

Subscription Agreement

Waterford Research Institute, LLC (“Waterford” or “we”) has developed certain programs, products and technology, as further described and defined below, to provide educational and learning services to educational institutions, entities, educators, parents and guardians and individuals. The educational institution, entity, educator, parent, guardian or individual identified during registration (“Customer” or “you”) desires to subscribe to the Subscription Service providing access to Waterford’s Products for the benefit of certain student Users, and Waterford desires to provide access to the Products through the Subscription Service, on the terms and conditions set forth below.

Waterford is willing to provide the Subscription Service, Services, and access to the Products and related Documentation to Customer for use by the specified User(s), only on the condition that Customer accepts all of the terms in this Subscription Agreement (the “Agreement”).

PLEASE READ THIS AGREEMENT BEFORE ACCEPTING THIS AGREEMENT AND SUBSCRIBING TO USE THE SUBSCRIPTION SERVICE AND PRODUCTS, BY CLICKING “I AGREE”. YOU INDICATE YOUR ACCEPTANCE OF THE ENTIRE AGREEMENT. If you are agreeing to this Agreement on behalf of an institution or entity that is the Customer, you represent to Waterford that you have the requisite authority to bind Customer to the terms and conditions of this Agreement.

IF YOU ARE A PARENT OR GUARDIAN of a child using the Subscription Service, you are accessing the Subscription Service and/or the related Mentor mobile app for your child’s benefit, and the fees for the Subscription Service are being paid by an educational organization that is the primary Customer, then the following terms apply to you:

- You are agreeing to comply with the obligations of the Customer under this Agreement, except that Sections 2, 11 (as well as all other payment-related terms and conditions in this Agreement), and 16 do not apply to you.
- For any Customer or other individual who is not paying fees directly to Waterford to use the Subscription Service, the Subscription Service and other Products and Services of Waterford are provided “AS IS,” AND IN NO EVENT SHALL WATERFORD BE LIABLE TO SUCH INDIVIDUALS FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DIRECT DAMAGES, LOST PROFITS, LOST DATA, BUSINESS INTERRUPTIONS, OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SUBSCRIPTION SERVICE, MENTOR APP, OR OTHER WATERFORD PRODUCTS OR SERVICES, EVEN IF WATERFORD HAS NOTICE OF THE POTENTIAL FOR SUCH LOSS OR DAMAGE. This clause supersedes Section 17 below.
- Your license may terminate automatically, without notice, if the educational organization’s agreement with Waterford expires or terminates.

THE PARTIES HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1. DEFINITIONS.

“**Confidential Information**” means all information regarding a party, its business, and Users, including, without limitation, the Products, Documentation, technical, marketing, financial, employee, planning, Customer Data, Personal Data, and other confidential or proprietary information, disclosed under this Agreement, that is clearly identified as confidential or proprietary at the time of disclosure or that the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary. Confidential Information will not include information that the receiving party can prove: (i) is or becomes public knowledge, except through the fault of the receiving party; (ii) was already known to the receiving party at the time of disclosure by the disclosing party; (iii) is properly disclosed to the receiving party by a third party without obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information.

“**Customer Data**” means any data, information or information contained in any database, template or other similar document submitted by Customer or its Users through the Products or provided by Customer to Waterford in connection with Customer’s or its Users’ use of and access to the Products, including Personal Data. Customer Data does not include Feedback (as defined in Section 13(b)).

“**Documentation**” means the designated user manuals, handbooks, online materials, specifications or forms furnished by Waterford to Customer or Users that describe the features, functionality or operation of the Products and Subscription Service.

“**Effective Date**” means the date that Customer has (i) initially placed an order for the Subscription Service by registering and submitting Order Documents and (ii) clicking “I agree” to accept the terms of this Agreement.

“**Fees**” means the subscription fees Customer is required to pay for use of the Subscription Service and Products, and fees for Services, as set forth on the applicable Order Documents.

“**Order Documents**” means: (i) an account registration and order form for the Products and/or Services duly submitted on-line or in any other manner required by Waterford, in the form provided by Waterford, setting forth the Products or Services ordered and the applicable Fees, and/or (ii) such other documents as may be required by Waterford from time to time in connection with the subscription for the Products or ordering of Services. When submitted by Customer and accepted by Waterford, all applicable Order Documents of Customer are incorporated into this Agreement by this reference and are part of this Agreement as if fully set forth in this Agreement.

“**Personal Data**” shall mean any information relating to an identified or identifiable natural person as defined by the General Data Protection Regulation of the European Union (“GDPR” EC-2016/679) or other applicable federal or state laws or regulations.

“**Products**” means the educational products of Waterford specified on the Order Documents as having been subscribed to by Customer.

“**Professional Services**” has the meaning set forth in Section 2.

“**Services**” means Professional Services and all other services provided by Waterford to Customer and Users under or in connection with this Agreement.

“**Subscription Service**” means Waterford’s subscription service providing Users with online access to the hosted Products specified in the Order Documents, and any related Documentation, web pages, products, progress reports, education recommendations and services offered by Waterford that are made available online as part of the Subscription Service.

“**Term**” means the entire term of this Agreement, as determined in accordance with Section 14(a), including the Initial Term and any and all renewal terms.

“**Users**” means Customer’s students, children for whom Customer is the parent or guardian, and/or others (including parents and guardians) who are authorized to use the Products through Customer’s subscription to the Products and who have been supplied UserIDs (as defined below) and passwords for this purpose.

“**Website**” means Waterford websites where the Subscription Service may be accessed by Users via the available login.

2. ORDERS. The Order Documents will specify the Products that Customer is subscribing for, the related number of Users, and any consulting, configuration, customization or other professional services that Customer is purchasing from Waterford (“**Professional Services**”). Following Waterford’s acceptance of each Order Document and Customer’s payment of any initial Fees due under such Order Documents, Waterford will make the Products available to Customer and its Users for access, using a password-protected account on Waterford’s Website.

3. ACCESS AND SERVICE.

- a. **Subscription Grant.** Subject to the terms of this Agreement, including without limitation the timely payment of Fees, Waterford hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive subscription, during the Term, for authorized Users to access and use the Products, subject to the terms of the Order Documents related to the licensed number of Users. Customer and its Users may use the Subscription Service and Products solely for the provision of education and learning services and instruction to the authorized Users. . Customer and its Users are licensed to use the Products only as part of the Subscription Service. Customer will inform Users of proper use of the Subscription Service and Products under this Agreement, and is responsible for Users’ compliance with the terms of this Agreement and proper use of the Subscription Service and Products.
- b. **Future Developments.** Customer agrees that its purchase of the Subscription Service is not contingent upon the delivery of any future functionality or features, or dependent upon any statement or representation made by Waterford with respect to future functionality or features of the Products.

- c. **Modifications.** Customer acknowledges and agrees that the Subscription Service, Website, Services and Products may be updated and modified by Waterford from time to time, in Waterford's sole discretion.
4. **USE RESTRICTIONS.** Customer will not, and will not attempt to: (a) reverse engineer, disassemble or decompile any component of the Subscription Service or Products; (b) interfere in any manner with the operation of the Subscription Service, Products, or the hardware and network used to operate the Products; (c) distribute, transfer, grant sublicenses to, or otherwise make available the Products (or any portion thereof) to third parties (other than authorized Users), including, but not limited to, making Products (or any portion thereof) available (i) through resellers or other distributors, (ii) as an application service provider, service bureau, or rental source, (iii) by broadcast or transmission by telephone, cable, satellite, the Internet or interactive television; (d) embed or incorporate in any manner the Products (or any element thereof) into other applications of Customer or third parties; (e) create modifications to or derivative works of the Subscription Service or Products; (f) copy or reproduce any part of the Subscription Service or Products; (g) attempt or permit any third party to attempt to modify, alter, or circumvent the license or access control and protection mechanisms within the Products or for the Subscription Service; (h) use or transmit the Products in violation of any applicable law, rule or regulation, including any export/import laws, (i) in any way access, use, or copy any portion of the Subscription Service, Products, or Waterford's code included therein (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Products, Subscription Service or Services; or (j) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation of Waterford displayed on any display screen within the Subscription Service or Products ("Waterford Marks"). Customer shall not permit any User or other third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions.
5. **ADDITIONAL USERS AND SERVICES.** Access to the Products cannot be shared with anyone other than the number and types of Users authorized in the Order Documents. If Customer desires to add Users to the same subscription in excess of the number originally purchased ("Additional Users") or if Customer desires to order additional or upgraded Products, Services or modules from Waterford ("Additional Services"), Customer must submit an updated Order Document. Upon Waterford's acceptance of such an updated Order Document, (i) if Additional Users were ordered, Waterford shall make the Products available to the Additional Users through the Subscription Service; or (ii) if Additional Services were ordered, Waterford shall make the Additional Services available to Customer on the terms and conditions set forth in this Agreement and the updated Order Document. With respect to Additional Users: (i) the term will be coterminous with the preexisting subscription Term; and (ii) Customer will be responsible for any additional Fees for the Additional Users in full for the month in which the updated Order Document is accepted by Waterford.
6. **ACCESS TO SUBSCRIPTION SERVICE.** Subject to the terms of this Agreement, Waterford shall use commercially reasonable efforts to enable Customer and Users to access the Products through the Subscription Service on a continual basis during the Term, excluding downtime for maintenance and updating of the system, or caused by the fault of Customer or Users, or due to other causes outside of Waterford's reasonable control, including without limitation interruption of Internet service or force majeure events as described in Section 17.d.
7. **CUSTOMER SYSTEM OBLIGATIONS.** Except to the extent specified in an Order Document, Customer shall be solely responsible to provide or maintain any hardware or other software required for Customer to access the Subscription Service and use the Products. Waterford shall have no liability, obligation or responsibility for the maintenance of Customer's hardware or other software required for Customer to use the Products, and disclaims any such responsibility.
8. **ACCESS AND SECURITY GUIDELINES.** Each User must have a unique user identification name and password ("UserID") for access to and use of the Products. Customer shall be responsible for ensuring the security and confidentiality of the UserIDs of its Users. UserIDs may not be provided to any individual who is not a User. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Products, and will notify Waterford promptly of any such unauthorized use. Customer will not use its access to the Products to: (a) access, copy, harvest or collect any information or data of or about other Waterford customers without their prior written consent; (b) interfere with or disrupt the integrity or performance of the Subscription Service, Products or the data contained therein; or (c) harass or interfere with another Waterford customer's or their Users' use and enjoyment of the Products. Customer will, at all times, comply with all applicable local, state, federal, and foreign laws in using the Subscription Service and Products.
9. **CUSTOMER DATA.**
- a. Customer is solely responsible for the Customer Data and will not provide, post or transmit any Customer Data or any other information, data or material that: (a) infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; or (b) contains any

viruses or programming routines intended to damage, surreptitiously intercept or misappropriate any system, data or personal information. Waterford may take remedial action if Customer or the Customer Data violates this [Section 9\(a\)](#), however, Waterford is under no obligation to review Customer Data for accuracy or potential liability.

- b. Waterford reserves the right to collect and retain Customer Data from which all personally identifiable information included in such data has been removed (“[De-Identified Data](#)”). Waterford may use, publish and disclose De-Identified Data for any lawful purpose, including without limitation benchmarking, development or best practices, product and service development, and research and statistical purposes without reimbursement or notification to, or consent or authorization from, Customer. If Customer is an educational entity or institution, Customer agrees, to the fullest extent permissible under applicable law, that Waterford may, to the fullest extent permissible under applicable law, use and retain personally identifiable information included in such Customer’s Customer Data for research projects conducted in conjunction with such Customer, provided that at the conclusion of such research project, such Customer Data will be de-identified or removed at Waterford’s discretion, and in no event will personally identifiable information be disclosed to third parties. Waterford will use commercially reasonable efforts to safeguard the security, confidentiality and integrity of Customer Data.

10. **PRIVACY.**

- a. [Our Privacy Policy](#). The information that we obtain through your use of the Subscription Service, Products, Services or any portion of the Website, whether through the registration process or otherwise, is governed by the Waterford Privacy Policy posted on the Website (“[Privacy Policy](#)”), which is incorporated into the terms and conditions of this Agreement and supplements the terms of this Section 10. You may access the Privacy Policy by clicking on this link: <https://www.waterford.org/privacy-policy/> The Privacy Policy describes the types of Personal Data we collect and why we collect it, how we use and disclose that data, and the choices we offer you to control that data. If you do not agree with the Privacy Policy, you may not use the Subscription Service, Products, Services or Website.
- b. [Our Data Processing](#). We use Personal Data for purposes related to the Subscription Service, including licensing and operation of the Subscription Service and Products, consultation for student education progress, training, communication, customer service, system monitoring and data security. In addition, we process Personal Data for our business purposes, including processing donations received from individuals and entities, research, analytics, Products and Service improvement, security monitoring, business operations and administration, tax, and other regulatory requirements. We use Personal Data to enable use of Subscription Service features and related Products and Services, including through use of third-party service providers. We also use Personal Data to communicate with you for marketing purposes, such as to offer opportunities to donate to Waterford. We may use Personal Data to comply with applicable laws and exercise legal rights. We may also use Personal Data for internal purposes, including auditing, data analysis and system troubleshooting.

The types of Personal Data we Process includes contact information, student progress, student reports, student learning difficulties and impairments, device information, information relevant to learning advancement such as language, culture, age and other characteristics, Subscription Service use and service information, internet use information and regulatory information (to satisfy regulatory obligations such as tax and other reporting obligations), all as more fully described in the Privacy Policy.

We process the Personal Data of Data Subjects, including Customers who are individuals, Customer employees and representatives, parents, guardians, educators, and students, in order to operate our Subscription Service, Products, Services and Website.

- c. [Processing per Your Instructions](#). We Process the Personal Data you provide to us as instructed by you to fulfill your request for our Products and Services. The servers that host Waterford’s Subscription Service, Products, and Website are based in the United States of America and all content, information, and Personal Data you provide through the Website will be received, Processed and stored in the United States of America. When you submit any such content, information, or Personal Data through Waterford’s Subscription Service, Products, or Website or through your interactions with our customer service team, you authorize and instruct Waterford to transfer the information to the United States of America (if you are in a different country) and to Process that information in the United States.

Waterford processes Personal Data of minors for the purposes described in this Agreement and the Privacy Policy. You agree that you will not submit the Personal Data of minors to the Products unless (i) you have previously obtained consent from the parent or guardian of the minor, or (ii) you are the parent or guardian of the minor, and you are hereby providing such consent.

- d. Confidentiality. Waterford shall require its employees and contractors to be subject to confidentiality undertakings.
- e. Security. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Waterford shall, in relation to Personal Data provided by you, implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk. Waterford has implemented various measures to prevent accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed, including the measures listed in the Privacy Policy.
- f. Subprocessors. Waterford uses third-party service providers (“Subprocessors”) to Process Personal Data to facilitate our Subscription Service, Products, Services and Website. Examples include payments, security, data analysis, surveys, and so forth. You authorize Waterford to use Subprocessors to facilitate Waterford’s Subscription Service, Products, Services and Website. Waterford carries out due diligence to ensure its Subprocessors are capable of providing the level of protection for you required under this Agreement and applicable law, including appropriate technical and organizational measures for Processing Personal Data. If you would like to know more about our Subprocessors including Personal Data that is shared with specific Subprocessors or would like to object to the use of any Subprocessor, please contact us. We will respond in a timely manner to such inquiry or objection.

Inquiries may be made to:

Waterford Institute
 Attn: Data Privacy Agent
 1590 East 9400 South
 Sandy, Utah 84093 USA
dataprivacy@waterford.org

Waterford Research Institute, Romania
 Attn: Data Privacy Agent
 96 Memorandului Street
 Timisoara, Timis County Romania
dataprivacyro@waterford.org

Under certain data protection laws, including the GDPR, Waterford is liable if a Subprocessor that we have engaged to Process Personal Data fails to fulfill its data protection obligations.

- g. Rights of Data Subjects. We rely upon our Customers to maintain the accuracy of the Personal Data they provide through our Subscription Service, including the ability to administer user accounts and the ability to add, edit and delete contact information. Waterford agrees to assist in meeting obligations under the GDPR or applicable law for responding to a Data Subject’s exercise of rights. Such rights include the right of access, right to rectification, right to be forgotten, right to restriction of processing, and right of data portability. In accordance with applicable law, Waterford shall promptly notify you if it receives a request from a Data Subject for whom you submitted Personal Data in respect of the exercise of the rights of the Data Subject and shall ensure that it does not respond to that request except on your documented instructions provided to us within a reasonable timeframe, or as required by law, in which case Waterford shall to the extent permitted by law inform you of that legal requirement before responding to the request. You agree that a reasonable timeframe to provide us with documented instructions is 2 weeks. When we do receive your timely instructions we will make reasonable efforts to comply with your instructions, consistent with applicable law. Where we do not receive your documented instructions within a two (2) week timeframe from the time that we notify you of the Data Subject’s request, we will comply with the request made by the Data Subject in exercise of their rights.
- h. Data Breach and Other Obligations. In the event of any breach or compromise of the security, confidentiality or integrity of Personal Data, Waterford will inform you of the breach as required under applicable law, typically through contacting you via email and posting a notice on the Website. In addition, we will make available to you all information necessary for you to demonstrate or maintain your compliance with data protection, as required under applicable law.
- i. Retention of Data. Waterford may retain Personal Data provided by Customers and Users for the term of this Agreement. In some instances, Users have the option to add, update or delete Personal Data contained within the Subscription Service through use of Subscription Service features, including deactivating or deleting a User’s account. You authorize Waterford to delete your data from our systems upon termination of this Agreement. On your request, we shall return Personal Data to you if such request is made prior to performing our standard delete function. Waterford retains De-Identified Data for historical reporting and statistical and research purposes.

11. FEES, PAYMENT AND SUSPENSION OF SERVICES.

- a. As consideration for the subscription to the Products and the support Services provided by Waterford under this Agreement, Customer will pay Waterford the Fees for the number of

Users and the Products and Services ordered by Customer, as set forth on the applicable Order Document. Customer understands and agrees that Customer is ordering the Subscription Service for the full Term of this Agreement; however, the Fees will be charged on a monthly basis for each month of the Term.

- b. Unless otherwise agreed to in writing by the parties, Customer will pay to Waterford all undisputed Fees owed within 30 days after Waterford's issuance of an invoice for such amounts. Payments will be sent to Waterford's address on the invoice. All amounts shall be payable in the currency of the United States. All Fees owed by Customer in connection with this Agreement are exclusive of, and Customer shall pay, all sales, use, excise and other taxes that may be levied upon Customer in connection with this Agreement, except for employment taxes and taxes based on Waterford's net income.
- c. If any amount owing by Customer under this Agreement is 15 or more days overdue, Waterford may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations so that all such obligations throughout the remainder of the Term become immediately due and payable, and suspend Customer's access to the Subscription Service and suspend all UserIDs until such amounts are paid in full. Waterford will give Customer at least 5 days' prior notice that Customer's account is overdue before suspending access to the Subscription Service. All past due amounts shall accrue interest at the rate of 1.5% per month until paid in full. Customer shall reimburse Waterford for all expenses (including reasonable attorneys' fees) incurred by Waterford to collect any amount that is not paid when due.

12. CONFIDENTIAL INFORMATION.

- a. Obligation. Each party agrees (i) to hold the other party's Confidential Information in strict confidence, (ii) to limit access to the other party's Confidential Information to those of its employees or agents having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein, and (iii) not to use such Confidential Information for any purpose except as expressly permitted hereunder. The receiving party shall give Confidential Information at least the same level of care and protection as it gives its own confidential information of similar nature, but not less than a reasonable level of care. The receiving party shall maintain Confidential Information in a safe and secure place and shall not copy Confidential Information except to the extent necessary for the purposes of this Agreement.
- b. Legal Orders. The receiving party may disclose Confidential Information to the extent it is legally compelled to do so by a valid order or requirement by a court or other governmental body or as necessary to comply with open records acts or other freedom of information laws or regulations; provided that, if legally permissible, the receiving party shall first notify the disclosing party in writing of such order or requirement to disclose; to enable the disclosing party to seek to limit or prevent such disclosure.

13. OWNERSHIP.

- a. Products and Technology. Waterford owns and retains all right, title and interest in and to the Products and all software, materials, formats, interfaces, information, data, content and Waterford proprietary information and technology used by Waterford or provided to Customer and Users in connection with the Subscription Service and Products (the "Waterford Technology"). The Waterford Technology is protected by intellectual property rights owned by or licensed to Waterford. Other than as expressly set forth in this Agreement, no license or other rights in the Waterford Technology are granted to Customer, and all such rights are hereby expressly reserved by Waterford.
- b. Feedback. Waterford shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Products and Services any suggestions, enhancement requests, recommendations or other feedback ("Feedback") provided by Customer and Users relating to the Subscription Service, Products and Services. Waterford shall exclusively own all right, title and interest in and to any software and intellectual property developed or delivered to Customer or Users in the performance of this Agreement, regardless of whether it is based on or incorporates any Feedback, subject to the licenses and rights granted herein to Customer.
- c. Customer Data. Customer retains ownership of the Customer Data, provided that Customer grants to Waterford all necessary licenses in and to such Customer Data as necessary for Waterford to use Customer Data as set forth in this Agreement and the Privacy Policy. Waterford shall own all De-Identified Data.
- d. Metadata and Usage Data. The Subscription Service tracks metadata and other usage data related to Customer's and Users' use of the Subscription Service ("Usage Data") and provides such data to Waterford. Waterford shall own such Usage Data, excluding any

Personal Data incorporated therein. Customer agrees that Waterford shall have the perpetual right to collect, aggregate, use, distribute and sell such Usage Data for any legal purpose, including without limitation for the purposes of providing services and improving the Subscription Service and Waterford's Products and Services generally. Waterford may retain and use Usage Data permanently. To the extent such Usage Data contains any individually identifiable data or Personal Data, Waterford shall not sell or otherwise provide such Usage Data to any third party unless the data been anonymized (e.g., no name or address attached to the particular data) and/or aggregated with other users' data, so that it is not identifiable as to any particular person. Notwithstanding the foregoing, Waterford may share Usage Data in its original form as necessary or appropriate to provide its Services (for example, using a third party to process payments) or to comply with legal obligations or exercise its legal rights.

14. **TERM AND TERMINATION.**

- a. **Term.** This Agreement is effective on the Effective Date. The initial term of this Agreement (the "Initial Term") will commence on the Effective Date and continue for the period set forth in the applicable Order Document. Thereafter, this Agreement will automatically renew for additional terms in length equal to such Initial Term, unless either party gives the other party written notice of non-renewal at least 30 days prior to the expiration of the then-current term. Waterford reserves the right to increase the Fees applicable to any renewal term upon written notice to Customer.
- b. **Early Termination.** Either party may terminate this Agreement upon written notice if the other party materially breaches the Agreement and does not cure such breach (if curable) within thirty (30) days after receiving written notice of such breach.
- c. **Effect of Termination.** Upon the termination of this Agreement for any reason, (i) any amounts owed to Waterford under this Agreement before such termination will become immediately due and payable; and (ii) all Services, and Customer and User access to the Subscription Service and the Products, will be immediately terminated. The rights and duties of the parties under Sections 1, 4, 9, 10, 11, 12, 13, c, 14, 15, 16 and 17 will survive the termination or expiration of this Agreement.

15. **WARRANTY DISCLAIMER.** Waterford makes no warranty concerning the Subscription Service, Products and Services. ACCORDINGLY, THE SUBSCRIPTION SERVICE, PRODUCTS, SERVICES AND ALL DATA, MATERIALS, AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT BY WATERFORD ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. WATERFORD DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW, STATUTE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR REGARDING THE ACCURACY OR EFFICACY OF THE PRODUCTS AND SERVICES, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USE OF TRADE. ANY STATEMENTS OR REPRESENTATIONS MADE BY ANY PERSON OR ENTITY THAT CONTRADICT THE TERMS OF THIS THIS SECTION ARE VOID. CUSTOMER AND USERS ASSUME ALL RISK AS TO THE QUALITY, FUNCTION, PERFORMANCE, AND ACCURACY OF THE SUBSCRIPTION SERVICE, PRODUCTS AND SERVICES. WATERFORD DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICE, PRODUCTS OR SERVICES WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, COMPLETELY SECURE, OR VIRUS-FREE.

16. **INDEMNITY.**

- a. **By Waterford.** If any action is instituted by a third party against Customer based upon a claim that the Products, as delivered, infringe a United States patent, copyright or trademark, Waterford shall defend such action at its own expense on behalf of Customer and shall pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement of such claim. Waterford may, at its option and expense, (a) procure for Customer the right to continue using the Products, (b) replace or modify the Products so that they are no longer infringing but continue to provide comparable functionality, or (c) terminate this Agreement and Customer's access to the Products and refund any prepaid amounts previously paid for the Subscription Service attributable to the remainder of the then-current term of this Agreement. Waterford shall have no liability to Customer for any infringement action that arises out of (i) a breach of any term or condition of this Agreement by Customer or a User; (ii) any modification of the Product by Customer or a third party, or (iii) any combination of a Product with any other software, service, equipment, or process not provided by Waterford. This Section 15(a) sets forth the entire obligation of Waterford and the exclusive remedy of Customer for any alleged infringement or adjudicated infringement of any patent, copyright or other intellectual property right by the Products or Services.
- b. **By Customer.** If any action is instituted by a third party against Waterford (i) arising out of or relating to Customer's or a User's use or misuse of the Subscription Service, Products or Services (including claims by any customer or business partner of Customer); or (ii) alleging

that the Customer Data, or the use of Customer Data pursuant to this Agreement, infringes the intellectual property or other right of a third party or otherwise causes harm to a third party, Customer will defend such action at its own expense on behalf of Waterford and shall pay all damages attributable to such claim which are finally awarded against Waterford or paid in settlement of such claim. Customer shall have no obligation under this Section for any claim or action that is described in Section 15(a) above or arises solely out of a breach of this Agreement by Waterford.

- c. Indemnification Process. Any party that is seeking to be indemnified under this Section 15 (an "Indemnified Party") must (i) promptly notify the other party (the "Indemnifying Party") of any third-party claim, suit, or action for which it is seeking an indemnity hereunder (a "Claim"), and (ii) give the Indemnifying Party the sole control over the defense of such Claim. However, if an Indemnified Party fails to notify the Indemnifying Party promptly, the Indemnifying Party will be relieved of its obligations under this Section 15 only if and to the extent that its ability to defend the Claim is materially prejudiced by such failure. The Indemnifying Party may settle or compromise a Claim without the Indemnified Party's prior approval of any such settlement or compromise only if (x) such settlement involves no finding or admission of any breach by an Indemnified Party of any obligation to any third party, and (y) the sole relief provided in connection with such settlement is monetary damages that are paid in full by the Indemnifying Party. Upon the Indemnifying Party's assumption of the defense of such Claim, the Indemnified Party will cooperate with the Indemnifying Party in such defense, at the Indemnifying Party's expense. The Indemnified Party may, at its option and expense, be represented by separate counsel in any such action.

17. **LIMITATION OF LIABILITY.** WATERFORD'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER AND USERS FOR ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, THE SUBSCRIPTION SERVICE, PRODUCTS OR SERVICES (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO WATERFORD BY CUSTOMER IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE CUSTOMER'S FORMAL WRITTEN NOTICE OF THE CLAIM FOR LIABILITY HEREUNDER. ALL CLAIMS THAT CUSTOMER MAY HAVE AGAINST WATERFORD WILL BE AGGREGATED TO SATISFY THIS LIMIT AND MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. IN NO EVENT WILL WATERFORD BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS, AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE PRODUCTS OR SERVICES, EVEN IF WATERFORD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

18. GENERAL PROVISIONS.

- a. Publicity. Waterford may make public announcements, including but not limited to, press releases and media announcements, of the existence of this Agreement and the relationship between the parties. Customer agrees to allow Waterford to use Customer's name in customer lists and other promotional materials describing Customer as a customer of Waterford and a user of the Subscription Service and Products.
- b. Assignment. Neither party may assign any rights or obligations arising under this Agreement, whether by operation or law or otherwise, without the prior written consent of the other; except that either party may assign this Agreement without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and shall be binding on the successors and assignees of the parties.
- c. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Utah, without giving effect to principles of conflict of laws. *The United Nations Convention on Contracts for the International Sale of Goods* will not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in a federal or state court sitting in Salt Lake County, Utah, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. If a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys' fees of the prevailing party.
- d. Force Majeure. Waterford will not be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond Waterford's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, telecommunications failures or delays, computer failures involving hardware or software not within Waterford's

possession or reasonable control, and acts of vandalism (including network intrusions and denial of service attacks).

- e. Notices. Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth on the Order Documents (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (i) delivered personally, (ii) sent via certified mail (return receipt requested) (iii) sent via e-mail or fax (all with confirmation of receipt), or (iv) sent by commercial express delivery service.
- f. Entire Agreement; Amendment. This Agreement, together the Order Documents, is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. Only a writing signed by both parties may modify it. Any preprinted terms on a Customer purchase order are expressly agreed to be void and of no effect, and are superseded in their entirety by this Agreement.
- g. Severability and Waiver. If any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- h. Relationship of the Parties. The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.
- i. Injunctive Relief. If Customer or a User violates or attempts to violate Waterford's intellectual property rights or the scope of its licenses, Customer agrees that Waterford will be irreparably harmed and will not have an adequate remedy in money or damages and, therefore, that Waterford shall be entitled to seek an injunction against such breach from any court of competent jurisdiction immediately upon request, without the necessity of posting bond, in addition to any other remedies that may be available at law or in equity.
- j. Electronic Signatures. Customer may sign this Agreement by clicking "I Accept" in the online link provided by Waterford related to this EULA. Such acceptance shall be treated as and shall have the same effect as an original signature.