



MASTER SUBSCRIPTION AGREEMENT TERMS & CONDITIONS FOR SOFTWARE

Last Updated 3 February, 2023

This Master Subscription Agreement (the "Agreement") is a binding agreement between [Customer.Company] ("Client") and WaterStreet Company ("WaterStreet"). This Agreement goes into effect as of the date of execution by Client a/an [Customer.CompanyDesc], on behalf of itself and its Affiliates (collectively "Client"), having its principal place of business at [Customer.StreetAddress], [Customer.City], [Customer.State], [Customer.PostalCode] and WaterStreet, a Montana corporation having its principal place of business at 215 South Complex Drive, Kalispell, Montana, 59901. This Agreement governs Client's access to and use of the Software and/or Services (as defined below).

BY SIGNING, CLICKING AN "AGREE", "CONSENT" OR SIMILAR BUTTON, SUBMITTING AN ORDER FORM (AS DEFINED BELOW), OR USING THE SERVICES, YOU: (A) ACCEPT THIS AGREEMENT ON BEHALF OF YOURSELF AND THE ENTITY YOU REPRESENT ("CLIENT"); (B) AGREE THAT YOU AND CLIENT ARE LEGALLY BOUND BY ITS TERMS; AND (C) REPRESENT THAT YOU HAVE AUTHORITY TO BIND CLIENT TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT ACCEPT THIS AGREEMENT AS SET FORTH ABOVE, CLIENT MAY NOT ACCESS OR USE THE SERVICES.

NOW, THEREFORE, for and in consideration of the promises set forth below, Client and WaterStreet hereby agree as follows:

SECTION 1 – DEFINITIONS

"Access Credentials" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

"Agreement" means this Agreement and any applicable WaterStreet product- or service-specific terms or WaterStreet policy linked to or otherwise incorporated into this Agreement or any Order Form.

"Advanced Support" has the meaning set forth in Section 2.3.

"Authorized User" means any employee, agent, independent contractor or customer of Client who Client expressly authorizes to access and use the Services as set forth in Section 5.1 of this Agreement.

"Client" means the Person identified in the applicable Order Form, account record or online subscription process as the Person using or receiving the Services.

**DO MORE.
STARTING NOW.**

“Client Cloud Account” has the meaning set forth in Section 3.1.

“Client Cloud Configuration” has the meaning set forth in Section 3.2.

“Client Data” means data originating with Client or generated by Client through use of the Subscription Services. For the avoidance of doubt, Client Data does not include Resultant Data or any other information reflecting access to or use of the Services by or on behalf of Client or otherwise by any Authorized User.

“Client Materials” means documents originating with Client such as, without limitation, products, manuals, forms and ratings.

“Config Consult” has the meaning set forth in Section 2.2.

“Day” means calendar day unless “business day” is expressly stated.

“Force Majeure Event” has the meaning set forth in Section 11.1.

“Harmful Code” means any software, hardware or other technology, device or means, including any virus, worm, malware, backdoor, time bombs, Trojan horses or other malicious computer code, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort or otherwise harm or impede in any manner any: (i) computer, software, firmware, hardware, system or network; or (ii) application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby.

“Intellectual Property Rights” means any patented, unpatented, registered or unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Order” or “Order Form” means WaterStreet’s form or online subscription process by which Client subscribes to Subscription Services or purchases Config Consult services or Advanced Support.

“Application Service Event” has the meaning set forth in Section 2.4.c.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

“Resultant Data” has the meaning set forth in Section 3.7.

“Sensitive Personal Data” has the meaning set forth in Section 3.5.

“Services”, when used as a separate, capitalized term, means the Subscription Services, the Config Consult services and Advanced Support. “Services” does not include any Third-Party Products or Third-Party Services.

“Subcontractor” has the meaning set forth in Section 2.5.

“Subscription Services” means WaterStreet’s web-based applications, tools and platforms that WaterStreet makes available to Client pursuant to a subscription, but does not include Config Consult services or Advanced Support.

“Term” has the meaning set forth in Section 10.1.

“Third-Party Agreement” has the meaning set forth in Section 2.6.

“Third-Party Charges” has the meaning set forth in Section 2.6.

“Third-Party Materials” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components, that relate to the Services and are not proprietary to WaterStreet.

“Third-Party Product” or “Third-Party Service” means any product or service provided by a third party (other than a Subcontractor) that interoperates with or is used in connection with the Subscription Services. A list of the Third-Party Products and Third-Party Services currently available for use with the Subscription Services is set forth at the following link: <https://www.waterstreetcompany.com/wp-content/uploads/2022/09/Waterstreet-Web-Service-Listing-2.pdf>.

“Unavailability” has the meaning set forth in Section 2.4.a.

“WaterStreet Materials” means (i) the software used by WaterStreet to provide the Services; (ii) any specifications, online or printed documentation, user interface screens or other information format generated through the use of the Services, information, data, documents, materials, works, content, devices, methods, processes or other technologies or inventions, including any technical or functional descriptions, requirements, parts, features, functions, plans or reports, which are provided or used by WaterStreet or any third party in connection with the Services, or that otherwise comprise or relate to the Services; and (iii) any

Intellectual Property rights of any nature embodied in any of the foregoing. For the avoidance of doubt, WaterStreet Materials include Resultant Data and any other information, data or content derived from WaterStreet's monitoring of Client's access to or use of the Services, but to the extent that any Client Materials are incorporated into or embodied in any WaterStreet Materials, the term WaterStreet Materials will not be deemed to include such Client Materials.

SECTION 2 – USE OF SERVICES

2.1 Subscription Services. WaterStreet will make the Subscription Services available to Client and Client's Authorized Users in accordance with the terms and conditions of this Agreement and the applicable Order Form. Client acknowledges and agrees that Client's purchase of Services is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by WaterStreet regarding future functionality or features.

2.2 Config Consult.

- a. "Config Consult" means consulting services, as described in this Section 2.2, to assist Client in configuring the Subscription Services. Config Consult sessions will be performed remotely and will be recorded for training purposes and to assist WaterStreet in improving the Services it offers. Config Consult fees will be charged at WaterStreet's standard published rates in effect at the time such Services are ordered, and are non-refundable. Client may schedule a Config Consult session using the online Client portal.
- b. Client will be responsible for promptly reviewing and responding to any request for approval, design notes or other communication that may be provided during or following a Config Consult session.
- c. Provided that the underlying information technology infrastructure used to provide the Subscription Services performs in accordance with the warranty set forth in Section 6.1 (Performance Warranty; Exclusive Remedy), Client will be responsible for determining that the Subscription Services are configured so as to meet Client's needs and requirements. WATERSTREET WILL HAVE NO RESPONSIBILITY, AND HEREBY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, RELATING IN ANY WAY TO ANY FAILURE OF THE SUBSCRIPTION SERVICES TO PERFORM IN ACCORDANCE WITH THE APPLICABLE DOCUMENTATION, OR OTHERWISE MEET CLIENT'S NEEDS OR REQUIREMENTS, AS A RESULT OF CLIENT'S FAILURE TO COMPLY WITH THE FOREGOING SENTENCE.

d. WaterStreet reserves the right to limit or deny access to Config Consult or support services to any person whom it determines, in its commercially reasonable discretion, has acted in a way that is abusive toward members of WaterStreet's team or that is otherwise a misuse of such services.

2.3 Support.

- a. During the term of a subscription (including any renewal term), WaterStreet will provide its standard e-mail support Monday through Friday from 7:00 a.m. to 5:00 p.m. Mountain time at no additional cost, and during such time period will attempt to respond to any such support item within 24 hours.
- b. Advanced Support is available for purchase at WaterStreet's standard rates as set forth in the applicable Order Form.

2.4 Application Service-Level Commitment.

WaterStreet will use commercially reasonable efforts to make the Subscription Services available at least 99.95% of the time during any monthly billing cycle (the "Uptime Commitment"), not including any Unavailability resulting directly or indirectly from an Exclusion (as defined below). As used in this Agreement, the terms "Unavailable" or "Unavailability" mean a material interruption in the ability of multiple Authorized Users to access and use the Subscription Services. If the Subscription Services are available for less than the Uptime Commitment, and provided that Client has promptly reported any applicable Unavailability as set forth in this Section 2.4, Client will be eligible to receive a Service Credit as a percentage of the fees attributable to the month in question, as set forth below:

<u>Monthly Uptime Percentage</u> (not including any Unavailability resulting directly or indirectly from an Exclusion)	<u>Service Credit Percentage</u>
Less than 99.95% but equal to or greater than 99.0%	10%
Less than 99.0%	25%

- a. Exclusions. The term "Exclusion" means any Unavailability caused by or resulting from: (i) factors

outside of WaterStreet's reasonable control, including any Force Majeure Event or interruption of Internet access; (ii) any act or omission of Client, an Authorized User or a third party (including but not limited to any access to or use of the Services other than in strict compliance with this Agreement, or other failure or delay in performing any of Client's obligations under this Agreement); (iii) any failure, interruption, outage or other problem with or arising from the Client Cloud Account; (iv) any other failure, interruption, outage or problem with or arising from Client's or any third party's equipment, software, hardware, system, network, facility or other matter; (v) scheduled or unscheduled maintenance; (vi) any suspension or termination of access to the Services as otherwise permitted by this Agreement; or (vii) a transition to a disaster recovery site.

- b. Application Service Events. "Application Service Event" means: (i) an instance of Unavailability; or (ii) an issue with the Subscription Services that results in material errors in processed transactions. Client will report any Application Service Event to WaterStreet with commercially reasonable promptness after the commencement thereof, and will take all reasonable measures to avoid or minimize any loss, detriment or harm resulting from said Application Service Event. Provided that Client has reported the Application Service Event with commercially reasonable promptness as set forth above, WaterStreet will use commercially reasonable efforts to respond in accordance with its current Application Service-Level Escalation document set forth at the following link: <https://www.waterstreetcompany.com/wp-content/uploads/2022/09/Waterstreet-Proposal-SAAS-Policy-Admin-Template-Nautix-WATERSTREET-APPLICATION-SLA.pdf>.
- c. WaterStreet will apply any Service Credits within one billing cycle following the month after WaterStreet has confirmed that the applicable Monthly Uptime Percentage is less than the Uptime Commitment. WaterStreet will apply Service Credits only against future fees otherwise due from Client. Service Credits will not entitle Client to any refund or other payment from WaterStreet Company.
- d. Exclusive Remedy. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY UNAVAILABILITY OR OTHER FAILURE BY WATERSTREET TO COMPLY WITH THE UPTIME COMMITMENT IS THE RECEIPT OF A SERVICE CREDIT AS SET FORTH ABOVE.

2.5 Subcontractors. WaterStreet may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").

2.6 Third-Party Services and Products. Client acknowledges and agrees that Client's acquisition of, access to and use of any Third-Party Service or Third-Party Product is subject to the terms and conditions set forth in said third party's user agreement, terms of use, service level agreement, acceptable use policy or similar

document ("Third-Party Agreement"). Client expressly agrees to be bound by the terms of any such Third-Party Agreement. NOTWITHSTANDING ANYTHING SET FORTH IN ANY THIRD-PARTY AGREEMENT, WATERSTREET MAKES NO REPRESENTATIONS OR WARRANTIES, AND WILL HAVE NO OBLIGATIONS OR LIABILITIES, BEYOND WHAT IS EXPRESSLY SET FORTH IN THIS AGREEMENT. Charges for Third-Party Services or Third-Party Products ("Third-Party Charges") will be billed directly to Client or, if included in WaterStreet charges, will be a pass-through and will not be marked up by WaterStreet.

[2.7 Access Credentials.](#) Client will employ commercially reasonable physical, administrative and technical controls, screening and security procedures and other safeguards, including but not limited to up-to-date virus protection software, necessary to: (i) securely administer the issuance and use of all Access Credentials; (ii) protect against any unauthorized access to or use of the Subscription Services, and (iii) control the content and use of Client Data, including the uploading or other provision of Client Data for processing by the Subscription Services. Client will indemnify, defend and hold harmless WaterStreet, in accordance with the provisions of Section 8 (Indemnity), for any Actions (as defined in Section 8) resulting from, arising out of, or otherwise related in any way to breach of this Section 2.7 by Client.

[2.8 Client Control and Responsibility.](#) Client has and will retain sole responsibility for:

- a. Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or any other Person ("Client Systems");
- b. The issuance, security and use of Client's and Authorized Users' Access Credentials;
- c. All access to and use of the Services and WaterStreet Materials directly or indirectly by or through the Client Systems or Access Credentials of Client or any Authorized User, with or without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use;
- d. The contents and accuracy of any information, instructions or materials provided by or on behalf of Client or any Authorized User in connection with the Services, including but not limited to information regarding any insurance application; and
- e. Client's business operations, including but not limited to underwriting, binding coverage, claims administration, claims payment(s) and claims recoveries.

SECTION 3 – CLIENT DATA

3.1 Client Cloud Account. Client acknowledges and agrees that all Client Data will be stored on a cloud account operated by a Third-Party Service (the “Client Cloud Account”), in accordance with a Third-Party Agreement between Client and said Third-Party Service such as, for example and without limitation, the Microsoft Cloud Agreement set forth in the following link: . In accordance with Section 2.6 (Third-Party Services and Products), charges for the Client Cloud Account will be billed directly to Client or, if included in WaterStreet charges, will be a pass-through and will not be marked up by WaterStreet.

3.2 Cloud Configuration. The standard cloud configuration for the Client Cloud Account (“Client Cloud Configuration”) is set forth at the following link: <https://www.waterstreetcompany.com/wp-content/uploads/2022/09/Waterstreet-Proposal-SAAS-Policy-Admin-Template-Nautix-WATERSTREET-CLOUD-CONFIGURATION.pdf>. WaterStreet may change the Client Cloud Configuration from time to time in its sole discretion and without notice.

3.3 Client acknowledges and agrees that:

- a. Client will have complete access to all Client Data stored in the Client Cloud Account; and
- b. Client will be responsible for all Client Data, including but not limited to its content, use and storage.

3.4 Data Security. WaterStreet’s data security protocols are set forth at the following link: <https://www.waterstreetcompany.com/wp-content/uploads/2022/09/Waterstreet-Proposal-SAAS-Policy-Admin-Template-Nautix-WATERSTREET-DATA-SECURITY.pdf>. WaterStreet may change its data security protocols from time to time in its sole discretion and without notice. Client acknowledges and agrees that it is impossible to eliminate all risk of a security breach no matter what data security protocols may be employed.

3.5 Sensitive Personal Data. “Sensitive Personal Data” means credit or debit card numbers, financial account numbers, wire instructions, Social Security numbers or other government-issued identification numbers, dates of birth, personal health information or biometric information. Client acknowledges and agrees that any

use of the Subscription Services to input, store or retrieve Sensitive Personal Data may create or significantly increase the risk of a security breach for both Client and WaterStreet, and accordingly should be avoided unless absolutely necessary. NOTWITHSTANDING ANYTHING SET FORTH IN ANY THIRD-PARTY AGREEMENT, WATERSTREET MAKES NO REPRESENTATIONS OR WARRANTIES, AND WILL HAVE NO OBLIGATIONS OR LIABILITIES, BEYOND WHAT IS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND WATERSTREET WILL HAVE NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF SENSITIVE PERSONAL DATA.

[3.6 Use of Client Data.](#) As between WaterStreet and Client, Client Data is and will remain the sole property of Client; but Client hereby irrevocably grants all such rights and permissions in or relating to Client Data as are necessary or useful to WaterStreet and its Subcontractors to perform their obligations and exercise their rights under this Agreement.

[3.7 Use of Resultant Data.](#) “Resultant Data” means data and information related to Client's use of the Services that is used by WaterStreet in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services. Client acknowledges and agrees that WaterStreet may use Resultant Data to support, evaluate, develop and improve the features and functionality of the Services; that WaterStreet may engage Subcontractors for such purposes and share Resultant Data with them; and that WaterStreet may share Resultant Data with third parties provided that WaterStreet will not identify any users of the Services. In furtherance of the foregoing, Client hereby unconditionally and irrevocably grants to WaterStreet an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

SECTION 4 – FEES AND PAYMENT

[4.1 Payment.](#) Client will promptly pay all amounts specified in an Order Form, or that may otherwise be invoiced by WaterStreet. Except as may be otherwise set forth in this Agreement or an Order Form: (i) fees are based on Services purchased and not actual usage; (ii) payment obligations are non-cancelable and non-refundable; and (iii) fees will not be decreased during the applicable subscription term.

[4.2 Electronic Payment.](#) Unless otherwise specified in an Order Form, all fees will be paid electronically. Client will provide WaterStreet with valid and updated banking or other payment information, and Client hereby authorizes WaterStreet to charge Client's account for all purchased Services, including renewal subscription

terms. Client further authorizes WaterStreet to use a third party to process payments, and Client consents that WaterStreet may disclose Client's payment information to such third party. If an Order Form provides for other than electronic payment, WaterStreet will invoice Client in advance for any amounts owing, and Client will provide complete, accurate and updated billing and contact information. Any amounts not paid within 15 days after the following dates will bear interest at the rate of 1.5% per month, or the highest rate permitted by applicable law, whichever is lower: (i) the last day of the applicable month, in the case of monthly fees for Subscription Services, or (ii) for any other fees, the date the fees are invoiced or otherwise become due in accordance with the applicable Order Form.

4.3 Fee Increases. WaterStreet may increase the fees for any Subscription Services as of the commencement of any renewal term of the applicable subscription by providing written notice to Client at least 120 days prior to the expiration of then-current subscription term. If Client does not agree to the increase Client must provide written notice of non-renewal of said subscription on or before the date set forth in Section 10.2 (Initial and Renewal Terms).

4.4 Taxes and Similar Assessments. All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Client is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder or otherwise resulting from the Client's use of the Services, other than any taxes imposed on WaterStreet's income.

4.5 Third-Party Charges. Notwithstanding any other provision of this Agreement, all Third-Party Charges are DUE UPON RECEIPT. WATERSTREET WILL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY INTERRUPTION OF SERVICES RESULTING FROM CLIENT'S FAILURE TO PROMPTLY PAY THIRD-PARTY CHARGES. WaterStreet may immediately and without notice increase the fees payable by Client to reflect any increase in the amount charged by a provider of Third-Party Services or Third-Party Products.

SECTION 5 – AUTHORIZATION; PROPRIETARY RIGHTS; RESTRICTIONS

5.1 Authorization. During the Term, and subject to and conditioned on Client's compliance with all terms and conditions of this Agreement, including but not limited to timely payment of all applicable fees and charges, WaterStreet hereby authorizes Client and its Authorized Users to access and use such Services and WaterStreet Materials as WaterStreet may make available to Client solely for the purposes of and in accordance with the access rights set forth in this Agreement. This authorization is non-exclusive and, other than as may be expressly set forth in this Agreement, non-transferable.

5.2 Proprietary Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to the Services or WaterStreet Materials, whether expressly, by implication, by estoppel or otherwise. All right, title and interest in and to the Services and WaterStreet Materials, including but not limited to all source code, object code, databases and any Intellectual Property Rights therein, are and will remain with WaterStreet and the respective third-party rights holders. Client acknowledges the validity of WaterStreet's Intellectual Property Rights, and to the maximum extent permitted by law agrees not to challenge the validity of such Intellectual Property Rights. Client will preserve all proprietary notices on any copies of the WaterStreet Materials, including electronic copies, and will otherwise cooperate as necessary to protect WaterStreet's Intellectual Property Rights.

5.3 Restrictions. Except as expressly permitted in this Agreement, Client will not engage in any of the following, or permit any other Person to do so:

- a. Modify, copy, reproduce, merge with any other program, prepare derivative works or improvements based on, or adapt any Services or WaterStreet Materials, in whole or in part;
- b. Demonstrate, engage in screen scraping, reverse engineer, decompile, disassemble, decode or otherwise attempt to derive or gain access to the source code, system design or database structure of the Services or WaterStreet Materials, in whole or in part;
- c. Mortgage, hypothecate, pledge, distribute, publish, loan, rent, lease, lend, sell, resell, grant, assign, transfer, license, sublicense, market, grant, display or otherwise make available any Services, WaterStreet Materials, or rights therein or thereto to any Person, including on or in connection with the Internet or any outsourcing, time-sharing, service bureau, data processing, software as a service, cloud hosting or similar arrangement;
- d. Attempt to gain access to the Services or WaterStreet Materials, including any related systems or networks, in any manner other than by an Authorized User through the use of his or her own then-valid Access Credentials;
- e. Permit direct or indirect access to or use of any Services or WaterStreet Materials in a way that circumvents any contractual use limits or is otherwise beyond the scope of the authorization granted in this Agreement;
- f. Frame or mirror any Services or WaterStreet Materials except for Client's internal business purposes as otherwise permitted under this Agreement;
- g. Access or use the Services or WaterStreet Materials to create a competitive product or service or to benchmark with a product or service other than WaterStreet's, or for any other purpose that is to WaterStreet's detriment or commercial disadvantage;
- h. Input, upload, transmit or otherwise provide to or through the Services any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

- i. Access or use any Services or WaterStreet Materials in a way that infringes, misappropriates, or otherwise violates the rights of any Person; or
- j. Access or use any Services or WaterStreet Materials in a way that otherwise violates applicable law, rules or regulations.

5.4 The parties agree that the restrictions set forth in Section 5.3 above are to be applied to the maximum extent permitted by law. Client further agrees that, if Client believes that reverse engineering or any similar activity is permitted under applicable law, Client will so advise WaterStreet at least 30 days before engaging in any such activity or permitting any other Person to do so. If Client becomes aware of any actual or threatened activity prohibited by Section 5.3 above, or any actual or threatened infringement or misappropriation of any Intellectual Property Rights of WaterStreet, Client will, and will cause its Authorized Users to, immediately: (i) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and WaterStreet Materials, and permanently erasing or destroying any data to which any Person may have gained unauthorized access); and (ii) notify WaterStreet of any such actual or threatened activity.

SECTION 6 – WARRANTY; DISCLAIMER OF WARRANTY

6.1 Performance Warranty; Exclusive Remedy. WaterStreet represents and warrants that, during the Term of this Agreement, the Services will substantially comply in all material respects with the applicable documentation, and will be provided in accordance with generally accepted standards for the industry. In the event of non-conformance with the foregoing warranty, WaterStreet will use commercially reasonable efforts to correct such non-conformance, provided that Client provides notice of such non-conformance with commercially reasonable promptness, and that such non-conformance does not result from any failure by Client to use the Services in accordance with the terms and conditions of this Agreement. If WaterStreet is unable to correct such non-conformance within 60 days after receiving notification thereof (the “Cure Period”), either party may terminate this Agreement by providing written notice to the other within 30 days after the expiration of the Cure Period, in which case Client will be relieved of any obligation to pay any fees attributable to the period after the effective date of such termination. EXCEPT FOR ANY OTHER EXCLUSIVE REMEDY SET FORTH IN THIS AGREEMENT (INCLUDING BUT NOT LIMITED THAT SET FORTH IN SECTION 2.4 (APPLICATION SERVICE-LEVEL COMMITMENT)), AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS SECTION 6.1 STATES CLIENT’S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY UNDER THIS AGREEMENT.

[6.2 Disclaimer of Warranties.](#) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 6.1 ABOVE, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, WATERSTREET IS PROVIDING ALL SERVICES TO OR FOR CLIENT “AS IS”, WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, AND WATERSTREET HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE AND NONINFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR TRADE PRACTICE. NEITHER WATERSTREET NOR ANY SUPPLIER OR OTHER THIRD PARTY WARRANTS THAT THE SERVICES WILL MEET THE REQUIREMENTS OF CLIENT OR ACHIEVE ANY INTENDED RESULT; THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE; OR THAT ALL ERRORS OR DEFECTS WILL BE CORRECTED. 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 CLIENT. THE ENTIRE RISK ARISING OUT OF THIS AGREEMENT OR THE USE OF ANY SERVICES REMAINS WITH THE CLIENT.

[6.3 Third-Party Products/Services.](#) WITHOUT LIMITING, QUALIFYING OR OTHERWISE MODIFYING ANYTHING OTHERWISE SET FORTH IN THIS AGREEMENT, ALL THIRD-PARTY PRODUCTS AND THIRD-PARTY SERVICES ARE PROVIDED “AS IS”; ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES IS STRICTLY BETWEEN CUSTOMER AND THE APPLICABLE THIRD PARTY; AND WATERSTREET DOES NOT PROVIDE AND HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY THIRD-PARTY PRODUCT OR THIRD-PARTY SERVICE.

SECTION 7 – LIMITATION OF LIABILITY

[7.1 Limitation of Liability.](#) Except AS OTHERWISE PROVIDED IN SECTION 7.3, AND WITHOUT LIMITING, QUALIFYING OR OTHERWISE MODIFYING ANY EXCLUSIVE REMEDY OR OTHER PROVISION IN THIS AGREEMENT, WATERSTREET’s liability to CLIENT will be limited to AN AMOUNT NOT TO EXCEED THE LOWER OF CLIENT’S ACTUAL DAMAGES OR the SUBSCRIPTION services fees paid by Client to WaterStreet for the specific SERVICES from which such liability arose during the 12-month period preceding the first incident from which such liability arose.

[7.2 Exclusion of Damages.](#) Except AS OTHERWISE PROVIDED IN SECTION 7.3, Neither party will ever be liable to the other for any amount in excess of said party’s actual damages or for any indirect, special, consequential, INCIDENTAL, EXEMPLARY, ENHANCED OR PUNITIVE damages, including but not limited to lost profits, LOSS OF GOODWILL, LOST DATA, BUSINESS INTERRUPTION, payments to third parties or other economic loss,

arising out of OR OTHERWISE RELATING IN ANY WAY TO this Agreement or any SERVICES, whether under A THEORY OF contract, tort, strict liability or equity, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

7.3 Exceptions. The exclusions and limitations in [Sections 7.1](#) and [7.2](#) do not apply to Client's obligations to pay any fees owing or either party's obligations under [Section 8](#) (Indemnity), liability pursuant to Section 9 (Confidentiality), or liability for gross negligence or willful misconduct.

7.4 Allocation of Risk. THE PARTIES ACKNOWLEDGE THAT THIS SECTION 7 REFLECTS THE AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES, THAT NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT SAID LIMITATIONS ON ITS LIABILITY, AND THAT NO OTHER PROVISION REGARDING LIMITATION OF LIABILITY OR EXCLUSION OF DAMAGES WILL CONTROL NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY OTHER DOCUMENT. THIS SECTION 7 WILL APPLY DESPITE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY SET FORTH IN THIS AGREEMENT.

SECTION 8 – INDEMNITY

8.1 Client agrees to indemnify, defend and hold harmless WaterStreet and its officers, directors, employees, agents, successor, assigns, affiliates and Subcontractors from and against any and all claims, causes of action, liabilities, demands, costs, fees, expenses (including reasonable attorney's fees), suits, judgments, adjudications and losses of whatever kind or nature ("Actions") which result from, arise out of or otherwise relate in any way to: (i) Client's use of the Services in breach of this Agreement; (ii) Client's fraud, gross negligence or willful misconduct; (iii) personal injury, including death, or tangible property damaged caused by Client's negligence; or (iv) other failure by Client to comply with any provision of this Agreement.

8.2 WaterStreet agrees to indemnify, defend and hold harmless Client and its officers, directors, employees, agents, successor, assigns and affiliates from and against any and all Actions which result from, arise out of or otherwise relate in any way to an allegation, claim or assertion that any Services, or the use of any Services in accordance with this Agreement (excluding Customer Data and Third-Party Materials), infringes any U.S. patent or copyright. The foregoing obligation does not apply to the extent that the alleged infringement results from, arises out of or otherwise relates in any way to [Third-Party Materials](#), [Client Data](#), or any act, omission or other matter described in Section 8.1(i) or (ii), (iii) or (iv) above.

8.3 Indemnification Procedure. Each party will notify the other party with commercially reasonable promptness of any Action for which such party believes it is entitled to be indemnified pursuant to [Section 8.1](#) or [8.2](#), as the case may be. The party seeking indemnification (the "Indemnitee") will cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor will immediately take control of the defense and investigation of such Action and will employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this [Section 8.3](#) will not relieve the Indemnitor of its obligations under this [Section 8.3](#) except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

8.4 Mitigation. If any of the Services or WaterStreet Materials are, or in WaterStreet's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Client's or any Authorized User's use of any Services or WaterStreet Materials is enjoined or threatened to be enjoined, WaterStreet may, at its option and sole cost and expense:

- a. obtain the right for Client to continue to use the Services or WaterStreet Materials materially as contemplated by this Agreement;
- b. modify or replace the Services or WaterStreet Materials, in whole or in part, to seek to make the Services or WaterStreet Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services or WaterStreet Materials, as applicable, under this Agreement; or
- c. by written notice to Client, terminate this Agreement with respect to all or part of the Services or WaterStreet Materials, and require Client to immediately cease any use of the Services or WaterStreet Materials or any specified part or feature thereof, provided that Client will not have any obligation to pay any fees that are directly attributable to the use of such Services or WaterStreet Materials in the future.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS SECTION 8.4 SETS FORTH CLIENT'S SOLE REMEDIES AND WATERSTREET'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT ANY SERVICES, WATERSTREET MATERIALS OR OTHER SUBJECT MATTER OF THIS AGREEMENT INFRINGE, MISAPPROPRIATE OR OTHERWISE VIOLATE ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

SECTION 9 – CONFIDENTIALITY

9.1 For the purposes of this Agreement, “Confidential Information” will mean nonpublic information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure ought to be treated as confidential by the recipient, including but not limited to the terms of this Agreement, the disclosing party’s trade secrets, and information relating to the disclosing party’s customers, vendors, suppliers, personnel, products, services, finances, business plans, market information, marketing plans, contractual agreements, and business policies or practices. WaterStreet’s Confidential Information includes, without limitation, SOC 1 reports, processes, procedures, concepts, ideas, techniques, know-how, source code, object code, algorithms, computer systems, system logic, interface design, webpage design, webpage content, database structure, field tables, product roadmaps, and any other nonpublic information relating to the Services.

9.2 The recipient and its employees and agents will not: (i) disclose the disclosing party’s Confidential Information to any person other than to the recipient’s employees or independent contractors who have a need to know such information and who are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9, or (ii) use the disclosing party’s Confidential Information at any time or for any purpose not expressly authorized in this Agreement. The recipient will maintain the confidentiality of the disclosing party’s Confidential Information with reasonable care and at least the same degree of care as the recipient exercises to protect its own confidential, proprietary and trade secret information. The recipient will not disclose the disclosing party’s Confidential Information to the recipient’s parent company, any subsidiary, or any other affiliate without the prior written consent of the disclosing party.

9.3 The recipient will notify the disclosing party with commercially reasonable promptness of any misappropriation or misuse of the disclosing party’s Confidential Information. Upon the termination of this Agreement, the recipient will immediately return to the disclosing party all copies of Confidential Information, whether in hard copy, electronic form, or other media; and erase, delete or destroy any Confidential Information that resides on or is embodied in any electronic media that remains in the recipient’s possession, custody or control; except that WaterStreet may retain Client’s Confidential Information (i) to the extent necessary to comply with applicable law or professional standards, or (ii) temporarily for backup or archival purposes subject to regular deletion or destruction in the ordinary course of business.

9.4 Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under this Section 9 (Confidentiality) or, in the case of Client, Section 2.7 (Access Credentials) or Section 5.3 (Restrictions), would cause the other party irreparable harm for which monetary damages would

not be an adequate remedy and, accordingly, each party agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, to prove actual damages or to prove that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise, subject to the terms of this Agreement.

9.5 With respect to Confidential Information that constitutes trade secrets pursuant to applicable law, the recipient's obligations pursuant to this Section 9 will continue for so long as such Confidential Information will continue to constitute trade secrets. With respect to Confidential Information that does not constitute trade secrets or that ceases, through no fault of the recipient, to constitute trade secrets pursuant to applicable law, the recipient's obligations pursuant to this Section 9 will continue until the later of (i) 5 years after the expiration of the term of this Agreement, or (ii) 5 years after such Confidential Information ceases, through no fault of the recipient, to constitute trade secrets.

9.6 The foregoing nondisclosure obligations will not apply to information which, as established by competent documentary evidence: (i) is already known to the recipient prior to disclosure by the disclosing party; (ii) becomes publicly available without fault of the recipient; (iii) is rightfully obtained by the recipient from a third party without restriction as to disclosure; (iv) is developed independently by the recipient without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law, provided that the recipient provides reasonable notice to disclosing party of such required disclosure and reasonably cooperates with the disclosing party in limiting such disclosure.

SECTION 10 – TERM AND TERMINATION

10.1 The Term of this Agreement will commence on the date Client first accepts this Agreement as provided above (by signing this Agreement, clicking an "AGREE" button, submitting an Order Form, or using the Services), and continues until all subscriptions or Orders hereunder have expired or been terminated.

10.2 Subscriptions will have an initial term of 36 months and will automatically renew for successive renewal terms of 36 months, except as follows: (i) a party receives written notice of non-renewal from the other party at least 90 days prior to the expiration of the applicable subscription; (ii) the applicable Order Form provides otherwise; or (iii) the subscription or this Agreement has been terminated beforehand as otherwise provided in this Agreement.

10.3 In addition to any other termination right set forth elsewhere in this Agreement, and except as provided in Section 6.1 (Performance Warranty; Exclusive Remedy):

- a. WaterStreet may terminate this Agreement, effective immediately upon written notice to Client, if Client: (i) fails to pay any amount when due hereunder, and such failure continues more than 15 days after WaterStreet's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 5 (Authorization; Proprietary Rights; Restrictions) or Section 9 (Confidentiality);
- b. Client may terminate this Agreement, effective immediately upon written notice to WaterStreet, if WaterStreet breaches any of its obligations under Section 9 (Confidentiality);
- c. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach;
- d. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent to take charge of or sell any material portion of its property or business; and
- e. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party's business operations are terminated either voluntarily or involuntarily, including but not limited to termination resulting from the termination, cancellation or nonrenewal of any license or other authority required for a party to engage in business.

10.4 WaterStreet may suspend or otherwise deny access to or use of all or any part of the Services or WaterStreet Materials to or by Client, any Authorized User or any other Person, without incurring any resulting obligation or liability, if: (i) WaterStreet receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires WaterStreet to do so; or (ii) WaterStreet believes, in its reasonable discretion, that: (a) Client or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; or (b) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services. This Section 10.4 does not limit any of WaterStreet's other rights or remedies, whether at law, in equity or under this Agreement.

10.5 Upon any expiration or termination of this Agreement or any subscription, as applicable, and except as otherwise provided in this Agreement (including but not limited to Section 6.1 (Performance Warranty; Exclusive Remedy)):

- a. all applicable rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate, provided that, for clarity, this Section 10.5.a does not apply to WaterStreet's rights with regard to Resultant Data;
- b. Client will immediately cease all use of the applicable Services;
- c. WaterStreet may disable all Client and Authorized User access to the applicable Services;
- d. if Client terminates this Agreement for cause pursuant to Section 10.3, Client will be relieved of any obligation to pay any fees attributable to the period after the effective date of such termination; and
- e. if WaterStreet terminates this Agreement for cause pursuant to Section 10.3, all amounts that would have become payable had the Agreement remained in effect until the expiration of the Term will become immediately due and payable, and Client will pay such amounts on receipt of WaterStreet's invoice therefor.

SECTION 11 – GENERAL

11.1 Force Majeure. Except for Client's payment obligations, neither party will be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of any Services resulting, directly or indirectly, from any "Force Majeure Event", which means: an act of God, action or inaction of any government authority, labor disputes, communications failures (including but not limited to Internet line disruption), Third-Party Service, Third-Party Product, denial of service attack, war, sabotage, riot, act of terrorism, insurrection, civil unrest or commotion, national emergency, martial law, fire, lightning, flood, cyclone, hurricane, earthquake, landslide, storm, explosion, power shortage, epidemic or pandemic, quarantine, radiation or radioactive contamination, or other causes that are beyond the reasonable control of such party.

11.2 Notices. Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing, sent or delivered as set forth below, and addressed to a party as follows (or to such other address or such other Person that such party may designate from time to time in accordance with this Section 11.2):

If to WaterStreet:



WaterStreet Company

Physical:

215 S. Complex Drive

Kalispell, MT 59901

Mailing:

P.O. Box 2700

Bigfork, MT 59911

Attn: Gregg Barrett

Email: gregg.barrett@waterstreetcompany.com

If to Client:

[Customer.Company]

[Customer.StreetAddress]

[Customer.City], [Customer.State] [Customer.PostalCode]

Attn: [Customer.FirstName] [Customer.LastName]

Email: [Customer.Email]

Communications sent in accordance with this Section 11.2 will be deemed effectively given: (i) when received, if delivered by hand, with signed confirmation of receipt; (ii) when received, if sent by a nationally recognized overnight courier, signature required; (iii) when sent, if sent by facsimile or e-mail with confirmation of transmission during the addressee's normal business hours, and on the next business day, if so sent after the addressee's normal business hours; and (iv) on the 3rd day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

11.3 No Inducement. Client and WaterStreet agree that while this Agreement is in effect, neither will directly or indirectly induce any employee of the other to terminate his or her employment, provided that the foregoing will not be construed to prohibit either party from hiring any Person who responds to a job posting made generally available to the public.

11.4 Entire Agreement. This Agreement, including any Order Form, constitutes the entire understanding between the parties and supersedes all other agreements, whether written or oral, between the parties. If there is any conflict or inconsistency between any provision in the body of this Agreement and that of any Order Form, any applicable WaterStreet product- or service-specific terms or any applicable WaterStreet policy, the terms of the said Order Form, terms or policy will control unless otherwise agreed to by the parties, and in the case of an Order Form, only with respect to that Order Form. The parties acknowledge and agree

that the terms of any purchase order, work order or similar document originating with Client will be of no force and effect and will have no impact on this Agreement or any business between the parties.

11.5 Modification. WaterStreet may modify this Agreement, any applicable WaterStreet product- or service-specific terms or any applicable WaterStreet policy by posting a revised version on WaterStreet's website and notifying Client by email or through the Services (the "Modification Notice"). Any such modification will take effect the day after the date of the Modification Notice. In the event that Client does not agree to such modification, Client must notify WaterStreet within 30 days after the date of the Modification Notice, in which case the modifications will not take effect with respect to Client until the expiration date of the Client's then-current subscription (or if Client has multiple subscriptions, the expiration date of the last such subscription to expire). Except as otherwise set forth above in this Section 11.5, this Agreement may be amended or modified only in a writing agreed to and signed by the authorized representatives of the parties.

11.6 Waiver; Strict Compliance. Neither party hereto will be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by the authorized representative of the party. No delay or omission by either party hereto in exercising any right under this Agreement will operate or be construed as a waiver of such right. A waiver of a right on any occasion will not be construed as a waiver of such right on any further occasion. All rights and remedies hereunder will be cumulative and may be exercised singularly or concurrently. Either party may at any time insist upon strict compliance with the terms and conditions of this Agreement, notwithstanding previous custom, practice or course of dealing to the contrary.

11.7 Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties' successors and permitted assigns. WaterStreet will have the right to subcontract, delegate or assign its rights or obligations under this Agreement in WaterStreet's sole discretion. Except as provided above, any subcontract, delegation or assignment of this Agreement or any rights or obligations thereunder, whether voluntarily, involuntarily, by operation of law, or otherwise, without the other party's express written consent is void, and will have no effect.

11.8 Construction; Headings. The parties mutually agree that the provisions of this Agreement will not be construed for or against either party. The captions and headings of this Agreement are for ease of reference and will not be deemed to define or limit the scope of any terms, covenants, conditions or agreements contained herein. As used herein, all words in any gender will be deemed to include the masculine, feminine or neuter gender, all singular words will include the plural, and all plural words will include the singular, as the context may require.

11.9 Governing Law; Jurisdiction and Venue. This Agreement will be governed by and construed in accordance with the laws of Montana without regard to any applicable conflicts of law rules or principles. Neither the United Nations Convention on Contracts for the International Sale of Goods (“CISG”) nor the Uniform Computer Information Transactions Act (“UCITA”) will apply. The exclusive venue for any judicial action arising out of or relating to this Agreement will be the courts located in Flathead County, Montana (state court jurisdiction) or Missoula, Montana (federal court jurisdiction), and the parties hereby consent to the jurisdiction of said courts and waive any objection that venue in such courts is inconvenient.

11.10 Survival. Those provisions of this Agreement that by their terms, nature, or sense survive any termination or expiration of this Agreement will so survive in accordance with their terms, including but not limited to Section 2.7 (Access Credentials); Section 5 (Authorization; Proprietary Rights; Restrictions); Section 6 (Warranty; Disclaimer of Warranty); Section 7 (Limitation of Liability); Section 8 (Indemnity); Section 9 (Confidentiality); Section 10.5 (Effect of Expiration or Termination); Section 11.9 (Governing Law; Jurisdiction and Venue); Section 11.11 (Severability; Reformation); Section 11.13 (Claims); and Section 11.14 (Attorneys’ Fees).

11.11 Severability; Reformation. In the event any court of competent jurisdiction or arbitrator determines that any provision of this Agreement is unreasonable or unenforceable for any reason, it is the intention of the parties that said provision be enforced to the fullest extent permitted by law, that the Agreement will thereby be reformed, and that in any event the remaining provisions of this Agreement will remain in full force and effect. Without limiting the foregoing in any way, if the court or arbitrator determines that any provision of Section 7 (Limitation of Liability) is less than fully enforceable because an exclusive remedy fails of its essential purpose or for any other reason, then this Agreement will be interpreted or reformed to the extent necessary to render Section 7 fully enforceable.

11.12 No Agency or Joint Venture; No Third-Party Beneficiaries. This Agreement will not be deemed to create a franchise, agency, partnership, joint venture or other relationship other than that of independent contracting parties. Nothing expressed or implied in this Agreement is intended, or will be construed, to confer upon or give any Person other than WaterStreet and Client, and their permitted successors or assigns, any rights, remedies, obligations or liabilities under or because of this Agreement, or to result in such Person being deemed a third-party beneficiary of this Agreement.

11.13 Claims. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ANY CLAIM FOR BREACH OF WARRANTY OR WHICH IS OTHERWISE BASED ON THE PERFORMANCE OR NONCONFORMITY OF ANY SERVICES WILL BE FOREVER BARRED IN THE EVENT OF EITHER OF THE FOLLOWING: (i) CLIENT FAILS TO PROVIDE WRITTEN NOTICE TO WATERSTREET OF THE BREACH, NONPERFORMANCE, NONCONFORMITY OR

OTHER FACTS GIVING RISE TO SUCH CLAIM WITHIN 30 DAYS AFTER THE CLIENT LEARNS OR IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE LEARNED OF SUCH BREACH, NONPERFORMANCE, NONCONFORMITY OR FACTS, OR (ii) CLIENT FAILS TO FILE A LAWSUIT BASED ON SUCH CLAIM WITHIN 180 DAYS AFTER CLIENT LEARNS OR IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE LEARNED OF SUCH BREACH, NONPERFORMANCE, NONCONFORMITY OR FACTS.

11.14 Attorneys' Fees. In the event either party commences legal action, including arbitration, to enforce any term of, or to declare a breach of, this Agreement, the prevailing party in such proceeding will be entitled, in addition to any other rights and remedies it may have, to recover its reasonable costs, expenses, and attorneys' fees incurred in such proceeding from the other party.

11.15 Insurance Coverage.

- a. Professional Errors and Omissions. WaterStreet will maintain professional errors and omissions insurance covering the activities of WaterStreet.
- b. Cyber Risk. WaterStreet will maintain a cyber liability insurance policy.
- c. Commercial General Liability. WaterStreet will maintain a commercial general liability insurance policy.



WATERSTREET
C O M P A N Y

WATERSTREET AND CLIENT CERTIFY BY THEIR UNDERSIGNED AUTHORIZED AGENTS THAT THEY HAVE READ THIS AGREEMENT, INCLUDING ALL SCHEDULES AND EXHIBITS HERETO, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

[Customer.Company]

WaterStreet Company

By: _____
(in non-black ink, please)

By: _____
(in non-black ink, please)

(Name)

(Name)

(Title)

(Title)

(Execution Date)

(Execution Date)