fees:** In the event of any litigation between the Parties hereto arising from or with respect to this Agreement, the breach of any warranty, representation or breach of any other terms hereof, and/or the performance of the obligations hereunder, the losing Party shall pay all costs and expenses incurred by the prevailing party in connection with such litigation, including but not limited to reasonable fees and costs of attorneys, accountants and experts, whether incurred at the pre-trial, trial or appellate levels, and/or bankruptcy or other creditors rights' proceedings.

22. **Assignability:** Client may not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without HD Supply Waterworks' prior written consent.

23. **Notices:** All notices and communications related to this Agreement shall be made in following address:

If to Client:	North Beach Water District William Neal – General Manager 25902 Vernon Avenue, Suite C PO Box 618 Ocean Park, WA 98640-0618
If to HD Supply Waterworks:	HD Supply Waterworks Jered Lindstrom Product Specialist Mobile: 360.600.7603 Fax: 877.487.4944 E-Mail Address: Jered.Lindstrom@hdsupply.com

24. **Binding Effect:** Each of Client and HD Supply Waterworks represents and warrants to the other that this Agreement has been duly executed and delivered by such Party and constitutes a valid and binding agreement of such Party enforceable against such Party, its successors and assigns in accordance with its terms.

25. **Modifications:** This Agreement shall not be modified, waived, discharged, terminated, amended, altered or changed in any respect except by a written document signed and agreed to by both HD Supply Waterworks and Client.

26. **Severability:** Any term or provision found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, invalidating the remainder of this Agreement.

27. **Other Public Entities:** HD Supply Waterworks agrees to extend prices, terms and conditions herein to other public entities to the extent permitted by law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"HD SUPPLY WATERWORKS, Ltd"
HD SUPPLY WATERWORKS, LTD

By: _____

Printed Name: _____

Printed Title _____

"CLIENT"
NORTH BEACH WATER DISTRICT

By: _____

Printed Name: _____

Printed Title _____



Appendix A

Material Supply Contract

Provider: HD Supply Waterworks, Ltd. ("HD Supply Waterworks")
Client: North Beach Water District

This Material Supply Contract (the "Material Supply Contract") is an Appendix to the Master Purchase Agreement of even date herewith (the "Master Purchase Agreement") concerning the Project referenced in the Master Purchase Agreement.

1. **Summary of Work.** The Summary of Work for the Project contemplated by the Master Purchase Agreement consists of providing Project Materials and Supplies as listed in Exhibit A-1.

2. **Project Implementation Period.** This project is projected to commence on Date of Acceptance with signature by the Client and it will last through December 31, 2021.

3. **Compensation.** Client agrees to pay HD Supply Waterworks for all non-damaged materials, described in Appendix A-1, delivered to Client in original boxes and free of damage. Client agrees to purchase from HD Supply Waterworks and HD Supply Waterworks agrees to sell to Client materials described in Appendix A-1 throughout the term of this agreement for the price identified in Appendix A-1 plus any price increase as prescribed in Section 4. Pricing, of the Master Purchase Agreement to which this appendix is attached. Payment and terms shall be as follows:

(a) **Payment for Project Materials and Supplies.** Client will make payment to HD Supply Waterworks for Project Materials and Supplies within thirty (30) calendar days of the receipt of an invoice for such Project Materials and Supplies (which will be invoiced no more frequently than weekly). Notwithstanding the foregoing, all orders are subject to HD Supply Waterworks' continuing approval of Client's credit. If Client's credit is not approved or becomes unsatisfactory to HD Supply Waterworks then HD Supply Waterworks, in its sole discretion, may suspend or cancel performance, or require different payment terms, including but not limited to cash on delivery or in advance of shipment. In addition, HD Supply Waterworks may in its discretion require an advance deposit of up to 100% of HD Supply Waterworks' selling price for any specially manufactured goods ordered by Client hereunder. Payments due hereunder shall be made in the form of cash, check, or money order, or other tender approved in writing by HD Supply Waterworks. HD Supply Waterworks may, in its sole discretion, apply Client's payment against any open charges. Past due accounts bear interest at the lesser of 1.5% per month or the maximum rate permitted by applicable law, continuing after HD Supply Waterworks obtains judgment against Client. HD Supply Waterworks may exercise setoff or recoupment to apply to or satisfy Client's outstanding debt. Client shall have no right of setoff hereunder, the same being expressly waived hereby. Any open and/or future purchase orders may be put on hold until the delinquent invoice is paid. In the event that a Client delay results in the lack of progress payment disbursement, HD Supply Waterworks reserves the right to delay further work without penalty until such time as payments are made. HD Supply Waterworks further reserves all rights and options available to it under the Master Purchase Agreement. Any and all materials that have been ordered and manufactured for this project are special ordered specific to the project and are non-cancelable.

(b) **Surety for Payment of Materials and Supplies.** Surety for payment of materials and supplies will be waived for this Master Purchase Agreement "ONLY" after North Beach Water District's credit has been qualified by HD Supply Waterworks.

IN WITNESS WHEREOF, the Parties have executed this Material Supply Contract as of _____, 2011.

“HD SUPPLY WATERWORKS, LTD.”

By: _____

Printed Name: _____

Printed Title: _____

“CLIENT”

NORTH BEACH WATER DISTRICT

By: _____

Printed Name: _____

Printed Title: _____



Exhibit A-1

Material Supply Summary

HD Supply Waterworks will only raise prices when it receives a global price increase from Neptune Technology Group, Inc. for the products identified in Appendix A-1. The price increase will not be greater than the global price increase identified by Neptune Technology Group, Inc. Client will be provided notice, not less than 30 days, to place an order prior to the price increase effective date.

ITEM	PRICE / UNIT (Taxes not included in prices)
5/8 x 3/4 T10 ECODER R900i	\$180.63/ea. One hundred eighty-one dollars and sixty-three cents.
1" T10 ECODER R900i	\$273.13 /ea. Two hundred seventy three dollars and thirteen cents.
2" T10 ECODER R900i	\$578.75 /ea. Five hundred seventy eight dollars and seventy-five cents.

Appendix B

WARRANTY

The warranties on water meters included in Project Materials and Supplies shall be as follows:

1. Project Materials and Supplies:

(a) General: Water meters and equipment included in Project Materials and Supplies that Client purchases from HD Supply Waterworks are warranted by the manufacturer to be free from Manufacturers' Defects for the period specified in the manufacturer's warranty. A copy of the present warranty of each water meter manufacturer that will supply water meters and equipment as part of the Project Materials and Supplies is attached hereto as Exhibit B-1. The term of such manufacturer's warranty shall be as set forth in such attached warranty (as the same may be changed from time to time during the course of the performance of the Master Purchase Agreement, but with changes to apply only to purchases of water meters occurring after the change becomes effective), but generally the start date for water meter warranties is the date of the manufacturer's shipment of such water meter. PROJECT MATERIALS AND SUPPLIES OTHER THAN WATER METERS and EQUIPMENT ARE NOT WARRANTED. HD SUPPLY WATERWORKS DOES NOT PROVIDE ANY SEPARATE WARRANTY FOR PROJECT MATERIALS AND SUPPLIES.

(b) HD Supply Waterworks' Responsibility: Upon any breach of the manufacturer's warranty on a water meter noticed to HD Supply Waterworks during the applicable Manufacturer's Warranty Period, HD Supply Waterworks' sole responsibility shall be to cooperate with Client in arranging for the manufacturer to repair or replace any defective water meter.

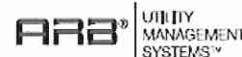
2. DISCLAIMER OF FURTHER WARRANTIES: EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, HD SUPPLY WATERWORKS DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL HD SUPPLY WATERWORKS BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING IN CONNECTION WITH ANY BREACH OF THIS WARRANTY.

Exhibit B-1

Manufacturers' Warranties

Meters

Neptune T-10, HP Turbine, TRU/FLO® Compound Cold Water Meters Warranty



1. Terms of Limited Warranty.

With respect to its Neptune T-10, HP TURBINE, TRU/FLO® Compound Water Meters (collectively the "Water Meters"), Neptune Technology Group Inc. ("Neptune") warrants the following on meters sold on or after 11/1/92:

The Water Meters will be, at the later of (i) the date of original purchase from Neptune or (ii) the date of original shipment from Neptune-authorized distributor of Water Meters (that later date is referred to as "the Date of Shipment") and will remain for a period of eighteen (18) months from the Date of Shipment, or twelve (12) months from date of installation, whichever comes first, free from manufacturing defects in workmanship and material.

(a) **Maincase.** The no-lead high copper alloy or Brass maincase of the Water Meters will be at the Date of Shipment free from manufacturing defects in workmanship and material for the life of the Water Meter.

(b) **Frost Protection.** All Neptune T-10 Cold Water Meters shipped with a synthetic polymer or cast iron bottom cap will, commencing upon the Date of Shipment, be warranted against chamber damage for a period of ten (10) years.

(c) **Registers.** Standard, roll sealed registers of the Water Meters will be at the Date of Shipment, and shall remain for the following periods, free from manufacturing defects in workmanship and material for a period of ten (10) years. The ARB®, ProRead® (ARB VI), and E-Coder® (ARB VII) system registers are warranted for ten (10) years from Date of Shipment. All ProRead encoder receptacles shipped after January 1, 2001 shall be warranted for five years from the Date of Shipment. All other components and parts are covered under Neptune's standard one-year material and workmanship guarantee.

(d) **Meter Accuracy for Neptune T-10.** Neptune T-10 Meters are warranted to meet or exceed, as listed herein, accuracy standards of the AWWA Standard C700-95 for a period of: (i) five (5) years from Date of Shipment for 5/8", 3/4" and 1" meters; (ii) for a period of two (2) years from the Date of Shipment for 1 1/2" and 2" meters; or (iii) the applicable registration shown below, whichever occurs first. Neptune further guarantees that the Neptune T-10 will perform to at least Repaired Meter Accuracy Standards, according to AWWA Manual M-8 Chapter 5 (1999) Table 5.3 for an additional ten (10) years or the registration shown below, whichever occurs first.

(e) **Meter Accuracy for HP Turbine and TRU/FLO.** The HP Turbine and TRU/FLO Compound Cold Water Meters will perform, for a period of one (1) year from the Date of Shipment, to American Water Works Association ("AWWA") accuracy standards for new water meters.

SIZE	EXTENDED LOW FLOW ACCURACY	NEW METER ACCURACY	REPAIRED METER ACCURACY
5/8 & 5/8" x 3/4"	1/8 US gpm @ 95% 5 years or 500,000 gallons	500,000 gallons	1,500,000 gallons
3/4"	3/4 US gpm @ 95% 5 years or 750,000 gallons	750,000 gallons	2,250,000 gallons
1"	3/8 US gpm @ 95% 5 years or 1,000,000 gallons	1,000,000 gallons	3,000,000 gallons
1 1/2"	3/4 US gpm @ 95% 2 years or 1,600,000 gallons	1,600,000 gallons	5,000,000 gallons
2"	1 US gpm @ 95% 2 years or 2,700,000 gallons	2,700,000 gallons	8,000,000 gallons

WATER 02.11



2. Warranty Return.

If a Neptune Water Meter fails an accuracy test during an applicable warranty period, it may be returned to Neptune for repair or replacement at Neptune's option. An accuracy test shall be conducted by the customer according to AWWA standards. Any meter being returned for repair to Neptune under this performance guarantee must be returned with a copy of the customer's test results. If the meter is returned to Neptune without a copy of the test results or if Neptune's factory test shows the meter to meet current AWWA standards, the customer will be charged a nominal testing fee by Neptune. In such cases, Neptune will repair or replace the meter at Neptune's option after the meter has been tested by Neptune. Meters repaired or replaced under the performance guarantee will be guaranteed to perform to AWWA repaired meter accuracy standards.

3. Warranties are exclusive.

The warranties set forth in this certificate of warranty are in lieu of any other warranty, guarantee, or representation, whether expressed or implied, including without limitation, the warranty of merchantability and the warranty of fitness for a particular purpose.

4. Damages limited to costs of replacement and repair.

If the Water Meter fails to meet the warranties set forth in Paragraph 1 of this Certificate of Warranty, Neptune, at its option shall, without charge of labor or materials, repair or replace the Water Meter or part thereof, provided that (a) the Water Meter is delivered to a Neptune representative, (b) the Water Meter is accompanied by a Return Material Authorization (RMA), and (c) all costs of delivery to Neptune are assumed by the purchaser of the Water Meter. Neptune's liability is limited to its costs of replacement and repair of the defective water meter. Damages resulting from miscalculation of water usage or lost revenue or profit are not recoverable from Neptune. It is the responsibility of the customer to periodically verify the operation and accuracy of its meters.

5. Warranties are inapplicable under certain conditions.

The warranties set forth in this Certificate of Warranty do not apply to any Water Meter that has been damaged by, or subjected to, conditions which, in the opinion of Neptune, have affected the Water Meter's ability of performance, including but not limited to: misuse; improper handling, application or installation; excessive operating conditions; foreign materials in the water; aggressive water conditions; tampering or unauthorized repairs or modifications; accidental or intentional damage; acts of God. This Certificate of Warranty shall not apply if product is placed in non-recommended installation, is connected or altered by other than Neptune recommended procedures, is used with other than genuine Neptune meter registers and components, or read by equipment not approved or licensed by Neptune. Neptune makes no claims concerning operability and/or compatibility of third party reading systems. In addition, this Certificate of Warranty shall not apply if third party reading equipment is believed to have caused damage to the meter or register. In order to determine its liability, if any, under this Certificate of Warranty, Neptune shall have the right to inspect any Water Meter or part thereof that is claimed to be defective at Neptune or other location designated by Neptune.

NEPTUNE'S LIABILITY WITH RESPECT TO BREACHES OF THE FOREGOING LIMITED WARRANTY SHALL BE LIMITED AS STATED HEREIN. NEPTUNE'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE. NEPTUNE SHALL NOT BE SUBJECT TO AND DISCLAIMS THE FOLLOWING: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY NEPTUNE, OR ANY UNDERTAKINGS, ACT OR OMISSIONS RELATING THERE TO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, MULTIPLE, EXEMPLARY, AND PUNITIVE DAMAGES WHATSOEVER.

WATER: 03.11



Registers

E-Coder)R900i™ Warranty Statement

E-CODER) R900i™

ARB[®] UTILITY
MANAGEMENT
SYSTEMS™

I. Integrated E-Coder and R900 meter interface unit (IMIU)

Neptune Technology Group Inc. warrants that the fully integrated self-contained solid state absolute encoder register and a radio frequency meter interface unit shall be free from defects in manufacture and design for a period of twenty (20) years from the "date of shipment" (such period being the "Warranty Period"). Neptune shall not be responsible for any defects in the E-Coder)R900i (whether due to design, materials, manufacture, or otherwise) which manifest themselves after the expiration of the Warranty Period. Neptune will repair or replace a non-performing E-Coder)R900i free of charge for the first ten (10) years and at a prorated replacement cost of the current list price during the remaining ten (10) years per the table.

II. Integrated E-Coder and R900 meter interface unit (IMIU) batteries

Neptune warrants that any Neptune-supplied batteries installed in the fully integrated self-contained solid state absolute encoder register and a radio frequency meter interface unit (the "Batteries") shall be free from defects in manufacture and design for a period of twenty (20) years from the "date of shipment" (such period being the "Battery Warranty Period"). Neptune shall not be responsible for any defects in, or failure of, batteries (whether due to design, materials, manufacture, or otherwise) which occur after the expiration of the Battery Warranty Period. Neptune will repair or replace a non-performing E-Coder)R900i Battery free of charge for the first ten (10) years and at a prorated replacement cost of the current list price during the remaining ten (10) years per the table.

Year of Failure	Battery Replacement Cost*
1-10	Full replacement
11	30%
12	35%
13	40%
14	45%
15	50%
16	55%
17	60%
18	65%
19	70%
20	75%

III. Warranties are inapplicable under certain conditions

This warranty does not include field replacement labor or materials costs, which are the responsibility of the utility. This warranty does not apply if product is placed in nonrecommended installations; may have been repaired with parts not recommended by Neptune; converted, altered or connected by other than Neptune recommended procedures; is used with other than genuine Neptune meter registers and components or read by equipment not approved or licensed by Neptune; or damaged due to improper care or maintenance, or improper periodic testing (please refer to E-Coder)R900i installation manual and quick install guides). This warranty does not apply to any IMIU that has been damaged by, or subjected to, conditions which, in the opinion of Neptune, have affected the E-Coder)R900i/IMIU's ability of performance, including but not limited to: misuse; improper handling; application or installation; excessive operating conditions; tampering or unauthorized repairs and modifications; accidental or intentional damage; or acts of God. In no event shall Neptune be liable for special, incidental, indirect or consequential damages, including, without limitation, lost revenue.

*Replacement cost percentage will be applied towards published list prices in effect for the year product is accepted by Neptune under warranty conditions. Replacement batteries are warranted for one (1) year after date of shipment or balance of original battery warranty, whichever is greater.

THE ABOVE WARRANTY FOR THE IMIU AND NEPTUNE-SUPPLIED BATTERY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY NEPTUNE WITH RESPECT TO THE E-Coder)R900i/IMIU AND NEPTUNE-SUPPLIED BATTERY. ALL OTHER WARRANTIES, CONDITIONS, TERMS, REPRESENTATIONS, OR OTHER LEGALLY OPERATIVE PROVISIONS CONCERNING THE IMIUS AND NEPTUNE-SUPPLIED BATTERY ARE HEREBY EXPRESSLY EXCLUDED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION, TERM, AND REPRESENTATION OR OTHER LEGALLY OPERATIVE PROVISION AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS PARAGRAPH IS EXPRESSLY INTENDED TO EXCLUDE FROM THIS CONTRACT ALL STATUTORY AND COMMON LAW WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW. TO AVOID ANY AMBIGUITY OR MISUNDERSTANDING, ALL PROBLEMS ARISING WITH AN IMIU OR NEPTUNE-SUPPLIED BATTERY AFTER THIS POINT ARE BUYER'S RESPONSIBILITY. NEPTUNE'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE. NEPTUNE SHALL NOT BE SUBJECT TO AND DISCLAIMS THE FOLLOWING: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY; (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY NEPTUNE, OR ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERE TO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, MULTIPLE, EXEMPLARY, AND PUNITIVE DAMAGES WHATSOEVER.

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 **NEPTUNE**
TECHNOLOGY GROUP INC.



