

GENERAL TERMS AND CONDITIONS OF SALE & SOFTWARE LICENSE TO END USERS

1.0 Application of these Terms & Conditions

1.1 The performance of services by Nova Metrix Ground Monitoring (Canada) Ltd., Waterloo Hydrogeologic Division (“**Waterloo**”) for a customer (“**Customer**”), and the purchase and use by Customer of any software supplied by Waterloo, are governed by these terms and conditions (“**Terms and Conditions**”). Waterloo’s offer to provide services to Customer and Customer’s purchase and use of any software supplied by Waterloo, are expressly limited by Customer’s acceptance of these Terms and Conditions, as evidenced by Customer’s issuance of an order for services and/or software, or Customer’s acceptance of any services and/or software under an order, or Customer’s payment for any services and/or software under an order. These Terms and Conditions apply to the exclusion of any other terms that Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. Terms, if any, included on any order, acknowledgment forms or other documents issued by or on behalf of Customer shall not apply and are hereby voided, except to the extent that any such terms are expressly agreed to in writing by Waterloo. These Terms and Conditions shall apply to all sales of services and/or software by Waterloo and may only be modified, amended or supplemented in a writing executed by an authorized officer of Waterloo.

1.2 These Terms and Conditions are subject to change without prior written notice at any time at Waterloo’s sole discretion, provided that any such changes shall not apply to any pre-existing orders.

2.0 Offers

Any offer by Waterloo to supply services or sell software must be in writing to be valid, and such offer shall be valid for thirty (30) days from its date of issuance, unless otherwise set forth in such offer. Such offer shall be deemed accepted only upon Waterloo’s receipt of Customer’s written acceptance of such offer, provided that such acceptance is in accordance with Waterloo’s offer and these Terms and Conditions, unless otherwise accepted by Waterloo in writing.

3.0 Orders

3.1 No order for services and/or software shall be binding on Waterloo unless and until it has been accepted in writing by Waterloo.

3.2 Customer may not cancel any order without Waterloo’s prior written approval, such approval at Waterloo’s sole discretion. In the event Waterloo expressly agrees in writing to permit Customer to cancel an order, Customer will compensate Waterloo for all costs and losses attributable to the cancellation. Subject to the warranty set forth in Section 10, software purchased under these Terms and Conditions is not returnable or refundable.

4.0 Price and Payment

4.1 The fees to be paid by Customer to Waterloo for the services and/or software to be supplied under an order shall be as set forth in such order. Prices do not include any fees, taxes or duties relating to the shipment and delivery of any of the software, including without limitation HST or other value-added tax (VAT), duty, import and export tariffs and other forms of taxes and excise duties in Canada and/or the recipient country. Customer agrees to pay for all such applicable fees, taxes and duties.

4.2 If the currency fixed in an order is devalued, such that the rate of exchange between the currency chosen and the U.S. Dollar (USD) varies by more than two percent (2%) as from the date of Waterloo’s offer, Waterloo may, at its sole discretion, suspend all performance under the order and notify Customer of any price adjustment resulting from the devaluation. Customer must then notify Waterloo in writing within eight (8) days of the date of Waterloo’s notification whether Customer wishes to purchase the products and services at the adjusted price. If Customer fails to notify Waterloo during such eight (8) day period, then Customer’s order will be automatically processed.

4.3 Unless the parties have agreed otherwise, payment of the price for the services and/or software to be supplied pursuant to an order shall be effected within thirty (30) days of the date of Waterloo’s invoice. All payments shall be made in the currency set forth on the invoice (or in U.S. dollars if no other currency is indicated).

4.4 Customer shall not be entitled to exercise any set-off, lien or any other similar right or claim against any amounts due to Waterloo for any reason.

4.5 If Customer fails to effect payment within the agreed time period, it shall be deemed to be in default by operation of law and Waterloo shall have the right, without any notice of default being required, to charge Customer interest of 1.5% per month (18% per annum) or at the maximum amount permitted by law, accruing from the date the payment was due until such payment thereof in full together with such interest as well as all judicial and extrajudicial costs relating to the collection of the amount owed. In addition, in the event that any invoice remains unpaid beyond the agreed time period, Waterloo shall be entitled to cancel or suspend the provision of services and/or software without incurring liability to Customer and without prejudice to any of Waterloo’s other rights hereunder.

5.0 Delivery

5.1 The estimated date of delivery of software shall be stated in Waterloo’s initial offer to sell software to Customer and Waterloo will use commercially reasonable efforts to

deliver the software within the estimated time to the extent possible. Delivery dates are estimates only and the time of delivery is not of the essence. Waterloo does not guarantee delivery of software on or by any estimated delivery date. In no event shall Waterloo be liable to Customer for any costs, fees, penalties or price reductions as a result of any failure to deliver software in accordance with any estimated delivery dates.

5.2 Partial deliveries by Waterloo are permitted unless otherwise agreed upon in writing by the parties.

5.3 Unless otherwise agreed to by the parties, in cases where the software is stored on physical media, the physical media shall be delivered Ex Works (EXW Incoterms 2010), Waterloo's premises. Unless otherwise agreed upon by the parties in writing, Customer shall arrange for transportation and transport insurance. If Customer fails to arrange for transportation, Customer will choose a method of transportation that it deems appropriate. In all cases Customer is responsible for all expenses involved in the shipment and delivery of the software, if applicable, (including without limitation loading, freight, shipping, insurance, forwarding and handling charges).

6.0 Drawings, Descriptive Documents, etc.

Waterloo reserves the right to alter the design functionality and description of any software. All data included in catalogues, prospects, circulars, advertisements, illustrated matter and price lists are approximate and shall not be binding unless otherwise agreed upon in writing by the parties. Drawings, descriptive documents, technical specifications, manuals, handbooks, maintenance libraries and other documentation (collectively, "**Documentation**") provided or made available to Customer by Waterloo are confidential information of Waterloo and may be used by Customer only in connection with the use of the software. Customer may not copy Documentation or disclose Documentation to any third party.

7.0 Ownership of the Software

7.1 With respect to any software supplied by Waterloo to Customer pursuant to an order, the terms "purchase" or "sale" mean the purchase or sale of a license or right to use in respect of such software, and shall under no circumstances be interpreted or construed to mean a transfer of title to such software. Such software is licensed, not sold, to Customer.

7.2 Notwithstanding anything contained herein to the contrary, Waterloo (and/or its licensor(s), where applicable) shall remain the exclusive owner of the software supplied to Customer and all intellectual property rights of whatever nature including, without limitation, copyrights, patents and patentable inventions, know-how, trade secrets, trademarks and design rights (whether registered, registrable or otherwise) embodied in or otherwise relating to such software and any modifications, improvements, enhancements or derivative works thereof. Where applicable, Customer shall own and have title to the tangible media on which the software is delivered to Customer.

8.0 License to Use the Software

8.1 Waterloo hereby grants to Customer a non-exclusive, non-transferable license to use the supplied software in accordance with the provisions of this Section 8. Such license

will come into effect upon Waterloo's delivery of the software to Customer and shall continue unless terminated for default as set forth in Section 8.6. The software is licensed for use in the country where first delivered and for the Customer listed on the order and may not be transferred outside such country without Waterloo's prior written consent.

8.2 Customer is encouraged to obtain one (1) duplicate of the software supplied by Waterloo and Customer's data maintained by such Software FOR BACKUP PURPOSES ONLY to protect against the loss of Customer's data. Customer may make a single (1) archival copy of such software as provided by applicable national copyright law and under international treaties. Customer agrees not to copy or reproduce such software or any portion thereof for any other purpose. Customer shall reproduce all copyright, patent, and proprietary rights notice(s) as a part of the informational content of any copy of the software in any form. In the case of disk, tape, or other storage media, Customer shall reproduce such notice(s) in a visually legible form on the exterior of the media or first page of the printed volume. Customer is hereby granted the right to make a reasonable number of printed copies of user documentation and help files contained in the distribution media with the software for its own internal use only, provided that such printed copies bear Waterloo's original copyright notice. Customer's use of such printed copies shall be subject always to these Terms and Conditions.

8.3 When requested by Waterloo, the Customer shall identify in writing the computers, servers, and workstations, and locations where the software will be used. Software shall be used solely in conjunction with the foregoing computers, servers, and workstations, at authorized locations, and accessed by only the agreed number of seats for which Customer is authorized as set forth in the order. A Customer designated computer or server is the processor or equipment configuration on which the Software is first installed pursuant to the license grant. The Customer understands that the Software will only operate properly on the types of computer equipment using the operating system version(s), as identified by Waterloo in its published technical specifications. Customer is solely responsible for ensuring that its computer systems comply with such technical specifications.

8.4 Customer is not authorized and may not authorize anyone else to do any of the following:

- (a) Obtain unauthorized access to the software, for example, by bypassing security features, including but not limited to license control features that limit or record the number of users, in or for the software;
- (b) Reverse engineer, decompile or disassemble the software except and only to the extent required by law;
- (c) Make more copies of the software than specified in Section 8.2 of these Terms and Conditions;
- (d) Publish the software;
- (e) Develop or create modifications, improvements and/or derivative works of the software;
- (f) Display the software in any manner except as provided herein;
- (g) Rent, lease, lend, sub-license or otherwise distribute or assign Customer rights in the software, including but not limited to assigning or sub-licensing Customer rights to use the software to third parties without Waterloo's prior written consent;

- (h) Separate out or use any portion of any third party software included or embedded as part of the software licensed under these Terms and Conditions for any purpose such as commercial or competitive analysis of Waterloo's software;
- (i) Deliberately modify or disable or otherwise "crack" any feature incorporated in the software, including those that are intended to prevent access to unlicensed software.
- (j) Utilize a temporary trial software license for any use other than demonstration or testing purposes.

8.5 If Customer has purchased software controlled by a software-based license (as opposed to dongle-controlled Software), Customer agrees to the following:

- (a) Customer shall not transfer the software, except for temporary CPU transfer in the event of computer malfunction;
- (b) If a Customer's existing valid license for software must be permanently transferred onto a substitute CPU, Customer shall notify Waterloo within thirty (30) day, and shall pay any software transfer fees owed to Waterloo;
- (c) If Customer is the U.S. Government, then the Customer agrees that Software is provided as a "Commercial Item" pursuant to FAR 52.201(c) and in no event shall the Government acquire greater than Restricted/Limited Rights as provided in FAR 52.227-19 (June 1987), FAR52.14 (ALT III) (June 1987), DEARS 252.227-7015 (November 1995), NFS 1852.227-86 (December 1987), or equivalent as applicable; and
- (d) Customer shall activate licenses within sixty (60) days of software receipt. License activation is the responsibility of the Customer. Failure to activate the software license does not negate Customer's purchase, nor does it constitute valid grounds for a return or refund.

8.6 In the event that Customer commits any material breach of the provisions of this Section 8, Waterloo may terminate the License to Customer for breach at any time with immediate effect by serving notice in writing to Customer.

9.0 Software Warranty

9.1 Waterloo warrants that during the term of the warranty period set forth in Section 9.2, the software supplied to Customer will perform in all material respects as described in the Documentation that Customer receives in or with the software. Waterloo does not provide any warranty for software that has not been properly licensed.

9.2 The warranty period for software is:

- (a) sixty (60) days from the date of physical shipment of the software, if the software is shipped via physical media; or
- (b) thirty (30) days from receipt of the license key for the software, if the software is delivered via electronic transmission or by Customer download from a server.

9.3 Customer agrees, however, that Customer must notify Waterloo of any defects Customer encounters during the applicable warranty period in order to enforce this warranty.

9.4 Waterloo will make its good faith efforts to correct defects in the Software that prevent the substantial use of the Software during the warranty period, when used in accordance with Waterloo's Software specifications. Customer agrees, however, that Customer must notify Waterloo of any defects Customer encounters during the stated warranty period in order to enforce this warranty. Customer agrees that Waterloo does not warrant that the Software is error free or that all errors will or can be corrected.

9.5 The warranty will not cover any errors or failure in the software when caused, directly or indirectly, by the failure to comply with Waterloo's published technical specifications (including those relating to compatible operating system software versions), Customer's acts or failures to act, the act of others, events beyond the reasonable control of Waterloo, failures in hardware, software, firmware products or data supplied by Customer, a third party, or Waterloo, unless such hardware, software, or firmware is the subject of a current warranty from Waterloo.

9.6 Waterloo does not warrant the form or content of third party software or related documentation that Waterloo provides. Customer accepts any such third party software "as is". However, Waterloo will pass through any applicable vendor's warranties for such third party software supplied by Waterloo to Customer as the end user, and Customer agrees that this is Customer's exclusive remedy.

9.7 WATERLOO DOES NOT GUARANTEE RESULTS. ALL INTERPRETATIONS USING THE SOFTWARE SUPPLIED BY WATERLOO AND ALL RECOMMENDATIONS OR DESCRIPTIONS BASED UPON SUCH INTERPRETATIONS, ARE OPINIONS BASED ON INFERENCES FROM MEASUREMENTS AND EMPIRICAL RELATIONSHIPS AND ON ASSUMPTIONS, WHICH INFERENCES AND ASSUMPTIONS ARE NOT INFALLIBLE, AND WITH RESPECT TO WHICH COMPETENT SPECIALISTS MAY DIFFER. IN ADDITION SUCH INTERPRETATIONS, RECOMMENDATIONS AND DESCRIPTIONS MAY INVOLVE THE OPINION AND JUDGMENT OF CUSTOMER. CUSTOMER HAS FULL RESPONSIBILITY FOR ALL INTERPRETATIONS, RECOMMENDATIONS, AND DESCRIPTIONS UTILIZING THE SOFTWARE SUPPLIED BY WATERLOO. WATERLOO CANNOT AND DOES NOT WARRANT THE ACCURACY, CORRECTNESS OR COMPLETENESS OF ANY SUCH INTERPRETATION, RECOMMENDATION OR DESCRIPTION. UNDER NO CIRCUMSTANCES SHOULD ANY SUCH INTERPRETATION, RECOMMENDATION OR DESCRIPTION BE RELIED UPON AS THE SOLE BASIS FOR ANY DRILLING, COMPLETION, WELL TREATMENT, PRODUCTION, STORAGE, MANAGEMENT OR ANY DECISION, OR ANY PROCEDURE INVOLVING ANY RISK TO THE SAFETY OF ANY WATER PROJECT, DRILLING RIG OR ITS CREW OR ANY INDIVIDUAL. CUSTOMER HAS FULL RESPONSIBILITY FOR ALL SUCH DECISIONS AND FOR ALL DECISIONS CONCERNING OTHER PROCEDURES RELATING TO THE PROJECT OR PRODUCTION OPERATION.

9.8 THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 9 ARE THE EXCLUSIVE TERMS AVAILABLE TO CUSTOMER AND EXTEND ONLY TO

THE ORIGINAL CUSTOMER OF WATERLOO OR WATERLOO'S AUTHORIZED DISTRIBUTOR, AS THE CASE MAY BE. THE REMEDIES FOR BREACH OF WARRANTY SET OUT IN THIS SECTION 9 SHALL BE WATERLOO'S SOLE AND EXCLUSIVE OBLIGATION AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER FOR ANY AND ALL LOSSES, DELAYS OR DAMAGES RESULTING FROM THE PURCHASE, PERFORMANCE OR USE OF WATERLOO'S SOFTWARE. OTHER THAN THE LIMITED WARRANTY SPECIFICALLY STATED HEREIN, WATERLOO, TO THE EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES WITH RESPECT TO WATERLOO'S SOFTWARE, INCLUDING IN RESPECT OF THE PERFORMANCE OR USE THEREOF, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, NON-INFRINGEMENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

10.0 Web Applications

10.1 If the software supplied by Waterloo to Customer has the ability to publish web pages and/or web applications, the following terms apply to the web pages/applications (herein referred to as the "**Website**").

10.2 Electronic communications through the Website may not be encrypted. Customer acknowledges that there is a risk that data, including e-mail, electronic and wireless communications and personal data, may be accessed by unauthorized third parties, when communicated between Customer and Waterloo and Customer and other parties.

10.3 EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN AN AGREEMENT BETWEEN CUSTOMER AND WATERLOO, ALL INFORMATION AND SOFTWARE ON THE WEBSITE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WATERLOO ASSUMES NO RESPONSIBILITY FOR ERRORS OR OMISSIONS IN THE INFORMATION OR SOFTWARE OR OTHER DOCUMENTS WHICH ARE REFERENCED OR LINKED TO THE WEBSITE.

10.4 ALTHOUGH WATERLOO TRIES TO PROVIDE ACCURATE AND TIMELY INFORMATION THROUGH THE WEBSITE, THERE MAY BE INADVERTENT OR FACTUAL INACCURACIES AND TYPOGRAPHICAL ERRORS. WATERLOO RESERVES THE RIGHT TO MAKE CHANGES AND CORRECTIONS AT ANY TIME, WITHOUT NOTICE. THE INFORMATION PROVIDED THROUGH THE WEBSITE IS PROVIDED "AS IS" AND "AS AVAILABLE".

10.5 WATERLOO DOES NOT WARRANT THE ACCURACY, COMPLETENESS OR TIMELINESS OF THE INFORMATION, TEXT, GRAPHICS, LINKS, OR OTHER ITEMS CONTAINED ON THE WEBSITE. WATERLOO DOES NOT PROVIDE ANY GUARANTEE AGAINST THE

POSSIBILITY OF DELETION, MID-DELIVERY, OR FAILURE TO STORE COMMUNICATIONS, PERSONALIZED SETTINGS, OR OTHER DATA. WATERLOO SPECIFICALLY DISCLAIMS ALL LIABILITY FOR ERRORS AND OMISSIONS IN OR THE MISUSE OR MISINTERPRETATION OR ANY INFORMATION CONTAINED ON THE WEBSITE. WATERLOO MAY CHANGE WATERLOO MAY CHANGE INFORMATION CONTAINED ON THE WEBSITE AT ANY TIME AND MAKES NO COMMITMENT TO UPDATE THE INFORMATION CONTAINED ON THE WEBSITE. CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE USE OF THE WEBSITE.

10.6 FURTHERMORE, WATERLOO MAKES NO WARRANTIES REGARDING ANY SERVICES THAT MAY BE PROVIDED THROUGH THE WEBSITE, INCLUDING BUT NOT LIMITED TO ANY SUPPORT SERVICES. WATERLOO AND ITS PARENT, AFFILIATES, AND AGENTS (INCLUDING ITS THIRD PARTY SERVICE PROVIDERS) DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, NON-INFRINGEMENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

10.7 ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE WEBSITE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR OTHER ELECTRONIC SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM WATERLOO OR THROUGH OR FROM THE WEBSITE WILL CREATE A WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.

10.8 When Customer visits the Website, automated tools may log information about each of Customer's visits. This information is processed in the aggregate to determine site performance issues, such as popular pages, most frequently downloaded forms (if applicable) and other site performance characteristics. By accessing the Website Customer agrees that the Waterloo may use this information for internal purposes.

10.9 The Website can be accessed from other countries around the world and may contain references to Waterloo products, services and programs that may not be available in a specific country. These references do not imply that the Waterloo intends to announce or provide these products, services or program in any particular country.

10.10 The Waterloo makes no representations that materials located on the Website are appropriate or available for use in any location and accessing them from territories where their contents are illegal is prohibited. Those who choose to access the site from other locations do soon their own initiative and are responsible for compliance with local laws.

10.11 UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO A NEGLIGENT ACT, WILL

WATERLOO OR ITS PARENT, AFFILIATES, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS OR THIRD PARTY SERVICE PROVIDERS BE LIABLE FOR ANY DAMAGES OF ANY KIND THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE WEBSITE OR ANY SERVICE RELATED THERETO, EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

10.12 IN NO EVENT WILL WATERLOO, OR ITS THIRD PARTY SERVICE PROVIDER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY TORT, CONTRACT OR ANY OTHER LIABILITY ARISING IN CONNECTION WITH THE USE OF THE WEBSITE OR ANY SERVICE RELATED THERETO OR RELIANCE ON ANY INFORMATION OR SERVICES PROVIDED BY WATERLOO. WATERLOO, ITS PARENT AND ITS THIRD PARTY SERVICE PROVIDERS WILL UNDER NO CIRCUMSTANCES BE LIABLE TO CUSTOMER AND/OR ANY THIRD PARTY, REGARDLESS OF THE FORM OF ACTION, FOR ANY LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER, EVEN IF WATERLOO, ITS PARENT, OR ITS THIRD PARTY SERVICE PROVIDERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM: (1) THE USE OR THE INABILITY TO USE THE WEBSITE OR ANY SERVICES PROVIDED THEREON (2) THE TIMELINESS, DELETION, MIS-DELIVERY, OR FAILURE TO STORE ANY USER DATA, COMMUNICATIONS OR PERSONALIZATION SETTINGS; (3) THE COST OF GETTING SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY PRODUCTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE WEBSITE (4) UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER TRANSMISSIONS OR DATA (5) STATEMENTS OR CONDUCT OF ANYONE ON THE WEBSITE (6) THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE OR NON-PERFORMANCE OF ANY THIRD PARTY, EVEN IF THE THIRD PARTY HAS BEEN ADVISED PREVIOUSLY OF THE POSSIBILITY OF SUCH DAMAGES (7) OR ANY OTHER MATTER RELATING TO THE WEBSITE. CUSTOMER AGREES THAT CUSTOMER WILL NOT IN ANY WAY HOLD WATERLOO, ITS PARENT, AFFILIATE COMPANIES, OFFICERS, DIRECTORS AND EMPLOYEES OF SAME, FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF THIRD PARTIES, IN CONNECTION WITH THE WEBSITE.

11.0 Web Applications on Waterloo Controlled Servers

11.0 If the Software has the ability to publish Websites to servers under the control of Waterloo or its Third Party Service Providers, the following terms apply.

11.1 Waterloo does not want to receive any confidential information or proprietary information from any user through the Website. Any communications, information or material of any kind that Customer e-mails, posts or otherwise transmits to Waterloo through the Website, including data, questions, comments or suggestions, including improvements or

recommended modifications (“**Customer Communications**”) to the Website will be treated as non-confidential and non-proprietary. By sending Waterloo any Customer Communications, Customer grants Waterloo an unrestricted, irrevocable license to use, reproduce, disclose, display, perform, modify, transmit, publish, broadcast, post and distribute those Customer Communications either on the Website or elsewhere with no liability or obligation to Customer. Customer agrees that Waterloo is free to use any ideas, concepts, know-how, or techniques contained in Customer Communications for any purposes, including but not limited to, developing and marketing products using or containing such information.

11.2 Waterloo may use third party service providers to assist in providing any Waterloo services with or without notice to Customer (each a “**Third Party Service Provider**”). Waterloo may also change the Third Party Provider or may itself provide any service without the assistance of such third party. Customer consents and authorizes Waterloo to delegate the authorizations Customer provides to Waterloo to its Third Party Provider(s) as Waterloo deems necessary or desirable to provide the applicable Waterloo services to Customer. Customer agrees that these Terms and Conditions including any of warranty disclaimers and liability disclaimers included herein, inure to the benefit of such Third Party Service Providers and such Third Party Service Providers shall be deemed to be a third party beneficiary of this Agreement.

11.3 Waterloo, its parent, affiliates and agents are entitled but not obligated to review or retain Customer Communications. Waterloo and its Third Party Service Providers may monitor Customer Communications to evaluate Customer compliance with these terms and Conditions. Customer agrees that such monitoring will not entitle Customer to any cause of action or other right to respect to the manner in which Waterloo or its Third Party Providers monitor Customer Communications and enforce or fail to enforce the rules and guidelines of these Terms and Conditions.

11.4 In the absence of a service level agreement with Waterloo, the use of Waterloo controlled servers may be provided as a courtesy and carry no guarantees of uptime or data retention. The server may be made unavailable at any time with no notice and all data may be removed at any time without notice. It may not be possible to recover any data removed.

12.0 Maintenance and Support of Software

12.1 If Customer has chosen to order support and maintenance services (“**Maintenance and Support Services**”) for the software supplied by Waterloo, the additional terms and conditions set forth in this Section 12 will apply.

12.2 Customer’s right to receive Maintenance and Support Services for the software purchased by Customer is subject to Customer paying the annual requisite maintenance fees and Customer complying with these Terms and Conditions.

12.3 Maintenance and Support Services include the following for the current version and for the two immediately prior versions of the purchased software:

- (a) Customer access to telephone support and access to Waterloo’s software support portal, and customer

support staff for reporting software malfunctions and assistance in the use of the software. Telephone support is limited to providing assistance with technical difficulties in using the software only.

- (b) Waterloo's provision of new versions, updates (including bug fixes and patches) or enhancements to current versions of the software, as they become available;
- (c) Waterloo's provision of updates and enhancements to existing Documentation, as they become available; and
- (d) Waterloo's reasonable efforts to correct defects in the software program codes and procedural documents supplied with the software where such errors are brought to Waterloo's attention during the term of Maintenance and Support Services and where Waterloo, in its sole discretion, recognizes them as having a detrimental effect on the performance of the software.

12.4 All modifications made to the software as part of Maintenance and Support Services will be in computer readable form which will be sent to Customer via mail, courier or e-mail at Waterloo's discretion. Software updates and upgrades may also be made available to Customer through Waterloo's support portal, provided, however, that updates and upgrades will only be sent to Customer authorized representatives. Customer will be responsible for loading such media according to Waterloo's instructions.

12.5 Customer is not entitled to receive any Maintenance and Support Services for software that Customer has modified. Any modifications Customer makes to the software will render the Maintenance and Support Services void. Waterloo will not be liable to Customer for any errors, losses or damage resulting from modifications that Customer makes to the software. Waterloo is only responsible for maintaining the unaltered release of the software purchased by Customer under these Terms and Conditions.

12.6 Maintenance and Support Services do not include application development, software programming support or step by step instructions for software configuration above and beyond general usage questions. Waterloo may at its discretion determine if the requested assistance is above and beyond normal operating questions. Advanced assistance may be provided to Customer under the terms of a separate consulting services agreement.

12.7 In addition to the above, Maintenance and Support Services exclude the following:

- (a) Software problems created through Customer fault or negligence;
- (b) Software problems that do not significantly impair or affect the operation of the software;
- (c) Except as provided herein, software problems resulting from hardware malfunction;
- (d) Software not sold or licensed by Waterloo;
- (e) Training on the use or benefits of the software (training services are available and may be purchased under separate terms);
- (f) Questions related to geoscience or interpretation of client data; and

- (g) Installation of updates on Customer computer system (installation services are available and may be purchased under separate terms).

12.8 Software updates are provided only for standard hardware platforms and operating systems supported by Waterloo as indicated in the software technical specifications. Customer is responsible for making or arranging for updates to interfaces for non-standard devices or custom applications (if applicable).

12.9 The term for Maintenance and Support Services shall be for an initial term as specified in the order. Upon expiration of the initial term, and as long as Customer has paid the then current Maintenance and Support Services fees, maintenance will be provided for consecutive, twelve-months terms beginning from the date of purchase.

12.10 Either party may terminate Maintenance and Support Services by providing sixty (60) days prior written notice to the other party, and the termination will be effective on the anniversary of the date of purchase. Customer's failure to notify Waterloo of its intent to terminate will result in automatic renewal and Customer may become liable for an additional year's charge for Maintenance and Support Services.

12.11 Maintenance and Support Services will automatically expire when the license granted to Customer under Section 8.1 is or when Customer fails to pay fees for the Maintenance and Support Services when due.

12.12 All payments for Maintenance and Support Services are payable in advance. Customer agrees to pay any invoice for Maintenance and Support Services fees within thirty (30) days of receipt. Waterloo may, in its discretion, determine to withhold Maintenance and Support Services until payment has been received.

12.13 Waterloo may increase the fees charged for Maintenance and Support Services by giving Customer not less than thirty (30) days prior written notice of increases which will become effective, upon renewal, on the anniversary of the date of purchase. Notwithstanding the foregoing, no increase in Maintenance and Support Services will apply for any period for which Customer have paid in advance.

13.0 Service Warranty

13.1 Waterloo warrants that the services it provides to Customer shall be performed in a professional and workmanlike manner and in accordance with all agreed upon specifications or documentation for a period of thirty (30) days following performance of such services. Should such services fail to conform to this warranty, Waterloo's sole obligation and liability and Customer's exclusive remedy is for Waterloo, at its sole option, to re-perform such non-conforming services at Waterloo's cost or refund the purchase price paid by Customer in respect of such services.

13.2 Waterloo does not warrant the accuracy, correctness or completeness of data which Customer obtains on the basis of or in relation to the services delivered. Customer shall interpret and/or use such data entirely at its own responsibility and shall indemnify Waterloo against claims, losses or obligations

arising in connection with the interpretation and/or use of such data.

13.3 THE EXPRESS WARRANTIES SET FORTH IN SECTION 13 ARE THE EXCLUSIVE TERMS AVAILABLE TO CUSTOMER AND EXTEND ONLY TO THE ORIGINAL CUSTOMER OF WATERLOO OR WATERLOO'S AUTHORIZED DISTRIBUTOR, AS THE CASE MAY BE. THE REMEDIES FOR BREACH OF WARRANTY SET OUT IN SECTION 13 SHALL BE WATERLOO'S SOLE AND EXCLUSIVE OBLIGATION AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER FOR ANY AND ALL LOSSES, DELAYS OR DAMAGES RESULTING FROM THE SUPPLY OF SERVICES BY WATERLOO TO CUSTOMER. OTHER THAN THE LIMITED WARRANTY SPECIFICALLY STATED HEREIN, WATERLOO, TO THE EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES WITH RESPECT TO ANY SERVICES PROVIDED TO CUSTOMER BY WATERLOO, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, NON-INFRINGEMENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

14.0 Limitation of Liability

To the extent permitted by law, Waterloo shall not be liable under any contract, tort, strict liability, negligence or other legal or equitable claim or theory for any special, incidental, consequential or indirect damages or for loss of goodwill or business profits, lost revenue, work stoppage (production or business interruptions or standstills), computer failure or malfunction, loss of use, loss of data, cost of substitute software or services, or for any and all other exemplary or punitive damages arising hereunder or from the installation, performance or use of any software supplied by Waterloo or the performance of any services by Waterloo, including, without limitation, any such loss or damage relating to personal injury (including death) or property damage, even if Waterloo has been advised or was aware of the possibility of such loss or damages. In no event shall Waterloo's total aggregate liability for any and all damages, losses or liabilities arising hereunder or from the supply of services and/or software exceed the purchase price or fees for such services and/or software giving rise to the liability. These limitations apply even if repair, replacement or a refund for the Software does not fully compensate Customer for any losses and regardless of: i) whether Waterloo knew of or should have known about the possibility of damages; and/or ii) if any limited remedy fails in its essential purpose. Customer will protect, indemnify, hold harmless and defend Waterloo of and from any loss, cost, damage, or expense, including attorneys' fees, arising from any claim asserted against Waterloo that is in any way associated with the matters set forth in this Article 14 including any third party claims.

15.0 Confidentiality

15.1 Confidential Information means any and all information disclosed by Waterloo to Customer or its representatives ("**Receiving Party**"), including information relating to the matters which are the subject of these Terms and Conditions, the existence and nature of these Terms and

Conditions, and all other information regarding Waterloo's past, present or future software, research, technology, know-how, ideas, concepts, designs, products, markets, computer programs, prototypes, processes, machines, manufacture, compositions of matter, business plans and operations, technical information, drawings, specifications, and the like, except information which is: (a) at the time of disclosure, or thereafter becomes, a part of the public domain through no act or omission by Receiving Party or its representatives; (b) lawfully in the possession of Receiving Party prior to disclosure by or on behalf of Waterloo as shown by Receiving Party's written records; (c) lawfully disclosed to Receiving Party by a third party which did not acquire the same under an obligation of confidentiality from or through Waterloo as shown by written records; or (d) independently developed by Receiving Party without use of Waterloo's Confidential Information as shown by Receiving Party's written records.

15.2 Receiving Party shall not, without the prior consent of Waterloo, disclose any of the Confidential Information to anyone for any reason at any time or use any of the Confidential Information for any purpose except as requested by Waterloo. If Receiving Party believes in good faith that it is required by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction or that of a competent regulatory authority to disclose any of the Confidential Information, it shall provide notice to Waterloo prior to making such disclosure so as to allow Waterloo time to undertake legal or other action to prevent such disclosure or otherwise obtain confidential treatment of such disclosure. In no event will Receiving Party disclose any of the Confidential Information that Receiving Party is not compelled to disclose by law, and Receiving Party will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to any of the Confidential Information so disclosed.

15.3 Receiving Party shall limit dissemination of the Confidential Information to only those of Receiving Party having a "need to know", and advise each such person who receives the Confidential Information that such information is confidential and require each such person (other than attorneys and other agents who are already under a professional duty of confidentiality) to sign and comply with a written agreement obligating it/he/she to observe all of Receiving Party's obligations hereunder relating to confidentiality, non-disclosure and restrictions on use.

15.4 The parties agree that a default caused by an unauthorized disclosure or use of Confidential Information could cause Waterloo irreparable harm. Accordingly, the parties agree that Waterloo will be entitled to seek timely injunctive relief to prevent Customer from completing any unauthorized disclosure or use of Confidential Information, as well as any other means that Waterloo deems appropriate to preserve its interests in relation to the Confidential Information, including without limitation the right to pursue all available remedies at law or equity.

16.0 Force Majeure

Waterloo shall not be liable for failure to perform or for delay in performance due to fire, flood, strike, or other labor difficulty, act of God, act of any governmental authority, riot, embargo, fuel or energy shortage, wrecks or delays in transportation, inability to obtain necessary labor, materials, or

manufacturing facilities from usual sources, or due to any cause beyond Waterloo's reasonable control. In the event of a delay in performance due to any such cause, the estimated date of delivery or time for completion of performance will be extended by a period of time reasonably necessary to overcome the effect of such delay. If Waterloo reasonably determines that any such delay in performance is likely to extend for a period of ninety (90) days or more, Waterloo shall have the right to cancel the applicable order upon notice to Customer with no liability or further obligation to Customer with respect to such order.

17.0 Export Regulations

Customer has been licensed to use the Software in the country where it was delivered to Customer. Because of the country(ies) of origin of the Software, the exportation of the Software to certain countries that are subject to United States, United Nations, European Union or other similar trade sanctions may be prohibited. Customer is responsible for complying with all applicable trade control regulations. Regardless of any disclosure by Customer to Waterloo of the contemplated ultimate destination of the Products, Customer shall not export or re-export, directly or indirectly, any Product (or the "direct product" of any Software Product) without first obtaining an export (or re-export) license from the relevant government entities, as required. Customer's export, transfer, assignment or other movement of the Software in violation of applicable trade control regulations will result in the automatic termination of this Agreement and all rights to use the Software.

18.0 Assignment & Subcontracting

Waterloo may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Terms and Conditions. Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Terms and Conditions without the prior written consent of Waterloo.

19.0 Severance

If any court or competent authority finds that any provision of these Terms and Conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Terms and Conditions shall not be affected.

20.0 Waiver

A waiver of any right or remedy under these Terms and Conditions is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

21.0 Governing Law

These Terms and Conditions shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the courts of Ontario shall have jurisdiction to entertain any action arising hereunder.

22.0 Venue

Customer agrees that any suit, action or proceeding with respect to these Terms & Conditions may be brought in the Courts of the Province of Ontario and Customer submits and attorns to the non-exclusive jurisdiction of such Courts over any such suit, action or proceeding. Customer irrevocably waives any objection it may now or hereafter have to the laying of venue of any such suit, action or proceeding in any of such Courts including any objection that any such Court is an inconvenient forum.

