

## **SERVICES AGREEMENT**

This SERVICES AGREEMENT (“Agreement”) is integrated and made a part of the Service Order by and between Weather Source, LLC (“Weather Source”) a Massachusetts limited liability company with its address at 1 Stiles Road, Suite No. 305, Salem, NH 03079 and the Subscriber named on the Service Order.

WHEREAS, Weather Source has developed a software application known as “OnPoint” which provides weather data via an API and the Site (the “Service”); and

WHEREAS, Subscriber desires to use the Service and submit Queries to the Service and to receive responses thereto.

NOW, THEREFORE, in consideration of the foregoing the parties hereby agree as follows:

### **1. DEFINITIONS**

- (a) “Agreement” means the Service Order and this Service Agreement.
- (b) “Agreement Month” means each one-month period during an Agreement Year, beginning on the Commencement Date.
- (c) “Agreement Year” means, the period beginning on the Commencement Date and ending on the last day of the twelfth Agreement Month.
- (d) “Application Programming Interface (“API”) means the Weather Source interface that allows Subscribers to connect to the Service. Documentation on the API and its terms of use may be found at <https://www.weathersource.com/weather-api>.
- (e) “Commencement Date” means the earlier of (i) the Effective Date on the Service Order; or (ii) the date the Subscriber first submits a Query to the Service.
- (f) “Documentation” means functional specifications, user manuals, file descriptions, and similar written materials relating to the Service.
- (g) “Permitted Use” means the Subscriber’s authorized use of the Service and the Service Data which is for internal business purposes only. Any exceptions to the Permitted Use shall be detailed in the Service Order or an addendum to this Agreement.
- (h) “Query” or “Queries” means a Query to the Service from the Subscriber requesting Service Data.
- (i) “Reseller” means a Subscriber that is authorized to resell the Service Data generated from the Service, including derivative works of the Service Data and subsequent transfer to a third party. Any Subscriber reselling the Service Data, or any Subscriber who transfers the Service Data, in any form, to a third party, is required to have a Reseller Addendum to this Agreement executed prior to reselling the Service Data.

(j) “Service” means the service and data to be provided by Weather Source to Subscriber and detailed on the Service Order. Service includes use of and access to the API and the OnPoint application.

(k) “Service Data” means the data that is returned from the Service to the Subscriber in response to a Subscriber Query.

(l) “Service Fee” means the fees stated in the Service Order.

(m) “Service Order” means the Weather Source Service Order executed by Subscriber and Weather Source that details the use of the Service and applicable Service Fees.

(n) “Site” means the internet website owned and operated by Weather Source and located at <https://www.weathersource.com>, as well as other affiliate domains and subdomains, and other Weather Source technologies such as a API’s, mobile or desktop application or other interfaces which provide access to the Service.

## **2. USE OF THE SERVICE**

(a) *Description of Services.* Weather Source agrees that the Subscriber may submit Queries to the Service and that Weather Source will operate the Service and return responses to Subscriber in the form of Service Data and such Queries and responses shall be in accordance with the terms of this Agreement and the Documentation.

(b) *Use of the Service and Service Data.* Subject to the terms and conditions of this Agreement, Weather Source grants to Subscriber a limited, worldwide, non-exclusive, non-transferable right during the term of this Agreement to use the Service, and Service Data, solely in connection with its internal business operation. The rights of Subscriber to use the Service and Service Data are subject to the Permitted Use and this Section 2(b) and in compliance with this Agreement and the Service Order. In the event that Subscriber desires to make derivative works of the Service Data that will be transferred to authorized third parties, or resell the Service Data derived from the Service, in any form, the parties will have executed a Reseller Addendum to this Agreement. Upon expiration or termination of this Agreement or the Service Order, for any reason, such right to use the Service and Service Data will terminate immediately

(c) *API License.* Weather Source grants Subscriber, during the term of this Agreement, a limited, non-exclusive, non-transferable license, to access and use the Weather Source API subject to the API terms of use which may be found at <https://developer.weathersource.com/documentation/terms-of-use>. Weather Source may update and/or amend such terms of use in its sole discretion and without notice. Upon expiration or termination of this Agreement or the Service Order, for any reason, such license and access to the API will terminate immediately.

(d) *Documentation.* Weather Source shall supply, and maintain, at no cost to Subscriber, Documentation regarding use of the API and the Service (in electronic format).

(e) *Hosting.* Weather Source shall be solely responsible for hosting the Service. Except as explicitly noted herein, the charges set forth in the Service Order are inclusive of all costs and expenses to Subscriber associated with such hosting.

(f) *Software Maintenance and Support.* Weather Source shall be solely responsible for providing and managing the Service and Service Data required for the proper operation of the Service.

(g) *Restrictions.*

(i) Subscriber agrees that it shall not reverse engineer, disassemble, decompile, modify or profile the Service, or Service Data, for any purpose whatsoever, nor will Subscriber implement or permit procedures such as “portscans”, “tiger attacks” or other techniques designed to gain access to the Service (or to computers running the Service) which have not been specifically authorized by Weather Source.

(ii) Except as expressly set forth in this Agreement or the Service Order, Subscriber shall not have any right to make, prepare or produce derivative works of the Service Data other than for internal business purposes only.

(iii) Subscriber agrees that it will not enter into commercial arrangements that contemplate or permit the use of the Service or Service Data other than set forth under this Agreement or the Service Order.

(iv) Subscriber may cache information obtained from a Query and Subscriber may retain the cached Service Data as long as this Agreement and the Service Order are in force and effect. Any information retained pursuant to the preceding sentence is referred to as the “Permitted Cache”. Information from the Permitted Cache may be used solely for purposes consistent with the Permitted Use, this Agreement, and the Service Order.

### **3. OWNERSHIP OF THE SERVICE AND SERVICE DATA**

Subscriber acknowledges that Weather Source is the sole and exclusive owner of all rights in and to the Service and Service Data and that other than the rights granted hereby, no proprietary rights (including but not limited to copyrights and patents) in the Service or Service Data are being transferred to Subscriber.

### **4. FEES AND PAYMENT TERMS**

(a) *Payment Terms.* Unless otherwise specified on the Service Order, Subscriber agrees to pay the Service Fee set forth in the Service Order at the time of acceptance and execution of the Service Order. After the initial term, the Service Fee, if renewed, will be invoiced at the then current rate for the Service in advance of the start of each renewal period. All Service Fee payments will be non-refundable and all amounts shall be denominated and paid in United States dollars.

(b) *Additional Services or Products.* Weather Source may provide additional services or products to Subscriber if so agreed by the parties pursuant to a statement of work or additional Service Order, in which case Subscriber shall pay Weather Source the fees set forth therein. In addition to any applicable the hourly rates, Subscriber shall pay Weather Source's out-of-pocket expenses incurred by Weather Source in rendering such services to Subscriber hereunder, including but not limited to reasonable costs of travel.

(c) *Invoicing.* Subscriber shall pay Weather Source according to the terms contained within the Service Order. For any renewals or additional invoices, Subscriber shall pay all such invoiced amounts within thirty (30) days after receipt of invoice. In the event of a good faith dispute as to any portion of an invoice, Subscriber shall give written notice to Weather Source, within fourteen (14) days after receiving such invoice, stating the details of any such dispute and shall promptly pay any undisputed amount in accordance with this Agreement.

(d) *Taxes.* The fees stated on the Service order do not include Taxes and each party shall be responsible for its own taxes related to the use of the Service. In the event Weather Source determines that it has a legal obligation to pay or collect Taxes, Weather Source shall add such Taxes to the applicable invoice and Subscriber will pay the Taxes unless Subscriber provides Weather Source with a tax exemption certificate from the appropriate taxing authority.

## **5. TERM AND TERMINATION**

(a) *Term of Agreement.* The term of this Agreement shall commence on the date hereof, and this Agreement and the rights granted to Subscriber hereunder shall terminate according to the Term specified in the Service Order. Thereafter, Subscriber shall have the right to extend this Agreement for Terms equal to the initial term.

(b) *Termination for Cause by Subscriber.* This Agreement and the rights granted hereunder may be terminated by Subscriber for cause, immediately by written notice, in the event (i) Weather Source fails to make the Service or Service Data available to Subscriber, and such breach is not cured within thirty (30) days after receipt of written notice thereof from Subscriber; or (ii) the Service returns answers that are not "responsive" in a material percentage of cases and such breach is not cured within thirty (30) days after receipt of written notice thereof from Subscriber; or (iv) an Insolvency Event occurs with respect to Weather Source. In the event of termination by Subscriber pursuant to this Section 5(b), Weather Source shall refund to Subscriber any Service Fees or other fees paid by Subscriber which have been paid in advance by Subscriber and have not been earned as of the effective date of termination. Upon Termination all access to the Service and the continued use of any cached Service Data shall be terminated.

(c) *Termination for Cause by Weather Source.* This Agreement may be terminated by Weather Source for cause immediately by written notice in the event (i) Subscriber breaches the payment obligations and such breach is not cured within fifteen (15) days after receipt of written notice thereof from Weather Source; (ii) materially breaches the confidentiality obligations set forth in Section 9, and, irrespective of damage to Weather Source,

such breach is not cured within thirty (30) days after receipt of written notice thereof from Weather Source; or (iii) an Insolvency Event occurs with respect to Subscriber.

(d) *Duties on Termination.* Upon termination of this Agreement for any reason, Weather Source shall immediately terminate all access to the Service and all rights granted hereunder shall immediately cease and terminate, including the right to continue using any cached Service Data.

(e) *Survival.* The parties' rights and obligations under this provision and the following sections shall survive the termination or expiration of this Agreement: 3, 7, 8, 9, 10, 12, and 13.

## **6. REPRESENTATIONS AND WARRANTIES**

(a) *By Subscriber.* Subscriber represents and warrants to Weather Source that it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder and that Subscriber's compliance with the terms and conditions of this Agreement will not violate any federal, state or local laws, regulations or ordinances or conflict with any third party agreements.

(b) *By Weather Source.* Weather Source represents, warrants and covenants to Subscriber as follows:

(i) *Authority:* That: (1) Weather Source has the full right, power and authority to enter into this Agreement, to carry out its obligations under this Agreement and to grant the rights granted to Subscriber in this Agreement; and (2) Weather Source's compliance with the terms and conditions of this Agreement shall not violate any federal, state or local laws, regulations or ordinances or conflict with any third party agreements.

(ii) *Service.* That the Service shall perform substantially in accordance with the Documentation.

(iii) *Non-Infringement:* That the Service and Service Data is original to Weather Source and does not infringe, or otherwise violate or misappropriate any copyright, patent, trade secret, or other proprietary right(s) held by any third party. Subscriber's sole remedy for a breach of the foregoing representation shall be to require Weather Source, at Weather Source's expense, to (1) procure for Subscriber the right to continue using the Service or Service Data; (2) replace or modify the Service or Service Data so that it becomes non-infringing but remains substantially equivalent in functionality and performance; or (3) in the event (1) and (2) are not commercially practicable, permit Subscriber to terminate this Agreement and, within thirty (30) days of the date of such termination, refund to Subscriber all unearned fees paid in advance by Subscriber.

(iv) *Documentation.* That the Documentation and all modifications or amendments thereto which Subscriber is required to provide under this Agreement will accurately describe the Service in all material respects, without reference to any other materials or information.

(c) Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 6, EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **7. INDEMNIFICATION**

(a) *By Weather Source*. Weather Source shall, at its own expense, defend, indemnify and hold harmless Subscriber and its directors, officers, employees, successors and permitted assigns from and against any and all liabilities, damages, awards, losses, costs and expenses (including court costs and reasonable attorneys' fees) arising out of any claim, demand, suit or cause of action (hereinafter a "Claim") brought by a third party relating to or resulting from (i) any act or omission of Weather Source or its employees, agents or contractors, (ii) any breach of the representation or warranty made in Section 6(b) by Weather Source.

(b) *By Subscriber*. Subscriber shall, at its own expense, defend, indemnify and hold harmless Weather Source and its directors, officers, employees, successors and permitted assigns from and against any and all liabilities, damages, awards, losses, costs and expenses (including court costs and reasonable attorneys' fees) arising out of any Claim brought by a third party relating to or resulting from (i) any act or omission of Subscriber or its employees, agents or contractors, or (ii) any breach of the representation or warranty made in Section 6(a) by Subscriber.

(c) *Indemnification Procedures*. If any party entitled to indemnification under this section (an "Indemnified Party") makes an indemnification request to the other, the Indemnified Party shall permit the other party (the "Indemnifying Party") to control the defense, disposition or settlement of the matter at its own expense; provided that the Indemnifying Party shall not, without the consent of the Indemnified Party, enter into any settlement or agree to any disposition that imposes any conditions or obligations on the Indemnified Party (other than the payment of monies that are readily measurable for purposes of determining the reimbursement obligations of the Indemnifying Party) or affect the rights of the Indemnified Party. Counsel selected by the Indemnifying Party shall be reasonably acceptable to the Indemnified Party. The Indemnified Party shall notify the Indemnifying Party promptly of any Claim for which the Indemnifying Party is responsible and shall reasonably cooperate with the Indemnifying Party to facilitate the defense of any such Claim. An Indemnified Party shall at all times have the option to participate in any Claim through counsel of its own selection and at its own expense.

## **8. LIMITATION OF LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DAMAGES IN CONNECTION WITH THIS AGREEMENT IN THE AGGREGATE EXCEED THE AMOUNT OF SERVICE FEES PAID BY SUBSCRIBER TO WEATHER SOURCE DURING THE PREVIOUS TWELVE

MONTHS PURSUANT TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL NOT APPLY TO THE PARTIES' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7, A BREACH BY EITHER PARTY OF SECTION 9 (CONFIDENTIAL INFORMATION), A BREACH BY COMPANY OF SECTION 4 (FEES AND EXPENSES) OR THE WILLFUL OR RECKLESS ACTS OF EITHER PARTY.

## **9. CONFIDENTIAL INFORMATION**

(a) *Confidential Information.* Each party has disclosed (prior to the commencement of this Agreement) and may disclose Confidential Information to the other party which it intends the other party to maintain in confidence, and each party agrees to comply with the provisions of this Section 9 with respect to all such Confidential Information. As used herein, each party which discloses such information is referred to as a "Disclosing Party" and each party which receives such information is referred to as a "Receiving Party." "Confidential Information" means Disclosing Party's confidential and proprietary inventions, products, designs and ideas, including computer software, data, functionality, concepts, processes, internal structure, external elements, user interfaces, technology and documentation, as well as confidential and proprietary information relating to Disclosing Party's operations, plans, opportunities, finances, research, technology, developments, know-how, personnel, and any third party confidential information disclosed to Receiving Party. Without limiting the foregoing definition, the Service and the Documentation (except Documentation reasonably expected to be provided to Subscribers regarding the use of the Service) are "Confidential Information" of Weather Source. The terms and conditions of this Agreement are also "Confidential Information." Notwithstanding the foregoing, "Confidential Information" shall not include information (a) already lawfully known to Receiving Party if the Receiving Party does not then have a duty to maintain its confidentiality, (b) developed independently by the Receiving Party, (c) generally known to the public through no fault of the Receiving Party; (d) lawfully obtained from a third party not known to the Receiving Party to be obligated to preserve its confidentiality; (e) required to be disclosed by law, regulation or order of a court of competent jurisdiction or other governmental authority (except that prior to any such disclosure the Receiving Party shall give the Disclosing Party notice thereof and afford the Disclosing Party the opportunity to oppose any such disclosure).

(b) *Non-Disclosure.* Receiving Party acknowledges that Confidential Information is confidential, proprietary and/or trade secret information of the Disclosing Party. Receiving Party shall not use the Confidential Information for any purpose other than in accordance with this Agreement, and shall not disclose Confidential Information to anyone other than its employees, and to contractors who legitimately need access to it and who have signed confidentiality agreements comparable in scope to this Section 9. In addition, a party may disclose Confidential Information that is commercial or financial to its financial advisors, investors or potential investors who have signed confidentiality agreements comparable in scope to this Section 9. Receiving Party shall notify each of its employees or other third parties who are given access to Confidential Information that they have an obligation not to disclose Confidential Information and shall take such steps as are reasonably necessary to insure compliance with this obligation. Receiving Party shall safeguard Confidential Information with reasonable security means at least equivalent to measures that it uses to safeguard its own

proprietary information. Receiving Party shall store Confidential Information in a safe and secure location. Receiving Party may not remove copyright, trademark, trade secret, confidentiality, and patent notices from Confidential Information. .

(c) *No Warranties.* Except as specifically set forth in Section 6, all Confidential Information is provided “as is,” without any express or implied warranty of any kind.

(d) *Breach of Confidentiality Obligations.* Receiving Party hereby acknowledges that unauthorized disclosure or use of Confidential Information shall cause immediate and irreparable harm to Disclosing Party for which it would not have an adequate remedy at law. Accordingly, Disclosing Party shall have the right to seek and obtain preliminary and final injunctive relief to enforce this Agreement in case of any actual or threatened breach, in addition to other rights and remedies that may be available to Disclosing Party.

## **10. RELATIONSHIP OF THE PARTIES**

The parties shall be treated for all purposes as independent contractors, and no provision of this Agreement shall be construed to constitute or create a partnership, joint venture, agency or formal business organization of any kind.

## **11. PUBLICITY AND TRADEMARKS**

At no time shall either party release a press release that mentions the other party unless the other party has consented in writing in advance to such press release; provided, however, that Weather Source may, in its sole discretion, use the Subscriber’s name on the Site as a customer of Weather Source on the Site and in its promotional materials and RFP responses. This Agreement does not authorize Subscriber to use Weather Source’s name or any of its trademarks or service marks without prior written consent.

## **12. DISPUTE RESOLUTION**

(a) In the event of any dispute arising from or in connection with this Agreement, the parties will use good faith efforts to resolve the dispute in an amicable and businesslike manner through informal discussion in accordance with the following:

(i) The parties will use diligent business efforts to resolve the dispute at the working level without resort to further dispute resolution procedures.

(ii) If the officers of the parties have not resolved the dispute within 15 days after the dispute is referred to them (or earlier if either party so requests), then, upon the request of either party, the dispute will be referred to the Chief Executives of the Parties.

(b) During each of these steps, the applicable representatives of the Parties will discuss the dispute and attempt in good faith to resolve the dispute in a fair and equitable manner. The specific manner of the discussions will be determined by the applicable representatives. No formal proceeding concerning the dispute may be commenced unless the Chief Executives have not resolved the dispute within 15 days after the dispute is referred to



them and the Chief Executive of either Party concludes in good faith that resolution of the dispute by informal discussion of the Parties is not likely.

### 13. MISCELLANEOUS

(a) *Severability.* If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision hereof.

(b) *Force Majeure.* Weather Source will not be responsible or liable for, and will be excused from, any non-performance or delay in the performance of any of its obligations under this Agreement if and to the extent that such non-performance or delay (i) is caused by an act of God, natural disaster, civil disturbance, war, fire, earthquakes, changes in law, regulation or government policy, or non-performance by any third party (including vendors or suppliers), or any other factor beyond the control of Weather Source, whether or not foreseeable (“Force Majeure”), and (ii) could not have been prevented by Weather Source’s taking normal and customary precautions. In the event that Weather Source is excused from the performance of its obligations pursuant to this Section 13(b), then Weather Source will use its reasonable commercial efforts to resume performance of its obligations as soon as feasible.

(c) *Entire Agreement.* This Agreement represents the entire agreement of the parties with respect to the subject matter hereof and cancels and supersedes any previous understanding, commitments, or agreement, oral or written, between Weather Source and Subscriber, other than confidentiality agreements.

(d) *Waiver.* No failure by either party to insist upon the strict performance of any covenant, term or condition of this Agreement, or to exercise any right or remedy, shall constitute a waiver of such right or remedy on any subsequent occasion.

(e) *Governing Law.* The validity, construction, scope and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts, exclusive of its choice of law provisions.

(f) *Amendment.* This Agreement may not be amended except in writing executed by duly authorized representatives of both Subscriber and Weather Source.

(g) *Notices.* Any notices hereunder shall be given by certified mail (return receipt requested) or overnight mail to the parties at the addresses set forth in the Service Order. In the case of Weather Source, the following address may be used to send a notice.

Weather Source, LLC  
1 Stiles Road, Suite N. 201  
Salem, NH 03079  
Attn: Legal Department

Notices given by certified mail shall be deemed given three business days after the day mailed; notices given by overnight mail shall be deemed given one business day after the day mailed.

(h) *Assignment.* This Agreement may not be assigned by either party without the other party's prior written consent; provided that either party shall be permitted to assign its rights and obligations hereunder, without the other party's consent, to a third party in the event of a change in control with respect to such party or any sale, assignment, transfer or other conveyance to such third party of all or substantially all of the business or assets of the assigning party. Subject to the foregoing, this Agreement shall be binding on the parties and their respective successors and permitted assigns, and such permitted assigns shall expressly agree to be bound by all the terms and conditions herein. No partial assignment of the rights or obligations granted hereunder shall be permitted.

(i) *Headings.* The headings of the Sections used in both this Agreement and the Exhibits attached hereto are for convenience of reference only and shall not be considered in construing this agreement.

(j) *Counterparts.* This Agreement may be signed in one or more counterpart copies, all of which together shall constitute one Agreement and each of which shall constitute an original.