



## MASTER SERVICE AGREEMENT TERMS & CONDITIONS FOR eFFICIENT SERVICES

Last Updated 3 February, 2023

This Master Service 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

"Day" means calendar day unless "business day" is expressly stated.

"Optional Services" means any Services specified as optional in this proposal.

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

"Services", when used as a separate, capitalized term, means the services described in this Agreement.

### SECTION 2 – SERVICES

WaterStreet shall provide those Services that have been selected by Client in writing as of the Effective Date or as set forth below. Client may elect to discontinue, add, or resume any Services upon one hundred twenty (120) days' notice to WaterStreet. The fees for discontinued Services, if separately calculated, shall no longer accrue beginning the first calendar month after said notice period expires. The fees for resumed or added

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Services, shall begin to accrue beginning the first calendar month that WaterStreet begins providing such added or renewed Services.

### **SECTION 3 – TERM**

The Term of this Agreement shall commence on the Effective Date and shall continue until the last day of the 36th full month thereafter and shall automatically renew in addition for successive renewal terms of 36 months, unless otherwise terminated pursuant to Paragraph 12 of this Agreement. As used in this Agreement, the word “Term” may include the initial Term and any renewal Term.

### **SECTION 4 – DUTIES OF WATERSTREET**

4.1 WaterStreet shall use commercially reasonable efforts to provide the Services in accordance with the obligations set out in this Agreement.

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4.2 WaterStreet shall maintain, in accordance with generally accepted practices in the industry, complete, accurate and orderly books, files, records and accounts of all transactions necessary for WaterStreet to perform the Services.

4.3 WaterStreet shall annually undergo and update its Service Organizations Control 1 Audit (SOC 1®), which provides information about backup and replication, business continuity planning and disaster recovery preparedness. A copy of the SOC 1® report will be provided to Client upon issuance each year.

4.5 WaterStreet shall provide supporting documentation concerning any disputed invoice to Client within 30 days following notification of a dispute to WaterStreet.

4.6 WaterStreet shall notify Client of any insurance department or other regulatory complaint within 1 business day after it is received by or becomes known to WaterStreet.

4.7 WaterStreet shall use commercially reasonable efforts to resolve any error or omission on the part of WaterStreet in providing the Services. Should such error or omission result in any under-payment to or over-payment by Client, Client will use commercially reasonable efforts, in cooperation with WaterStreet, to collect or recover any such amounts.

4.8 Client acknowledges and agrees that:

- a. WaterStreet is not responsible for Client's claims administration, claims payment(s), or claims recoveries, but WaterStreet shall, however, cooperate as required with Client's claims administration service provider(s);
- b. WaterStreet provides no direct insurance coverage or assumes any insurance risk for any Person, including but not limited to any of Client's policyholders or insureds;
- c. Client is solely responsible for the accuracy of any information provided regarding any insurance application, and WaterStreet has no actual or implied authority to bind insurance coverage or exercise any discretionary or overriding functions not provided for in this Agreement or in the Client's underwriting, rate, or form guidelines; and
- d. Client's purchase of Services is not contingent on the delivery of any future services or products, or dependent on any oral or written public comments made by WaterStreet regarding future services or products.

4.9 Insurance Coverage: WaterStreet shall maintain professional errors and omissions insurance covering the activities of WaterStreet.



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4.10 WaterStreet will be responsible for obtaining a Broad Screen Verify or comparable criminal background report for each of its employees or independent contractors who have access to Client's Confidential Information or as otherwise required by applicable law.

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### **SECTION 5 – DUTIES OF CLIENT**

5.1 Client shall, in a timely manner and in a format specified by WaterStreet, provide WaterStreet with:

- a. All financial and other data necessary for WaterStreet to perform the Services;
- b. All information, specifications, policy formats, corporate logos and other data necessary for WaterStreet to perform the Services;
- c. All banking and financial/operational control requirements necessary for WaterStreet to perform the Services; and
- d. Any approvals or other actions from Client as needed for WaterStreet to perform the Services.

WaterStreet will have no responsibility with regard to amounts paid (or not paid) in error, amounts collected (or not collected) in error, or any failure to timely provide required notices or other communications due to Client's failure to timely provide or update any information, approvals or other actions set forth above.

5.2 Client shall promptly report to WaterStreet any suspected error or omission by either party in connection with the Services and shall promptly take all reasonable measures to avoid or minimize any loss, detriment or harm resulting therefrom.

### **SECTION 6 – AUDITS**

Either party, its employees or its authorized agents, including regulators and government authorities, shall have the right, at any reasonable time during normal business hours and with reasonable notice to the other party, to review and/or audit all files relating to this Agreement which are maintained by the other party.

### **SECTION 7 – PRICE AND PAYMENT**

7.1 Client shall promptly pay all amounts invoiced in accordance with the payment terms in the pricing section of this document.

7.2 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 other resulting from the Client's use of the Services, other than any taxes imposed on WaterStreet's income.

7.3 WaterStreet may increase the fees for any Services by providing written notice to Client at least 30 days prior to the effective date of any such fee increase.

7.4 All charges for postage, printing, or other third-party charges incurred and paid by WaterStreet as a result of providing Services are the responsibility of the Client and shall be billed to Client not more than once per month. Payment terms for such reimbursements are identical to all other payment terms noted in this Agreement.

7.5 All fees will be paid electronically. Client will provide WaterStreet with valid and updated banking account 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.

## **SECTION 8 – WARRANTY; DISCLAIMER OF WARRANTY**

8.1 Performance. WaterStreet represents and warrants that all Services shall be performed in a professional manner in accordance with generally accepted standards for the industry.

8.2 Disclaimer of Warranties. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, 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. NEITHER WATERSTREET NOR ANY SUPPLIER OR OTHER THIRD-PARTY WARRANTS THAT THE SERVICES WILL MEET THE REQUIREMENTS OF CLIENT. 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.

8.3 Third-Party Products/Services. WITHOUT QUALIFYING OR LIMITING THE FOREGOING, WATERSTREET DOES NOT PROVIDE ANY WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY PRODUCT OR SERVICE PROVIDED BY A THIRD PARTY. Client expressly agrees to be bound by any such third party’s terms of use, service level agreement or similar document.

## **SECTION 9 – LIMITATIONS OF LIABILITY**

9.1 Limitation of Liability. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 9.3, WATERSTREET’S LIABILITY TO CLIENT SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE LOWER OF CLIENT’S ACTUAL DAMAGES OR THE FEES PAID BY CLIENT TO WATERSTREET FOR THE SERVICES FROM WHICH SUCH LIABILITY AROSE DURING THE 12-MONTH PERIOD PRECEDING THE FIRST INCIDENT FROM WHICH SUCH LIABILITY AROSE.

9.2 Exclusion of Damages. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 9.3, NEITHER PARTY SHALL 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, 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 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.

9.3 Exceptions. The exclusions and limitations in Paragraphs 9.1 and 9.2 do not apply to Client's obligations to pay any fees owing or either party's obligations under Article 10 (Indemnity), liability pursuant to Article 11 (Confidentiality), or liability for gross negligence or willful misconduct.

9.4 Allocation of Risk. THE PARTIES ACKNOWLEDGE THAT THIS ARTICLE 9 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 SHALL CONTROL NOTWITHSTANDING ANYTHING TO



THE CONTRARY IN THIS AGREEMENT OR ANY OTHER DOCUMENT. THIS ARTICLE 9 WILL APPLY DESPITE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY SET FORTH IN THIS AGREEMENT.

#### **SECTION 10 – INDEMNITY**

10.1 Client agrees to indemnify and defend WaterStreet and its officers, directors, employees, agents, successor, assigns and affiliates, 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 (“Claims”) which result from, arise out of or otherwise relate in any way to : (i) Client’s breach of this Agreement; (ii) Client’s fraud, gross negligence or willful misconduct; or (iii) personal injury, including death, or tangible property damaged caused by Client’s negligence.

10.2 WaterStreet agrees to indemnify and defend Client, its officers, directors, employees, agents, successor, assigns and affiliates, from and against any and all Claims which result from, arise out of or otherwise relate in any way to: (i) WaterStreet’s fraud, gross negligence or willful misconduct; or (ii) personal injury, including death, or tangible property damaged caused by WaterStreet’s negligence.

10.3 Indemnification Procedure. Each party shall promptly notify the other party of any Claim for which such party believes it is entitled to be indemnified pursuant to Paragraph 10.1 or 10.2, as the case may be. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor’s sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Claim and shall 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 Paragraph 10.3 will not relieve the Indemnitor of its obligations under this Paragraph 10.3 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.

10.4 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 11 – CONFIDENTIALITY**

11.1 For the purposes of this Agreement, “Confidential Information” shall 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, business plans, marketing plans, contractual agreements, business policies or practices. WaterStreet’s Confidential Information includes, without limitation, its 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, or other products and services developed or being developed by WaterStreet.

11.2 The recipient and its employees and agents shall not (i) disclose the disclosing party’s Confidential Information to any person other than to its 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 Article 11, or (ii) use the disclosing party’s Confidential Information at any time or for any purpose not expressly authorized in this Agreement.

The recipient shall 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 shall 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.

11.3 The recipient shall promptly notify the disclosing party of any misappropriation or misuse of the disclosing party's Confidential Information. Upon the termination of this Agreement, the recipient shall 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.

11.4 Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under this Article 11 (Confidentiality) 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, or to prove actual damages or 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.

11.5 With respect to Confidential Information that constitutes trade secrets pursuant to applicable law, the recipient's obligations pursuant to this Article 11 shall continue for so long as such Confidential Information shall 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 Article 11 shall 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.

11.6 The foregoing nondisclosure obligations shall 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 12 – TERMINATION**

12.1 Either party may terminate this Agreement without cause at the expiration of the initial Term or at the conclusion of any subsequent Term, provided the other party receives written notice of termination at least 120 days prior to the expiration of the then-current Term.

12.2 In addition to any other termination right set forth elsewhere in this Agreement:

- a. WaterStreet may terminate this Agreement, effective on 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 Article 11 (Confidentiality);
- b. Client may terminate this Agreement, effective on written notice to WaterStreet, if WaterStreet breaches any of its obligations under Article 11 (Confidentiality);
- c. Either party may terminate this Agreement, effective on 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 appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; and
- e. Either party may terminate this Agreement, effective on 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.

### **SECTION 13 – GENERAL**

13.1 Force Majeure. Except for Client's payment obligations, neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of Service resulting, directly or indirectly, from acts of God, civil or military authority, labor disputes, communications failures, including but not limited to Internet line disruption, or other causes that are beyond the reasonable control of such party

13.2 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 Paragraph 13.2).



**WATERSTREET**  
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If to WaterStreet:

Physical:

215 S Complex Drive

Kalispell, MT 59901

Mailing:

PO Box 2700

Bigfork, MT 59911

Attn: Gregg Barrett

Email: [gregg.barrett@waterstreetcompany.com](mailto: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 Paragraph 13.2 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.

13.3 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.

13.4 Entire Agreement. This Agreement, including any exhibit, addendum or amendment hereto, 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 exhibit, addendum or amendment hereto, the terms of the exhibit, addendum or amendment will control unless otherwise agreed to by the parties.

13.5 Modification. This Agreement may be amended or modified only in writing agreed to and signed by the authorized representative of the parties.

13.6 Waiver; Strict Compliance. Neither party hereto shall 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 shall operate as a waiver of such right. A waiver of a right on any occasion shall not be construed as a waiver of such right on any further occasion. All rights and remedies hereunder shall 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.

13.7 Successors and Assigns. The Agreement shall inure to the benefit of and bind the respective parties' successors and permitted assigns. WaterStreet shall have the right to subcontract, delegate or assign its rights or obligations under the Agreement in WaterStreet 's sole discretion. Except as provided above, any subcontract, delegation or assignment without the other party's express written consent is void, and shall have no effect.

13.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all the counterparts, when taken together, shall constitute one and the same agreement.

13.9 Arm's-Length Agreement, Attorney Review, Construction. The parties mutually acknowledge that the provisions of this Agreement are the product of arm's-length negotiations with both parties having essentially equal bargaining strength, access to legal representation of their choice, and the opportunity to determine the language used herein. The provisions of the Agreement shall not be construed for or against either party. The captions and headings of the Agreement are for ease of reference and shall not be deemed to define or limit the scope of any terms, covenants, conditions or agreements contained herein or in any exhibit or attachment attached hereto. As used herein, all words in any gender shall be deemed to include the masculine, feminine or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

13.10 Governing Law; Jurisdiction and Venue. The Agreement shall be governed by and construed in accordance with the laws of Montana without regard to any applicable conflicts of law provisions. The exclusive venue for any judicial action arising out of or relating to the Agreement shall 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.

13.11 Survival. Those provisions of this Agreement that by their terms, nature, or sense survive any termination or expiration of this Agreement shall so survive in accordance with their terms, including but not limited to Paragraph 5.8 (Access Credentials); Article 8 (Warranty; Disclaimer of Warranty); Article 9 (Limitation of Liability); Article 10 (Indemnity); Article 11 (Confidentiality); Paragraph 12.3 (Effect of Termination); Paragraph 13.10 (Governing Law; Jurisdiction and Venue); Paragraph 13.12 (Severability; Reformation); Paragraph 13.14 (Claims); and Paragraph 13.15 (Attorneys' Fees).





13.12 Severability; Reformation. In the event any court of competent jurisdiction 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 shall thereby be reformed, and that in any event the remaining provisions of this Agreement shall remain in full force and effect. Without limiting the foregoing in any way, if the court or arbitrator determines that any provision of Article 9 (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 shall be interpreted or reformed to the extent necessary to render Article 9 fully enforceable.

13.13 No Agency or Joint Venture. This Agreement shall not be deemed to create a franchise, agency, partnership, joint venture or other relationship other than that of contracting parties. Nothing expressed or implied in this Agreement is intended, or shall 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.

13.14 Claims. ANY CLAIM FOR BREACH OF WARRANTY OR WHICH IS OTHERWISE BASED ON THE PERFORMANCE OR NONCONFORMITY OF ANY SERVICES SHALL BE FOREVER BARRED IN THE EVENT OF EITHER OF THE FOLLOWING: (i) CLIENT FAILS TO PROVIDE WRITTEN NOTICE TO WATERSTREET OF THE APPLICABLE EVENT, ERROR, OMISSION, 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 OPERATIONAL EVENT, ERROR, OMISSION 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 OPERATIONAL EVENT, ERROR, OMISSION OR FACTS.

13.15 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.

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.