

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement"), effective this ____ day of _____, 2010, is made by and on behalf of the following entities: (i) South Florida Water Management District ("District"), a political sub-division of the State of Florida; and (ii) ChemWare, Inc., ("ChemWare"), a corporation organized under the laws of the State of _____. The District and ChemWare are referred to collectively as the "Parties".

WHEREFORE, the District and ChemWare were Parties to District Contract No. 4600001023 dated July 30, 2007 which was terminated by the District as of August 14, 2009; and

WHEREFORE, a dispute arose between the Parties regarding Contract No. 4600001023; and

WHEREFORE, the parties desire to settle and compromise certain of their disputes by entering into this Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows, contingent upon approval of this Settlement Agreement by the District's Governing Board at its next scheduled Governing Board meeting:

1. The District shall return the training manuals delivered by ChemWare to the District pursuant to Contract 46000001023 for the "Ecological Database"(EcoDB)
2. The District hereby certifies that it has either returned or destroyed any proprietary software related to the EcoDB project and delivered by ChemWare to the District pursuant to Contract 4600001023.
3. ChemWare shall retain the intellectual property rights to the software code that was developed by ChemWare to function with ChemWare's proprietary off-the-shelf software pursuant to the Exhibit "C" Statement of Work under Contract 4600001023.

4. The District shall retain ownership rights to all deliverable documentation provided under Contract 4600001023 pursuant to Article 1.10 as it relates to the terminated portion of the work performed by ChemWare.
5. ChemWare shall provide the District with credit for two years of software maintenance support on the Laboratory Information Management System ("LIMS") software licensed by the District pursuant to Contract OT050368 dated September 8, 2005 and maintained by ChemWare in accordance with the terms and conditions of Exhibit "N" to Contract OT050368. The total fixed amount of this credit shall be \$133,836 to be spread equally across a period not-to-exceed five (5) years commencing on October 1, 2010. Each year, a minimum amount of \$26,767 shall be credited towards the annual maintenance fee owed by the District. The timing and application of such credit shall coincide with the date on which payment is due for maintenance on an annual basis as prescribed by Exhibit "N" to Contract OT050368, hereinafter referred to as the "Maintenance Contract" attached hereto and made a part of this Settlement Agreement as Exhibit "A".
6. The District shall act in good faith to seek budgetary approval for funding the annual amounts owed for maintenance on LIMS which shall be authorized through the issuance of Purchase Orders on an annual basis once budgetary approval by the District's Governing Board has been obtained. The District understands that it waives its right for any monetary damages, or damages of any kind if the District terminates the Maintenance Contract or materially defaults (without curing such default) under the Maintenance Contract during the five year

period described in paragraph 3 above. However, in the event of such termination or default, the terms and conditions of the Settlement Agreement, including, but not limited to, ChemWare's agreement to forego final payment under the disputed Contract No. 4600001023, dated July 30, 2007, in the amount of \$123,243.84, shall remain in full force and effect.

7. ChemWare shall act in good faith and adhere to the terms of the Maintenance Contract by not increasing the annual maintenance fees by any more than the limit of the Consumer Price Index applicable to each renewal year as further delineated in the Maintenance Contract.
8. ChemWare shall act in good faith by continuing to provide maintenance services for the LIMS software in accordance with the Maintenance Contract throughout the five year period described in paragraph 3 above.
9. Should ChemWare terminate the Maintenance Contract prior to paying the District the full amount of \$133,136, ChemWare shall be obligated to pay the District the amount of any balance due and owed immediately upon the effective date of termination. If so, in addition to any unpaid balance owed to the District, ChemWare agrees to pay interest in the amount of 18% or the maximum rate allowed under the law (whichever is greater) until the District receives the amount owed pursuant to this Settlement Agreement.
10. ChemWare agrees to forego final payment under the disputed Contract No. 4600001023 dated July 30, 2007 in the amount of \$123,243.84 as part of this Settlement Agreement.
11. Dismissal of pending disputes

- A. The District Governing Board agrees not to suspend ChemWare from contracting with the District pursuant to the District's Suspension Rule 40E-7.218, Fla. Admin. Code.
- B. Within twenty (20) days of the execution of this Agreement, the Parties shall file a stipulation to dismiss with prejudice, each party to bear their own respective fees and costs, of the lawsuit styled *Chemware, Inc. v South Florida Water Management District*, Case No. 2009 CA 34767 AH, presently filed in the Fifteenth Judicial Circuit, Palm Beach County, Florida, before the Honorable Judge Fine.
- C. The Parties' stipulation to dismiss the lawsuit shall contain an Order requesting that the Court retain jurisdiction for the sole purpose of enforcing this Agreement.
- D. This Agreement encompasses all the terms and conditions of the settlement between the parties. Both parties agree that by signing this Agreement each party gives up all rights, remedies and causes of action regarding this contract dispute, other than the enforcement of this Agreement.

12. No admissions of liability.

This Agreement constitutes the settlement of disputed claims. It does not and shall not constitute an admission of liability by either of the Parties and shall not be used by either Party or any other person or entity in litigation or proceeding for that purpose. The Parties further agree that the disputed claims subject to this

Agreement shall not be considered in any context except as may be required by an audit, or for purposes of enforcing this Settlement Agreement.

13. Governing Law

This Agreement shall be governed by the laws of the State of Florida.

14. Costs and Attorney's Fees

The Parties agree to bear their own costs and attorney's fees in connection with the litigation and negotiation of this Agreement.

15. Releases

Except as provided in this Agreement (regarding enforcement of the Agreement), the Parties (on behalf of their respective officers, directors, employees, agents, affiliates, successors and assigns) hereby release and discharge the other (and their respective officers, directors, employees, agents, affiliates, successors and assigns) from any and all claims and causes of action, whether known or unknown, that have arisen as of the date of this Agreement.

16. Successors and assigns

This Agreement shall be binding and inure to the benefit of the Parties and their respective successors and assigns.

17. Amendments

This Agreement may only be amended in writing through an amendment duly executed by both Parties.

18. Further Assurances

The Parties agree to execute and deliver any additional papers, documents and other assurances, and take all acts necessary to carry out the intent of this Agreement.

19. No third-party beneficiaries

Nothing in this Agreement shall confer any rights upon any person or entity who is not a party to this Agreement, nor shall anything in this Agreement be construed as creating an obligation to any non-party to this Agreement.

20. Mutual Contribution

This Agreement was drafted by both of the Parties and, thus, shall not be construed against any Party because that Party initially drafted any particular provision.

WHEREFORE, the Parties have executed this Agreement as of the dates recorded below.

South Florida Water
Management District

ChemWare, Inc
