

# Terms and Conditions for WSI USPLN Lightning Data and Services (rev May 2008)

By signing the first page of this Agreement and/or by activating the Services, the Customer listed on the first page of this Agreement agrees and accepts the following terms and conditions:

## I. DEFINITIONS

The following terms shall have the following meanings for the purpose of this Agreement.

- A. "Customer" means the party listed on the Schedule with whom WSI is contracting hereunder.
- B. "Schedule" means the first and signatory page of this Agreement, as well as any addenda thereto, listing the Services provided hereunder and the fees associated therewith.
- C. "Services" means access to the USPLN Lightning Data listed on the Schedule and all data, text, maps, forecasts, graphics, and other content included therein.
- D. "USPLN Lightning Data" means WSI's restricted, password protected internet-accessed lightning data from the United States Precision Lightning Network.
- E. "Normal Business Hours" means 8 am-5 pm, EST, Monday-Friday, excluding WSI holidays.

## II. USE OF WSI SERVICES BY CUSTOMER

A. SERVICES: WSI hereby grants to Customer a limited, non-exclusive, non-transferable license to access and use the Services exclusively for Customer's own internal use by the single user listed on the Schedule ("Designated User").

B. WSI ONLINE: WSI hereby grants to Customer a limited, non-exclusive, non-transferable license to access and use the Service exclusively by the Designated User. Customer acknowledges and agrees that Customer shall be assigned a unique user code and password by WSI, and that the user code and password shall be kept strictly confidential and used exclusively by the Designated User. If Customer suspects that a user code and password has been compromised, it is Customer's responsibility to report this to WSI immediately via phone or email. Deliberate sharing of user codes and passwords or failure to report compromised user code and passwords is grounds for immediate cancellation of the Services and forfeiture of any prepaid fees. The means and costs for connectivity to the internet, hardware, and software required to utilize the Service are the sole responsibility of Customer.

C. RESTRICTIONS: Customer shall have the right to print copies of the information included within the Services solely for its own internal use. Under no circumstances will Customer engage in any form of electronic reproduction, redistribution, or retransmission of the Services, or any parts thereof, or resell, sublicense or externally electronically display or exhibit the Services. Subject to the limited license rights granted hereunder, all rights, title, and interest to the Services and the contents thereof, including without limitation all copyrights thereto, are the sole property of WSI and its licensors.

D. IMPROVEMENT AND DISCONTINUANCE OF SERVICES: In order to improve the quality of the Services to Customer, WSI reserves the right to make changes from time to time in the Services or the USPLN Lightning Data without notice to Customer. WSI shall give notice to Customer of changes that significantly affect Customer's access to the Services. Customer acknowledges that WSI receives certain data included in the Services from third parties and agrees that in the event that receipt of such data by WSI is terminated for any reason, or in the event it ceases offering any of the Services specified herein, WSI shall have the right to terminate transmission of such data or the Services or to provide substitute products hereunder. In the event WSI determines not to provide substitute products, the parties shall make an equitable adjustment in the fees payable for the Services or other services provided under this Agreement or this Agreement shall terminate without further liability to either party hereto.

## III. LIMITED WARRANTY

WSI MAKES NO WARRANTY WITH RESPECT TO THE SERVICES AND USPLN LIGHTNING DATA AND, ACCORDINGLY, THE USPLN LIGHTNING DATA AND ALL OTHER SERVICES HEREUNDER ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY STATED HEREIN, WSI MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE OR OF MERCHANTABILITY (WHICH ARE DISCLAIMED) WITH RESPECT TO THE SERVICES. WSI ASSUMES NO RESPONSIBILITY WITH RESPECT TO THE USE BY CUSTOMER OR ITS EMPLOYEES OR CLIENTS OF THE SERVICES OR DATA. CUSTOMER SHALL BE SOLELY LIABLE FOR ALL INTERPRETATIONS, INTERPRETATIONS, PREDICTIONS, DECISIONS, JUDGEMENTS, AND ACTIONS TAKEN WITH RESPECT TO THE USPLN LIGHTNING DATA.

## IV. MAINTENANCE SERVICES

WSI shall provide warranty services during Normal Business Hours.

## V. BILLING/PAYMENT TERMS

Customer will be billed on a quarterly or annual basis, in advance, as indicated on the Schedule for the Services. All invoices shall be payable within 30 days of the date thereof.

In the event Customer defaults on its payment obligations hereunder, Customer shall be liable to WSI for all costs and expenses, including reasonable attorney's fees, incurred in the collection of any balance owed. The amounts paid by Customer hereunder for the Services are exclusive of any sales, purchase, use, excise, or similar taxes which may be levied thereon. Customer shall be liable for all such taxes.

Additionally, Customer shall pay a late payment charge of the lesser of 1 1/2% per month or the maximum amount allowed under Massachusetts law on all delinquent payments hereunder from the date of invoice.

## VI. TERM AND TERMINATION; RENEWALS

The term of this Agreement shall be as indicated on the Schedule for the Services acquired hereunder. Absent notification to the contrary by either party at least thirty (30) days prior to the end of the then current term, the Agreement shall automatically renew annually for additional one (1) year periods. If Customer becomes bankrupt or insolvent or defaults on any of its obligations hereunder during the term of this Agreement, WSI may terminate this Agreement upon written notice thereof to Customer. Termination by WSI in case of default by Customer shall be in addition to any other remedies WSI may have in law or in equity. Upon any annual renewal of this Agreement, WSI may change its fees for Services with thirty (30) days prior notice to Customer. Such notice shall be effective if set forth on an invoice or in a billing insert sent to Customer, given via an electronic display transmitted on or through the Services, sent by email to Customer's email address or if otherwise provided in writing to Customer. New rates shall become effective at the beginning of the next annual term. WSI shall have the right to terminate the Services at any time upon thirty (30) days notice to Customer in the event it ceases to offer such Services for sale generally.

## VII. INTELLECTUAL PROPERTY INDEMNIFICATION

WSI will defend Customer against a claim that the USPLN Lightning Data or Services supplied hereunder infringe a patent, trade secret or copyright enforceable in the United States, and WSI will pay any resulting costs, damages, and reasonable attorney's fees finally awarded, provided that Customer promptly notifies WSI in writing of the claim, WSI has sole control of the defense and all related settlement negotiations, and Customer provides WSI with complete information concerning the claim. WSI's liability hereunder shall not apply to the extent that Customer has modified the USPLN Lightning Data or Services or used the USPLN Lightning Data or Services in combination with any equipment or software or services not contemplated by the Documentation. WSI's obligation hereunder is conditioned on Customer's agreement that if any part of the USPLN Lightning Data or Services become, or in WSI's opinion is likely to become, the subject of such claim, Customer will permit WSI, at its option and expense, either to procure the right for Customer to continue using the USPLN Lightning Data or Services or to replace or modify the same so that they become non-infringing while retaining equivalent functionality. If neither of the foregoing alternatives is available on terms that are reasonable in WSI's judgment, this Agreement shall terminate without further liability to either party hereto.

## VIII. ADVISORY NATURE OF WSI SERVICES

Customer acknowledges and agrees that the Services are wholly advisory in nature and all actions and judgments taken with respect to the Services are Customer's sole responsibility. WSI makes no representations with respect to the reliability, timeliness, predictive value or accuracy of the weather information contained within the Services and WSI shall not be responsible for errors resulting from any inaccurate, delayed, omitted, misstated, incorrectly displayed or other erroneous information. Customer acknowledges the inherent risk of relying upon weather data and forecasts and Customer is urged to verify the Services against other sources prior to use. WSI does not guarantee that the content of Services will remain the same over time.

## IX. LIMITATIONS OF WSI LIABILITY

A. LIMITATIONS OF LIABILITY: NOTWITHSTANDING ANYTHING CONTAINED HEREIN, OR THE FORUM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT BY CUSTOMER AGAINST WSI, CUSTOMER AGREES THAT WSI'S LIABILITY, IF ANY, TO CUSTOMER FOR ANY LOSS, DAMAGE, CLAIM, LIABILITY OR EXPENSE, OF ANY KIND CAUSED DIRECTLY OR INDIRECTLY BY THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS PURSUANT TO THIS AGREEMENT OR BY THE NEGLIGENCE, ACTIVE OR PASSIVE, OF WSI SHALL BE EXCLUSIVELY LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE PRICE PAID BY CUSTOMER TO WSI HEREUNDER FOR THE MOST RECENT TWELVE MONTHS OF SERVICES. IN NO EVENT SHALL WSI BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOST PROFITS OR DAMAGES FROM LOSS OF USE OR DATA (DESPITE THE FACT THAT THE POSSIBILITY OF SUCH DAMAGES ARE OR MAY BE KNOWN TO WSI), WHETHER ARISING OUT OF BREACH OF AGREEMENT, TORT OR ANY OTHER CAUSE OF ACTION RELATING TO THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT.

B. INDEMNIFICATION: EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF WSI, THE CUSTOMER AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND WSI FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, EXPENSES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES OF WHATEVER NATURE OR KIND ASSERTED BY, SUFFERED OR INCURRED BY THIRD PARTIES ARISING OUT OF THE USE BY CUSTOMER OF THE SERVICES UNDER THIS AGREEMENT.

# Terms and Conditions for WSI USPLN Lightning Data and Services (rev Mar 2008)

**Order #:**

**Customer Initials:**

## X. NON-SOLICITATION OF EMPLOYEES

Customer agrees that for the term of this Agreement and for a period of one (1) year thereafter, it will not solicit or hire away from WSI any employee of WSI who has been engaged in the performance of work under this Agreement without WSI's express written agreement. In the event of any violation of this clause, Customer shall pay WSI liquidated damages in the sum of One Hundred Fifty Thousand Dollars (\$150,000) for each such violation.

## XI. APPLICABLE LAW; VENUE

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of law principles. All disputes under this Agreement shall be resolved by the State or Superior Courts of Essex County in the Commonwealth of Massachusetts or in the United States District Court for the District of Massachusetts, and each party consents to the exclusive jurisdiction of such courts and hereby waives any jurisdictional or venue defenses otherwise available to it.

## XII. WAIVER, SEVERABILITY, AND NON-ASSIGNABILITY

All rights of WSI hereunder are separate and cumulative, and no one of them, whether exercised or not exercised, will be deemed to be an exclusion of any other right, and will not limit or prejudice any other legal or equitable right which WSI may have. Should any part of this Agreement for any reason be declared invalid or void, such decision shall not affect the remaining portion which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated. This Agreement shall not be assigned by Customer without the prior written consent of WSI.

## XIII. FORCE MAJEURE

WSI shall have no liability to Customer for failure to perform any of its obligations hereunder or otherwise due to occurrences beyond its reasonable control, including, but not limited to, strikes, riots, wars, fire, acts of God, acts in compliance of any law or government regulation or acts of any third party not affiliated with WSI.

## XIV. NOTICE

All notices required or permitted under this Agreement shall be in writing and shall be sufficiently given if delivered in person or sent by telecopy with confirmation of receipt, by express mail with confirmation of receipt or by registered or certified airmail, postage prepaid, with confirmation of receipt. All notices to you shall be addressed to the address provided by you in writing to WSI. All notices to WSI shall be addressed to WSI Corporation, 400 Minuteman Road, Andover, MA 01810-1093, and sent to the attention of Mark Gildersleeve, with a copy to Kim Rauenzahn. Notices shall be deemed given on the date of delivery if delivered in person or sent by telecopy or the date received if sent by express mail or registered or certified mail.

## XV. GENERAL

This Agreement contains the entire understanding of the parties and supersedes all prior understandings, written or oral with respect to the subject matter hereof. No waiver, alteration, or modification of any provision hereof shall be binding unless in writing and signed by a duly authorized representative of WSI and Customer. Trial services, if any, are for purposes of demonstration and evaluation only and Customer's use is subject to the Terms and Conditions herein. The provisions of this Agreement are for the benefit of the parties to the Agreement and not for the benefit of any other parties. Customer understands and agrees that WSI may display certain advertising within the Services and that this advertising is a condition of this Agreement at the offered price.

## XVI. WAIVER OF JURY TRIAL

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THEIR RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION OF THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER AND CONSENT TO A TRIAL BEFORE A JUDGE, SITTING WITHOUT A JURY.