

**General Terms and Conditions of UBIMET North America Inc.  
regarding Portals**

**§ 1**

**Applicability of Terms and Conditions**

1. These General Terms and Conditions apply to all business relationships between UBIMET North America Inc., a corporation incorporated under the laws of the State of Delaware (“UBIMET”), and its clients (each, a “Client”) regarding the access to Portals, including its severe weather warnings via-mail or text message (the “Services”).
2. As used in these General Terms and Conditions, the term “Agreement” means these General Terms and Conditions, together with any order form, agreement, supplement, amendment or other writing between Client and UBIMET that is signed by an authorized individual or agent of each of Client and UBIMET.
3. To the extent that there is any conflict in terms between these General Terms and Conditions and any order form, agreement, supplement, amendment or other writing between the parties with respect to the Services, the terms of such order form, agreement, supplement or amendment will govern and control with respect to such Services; provided that such writing shall be duly entered into between the parties pursuant to Section 1.2 above.
4. Terms or conditions of a Client or of any other nature that are alternative, contrary, or supplementary to these General Terms and Conditions shall only become an integral part of the Agreement to the extent that UBIMET expressly consents to their application in writing. This consent requirement applies in all cases, even if, for example, UBIMET provides services without any reservation or objection to Client’s contradictory general terms and conditions.

**§ 2**

**Services by UBIMET**

1. UBIMET provides meteorological information on an ongoing basis. The information contains data on the current weather and expected changes to the weather, particularly information about rain, storms and freezing rain. Additionally client may select to receive individual severe weather warnings transmitted via text message to a mobile phone number and/or e-mail address disclosed by the client and agreed with UBIMET. The specified scope of the Services for a particular project will be set forth in a duly executed order form or written offer from UBIMET that complies with the requirements of Section 1.2 above (the “Order Form”).
2. The transmission of severe weather warnings is deemed as completed, in case the warning is consigned by UBIMET to the respective telecommunication operator or internet provider.
3. UBIMET is reliant on the timely supply of data from third parties in order for UBIMET to provide the Services. UBIMET will not be responsible for any failure to provide the Services in a timely manner due to the failure of any third party to timely provide necessary data to UBIMET, and such delay will not constitute an event of default hereunder.
4. UBIMET shall have the right to modify any of the processes associated with the production of the Services if such modification is necessary or beneficial, in UBIMET’s sole determination, as a result of advancements in technology or otherwise, provided that such modification will not materially restrict or interfere with Client’s use of the Services.
5. The webcams are from webcams.travel: the free webcam catalogue with more than 40.000 webcams worldwide.
6. The map service is provided by HERE. Regarding the use of the map service the terms of use (<https://legal.here.com/terms/serviceterms/gb>) and the privacy policy (<https://legal.here.com/privacy/policy/gb>) of HERE apply additionally. The map service may also include data from other third parties. More detailed information is available on: [http://corporate.navteq.com/supplier\\_terms.html](http://corporate.navteq.com/supplier_terms.html).

**§ 3**

**Fees**

1. The amount of the fees (“Fees”) charged to Client for the Services will be set forth in the Order Form. Fees are due and payable to UBIMET in full without deduction within 14 days of issuance of the invoice.
2. Client shall incur interest charges on any past due amounts at the rate of 12% per annum or, if lower, the maximum amount permitted under applicable law, and shall be responsible for any fees or charges associated with collections on such past due amounts.
3. Client shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Client hereunder.
4. If the parties have agreed to an installment payment plan, any one overdue installment payment shall cause the entire outstanding fee amount to become immediately due and payable.
5. Fees are subject to increase on an annual basis, which increase shall be based on the Consumer Price Index (CPI-U) published by the U.S. Bureau of Labor Statistics.
6. Client shall (a) cooperate with UBIMET in all matters relating to the provision of Services; (b) respond promptly to any UBIMET request to provide direction, information, authorizations or decisions that are reasonably necessary for UBIMET to perform the Services in accordance with the Agreement; (c) provide such customer materials or information as UBIMET

may reasonably request to carry out the Services in a timely manner and ensure that such materials are complete and accurate in all material respects; and (d) comply with all applicable laws in relation to the Services.

7. If UBIMET's performance of its obligations under the Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants or employees, UBIMET will not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising from such prevention or delay.

#### **§ 4 Right of Use**

1. UBIMET and its affiliates are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the documents, data, know-how, methodologies, software and other materials, reports and specifications and all intellectual property therein or related thereto that are delivered to Client under the Agreement or prepared by or on behalf of UBIMET in the course of performing the Services, including, without limitation, meteorological measurement readings and forecast data (collectively, the "Data") UBIMET grants Client a non-exclusive and non-transferable right to the use of the Data. This right does not extend beyond the geographical location of as designated in the Order Form and is limited to the scope and purpose of the Agreement. Any additional use beyond these limitations, including the transfer to or sharing with any third party of the Data or the use of the Services and any modification, publication or disclosure of the Data, in whole or in part, without the prior written consent of UBIMET are not permitted.
2. Client's breach of [Section 4.1](#) above shall constitute an event of default hereunder for which UBIMET will have the right to terminate the Agreement for cause and receive liquidated damages of US\$15,000 for each such individual violation. The parties agree that the actual measure of damages for such violation is uncertain or difficult to quantify, that this amount represents a reasonable consideration of the actual or anticipated harm caused by such violation considering the difficulty of proving loss and of finding another adequate remedy and that this amount is structured to function as damages and not as a penalty.
3. Client must maintain confidentiality with respect to the user ID and password provided by UBIMET to access the portal. In particular, the user may not make the user ID and password available to third parties and/or enable third parties to gain knowledge of them – even by accident.
4. If UBIMET suspects that the provided Services are being used for other than its intended purpose, UBIMET shall be entitled to suspend delivery of Services. The same shall apply in case of any other breach of the Agreement by the Client. Client has the right to evidence that such breach has actually not occurred.

#### **§ 5 Liability and Warranty**

1. The Agreement does not establish rights of any kind in favor of end-customers of Client or any other third party. If such person brings an action or claim against UBIMET in connection with the Services provided under the Agreement, on whatever legal grounds, Client shall indemnify, defend and hold harmless UBIMET against such claims.
2. UBIMET represents and warrants to Client that it will provide all Services in accordance with the recognized practices of meteorological science and technology. Due to the numerous factors that influence the weather, actual weather conditions cannot be reliably forecast in all cases. Likewise, it is not always possible to fully understand weather conditions in retrospect. Rather, the Services may consist of meteorological forecasts based on meteorological experience and calculated probabilities. Unintended deviations from actual weather conditions cannot be avoided. UBIMET therefore makes no warranty that the Data will match actual weather conditions and assumes no liability of any kind to Client or any other person in connection with the failure of any Data to match actual weather conditions.
3. Client shall give UBIMET prompt written notice of any disruption of or material defect in the Services, no later than three days following Client's discovery of such disruption or material defect; provided that such notice shall be no later than one year after such disruptive or defective Service was originally provided. Client's failure to comply with the notice requirement shall constitute a waiver by Client of any warranty or damage claims associated with such disruption or material defect. Upon timely receipt of notice as specified in this [Section 5.3](#), UBIMET shall re-perform the Services. The foregoing sets forth Client's sole remedy with respect to a breach of this warranty.
4. UBIMET explicitly disclaims that any of the Data provided to Client constitutes an official severe weather warning. If Client requires an official severe weather warning of any kind, Client shall not rely on the Data, and should seek alternative sources for such information.
5. If and to the extent that UBIMET must rely on data from third parties to provide the Services, UBIMET shall confirm the reliability of such data in accordance with the recognized practices of meteorological science and technology. UBIMET assumes no further liability and makes no further warranty of any kind with respect to such data. UBIMET makes no warranty and assumes no liability of any kind for any failures, interruptions, omissions, faulty data transfers, or other disruptions or impairments of the channels of communication caused by technical difficulties (including necessary maintenance time) or otherwise not due to the willful misconduct or gross negligence of UBIMET.
6. EXCEPT AS SPECIFIED IN THIS SECTION 5, UBIMET MAKES NO WARRANTIES IN RESPECT OF ANY MATTER, INCLUDING WITHOUT LIMITATION THE SERVICES AND THE DATA, AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE. UBIMET SHALL NOT BE RESPONSIBLE FOR ANY

THIRD PARTY'S SERVICE OR DATA UBIMET PROVIDES OR USES IN THE PERFORMANCE OF THE SERVICES UNDER THE AGREEMENT. ALL THIRD PARTY SERVICES AND DATA ARE PROVIDED "AS IS" WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH CLIENT. UBIMET DOES NOT WARRANT THAT DELIVERY OF THE SERVICES OR THE DATA WILL BE UNINTERRUPTED OR ERROR FREE, OR ANY DEFECT OR MALFUNCTION IN THE SERVICES OR DATA IS CORRECTABLE OR WILL BE CORRECTED.

7. In no event shall UBIMET be liable to Client or to any third party for any loss of use, revenue, profit or interest or loss of data or diminution in value, or for any consequential, incidental, indirect, exemplary, special or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
8. UBIMET's liability under the Agreement shall be limited in amount to the following: (a) with respect to any Agreement where the compensation for the Services is fixed, half of the amount of the Fees; or (b) with respect to any Agreement where the compensation for the Services is a recurring charge, (i) the amount actually paid by Client for the Services provided by UBIMET during the six months immediately preceding the occurrence of Client's first claim or cause of action or (ii) US\$25,000, whichever is less.
9. The limitations of liability set forth in Sections 5.7 and 5.8 above shall not apply to liability resulting from UBIMET's willful misconduct or gross negligence. Client shall bear the burden of proving such willful misconduct or gross negligence.

## **§ 6 Duration of the Agreement**

1. The term of the Agreement is for the period stated in the Order Form.
2. Unless otherwise stated in the Order Form, the Agreement will automatically renew in each case for an additional 12-month period unless either party shall give the other party written notice of termination at least six months prior to the expiration of the Agreement.
3. The Agreement may be terminated prior to the expiration of the term as follows:
  - a. by mutual consent in writing between UBIMET and Client;
  - b. by UBIMET, if Client violates Section 4 of these General Terms and Conditions;
  - c. by UBIMET, if Client does not meet its payment obligations when due, provided that Client shall be afforded a one-time opportunity to cure such event of default within 14 days of receipt of notice thereof from UBIMET; or
  - d. by either party upon 30 days' written notice describing the breach, if the other party materially breaches the Agreement (other than non-payment), provided that the breaching party has 30 days after receipt of such notice in which to cure the breach.
4. In the event of an early termination of the Agreement under Section 6.3, all outstanding Fees and other amounts due UBIMET will become immediately due and payable. An early termination of the Agreement will not operate as a waiver of Client's obligation to pay any outstanding amounts due UBIMET under the Agreement and such obligation shall survive termination.

## **§ 7 Data Privacy**

The personal data provided by Client in the framework of the contractual relationship, particularly the contact information (i.e. the telephone number, facsimile number and e-mail address), are processed by UBIMET for the purposes of provision and performance of the Services. Subject to revocation, Client hereby expressly agrees to the use of Client's personal data for such processing purposes and to the receipt of Services related information through facsimile, e-mail and/or SMS messages.

## **§ 8 Governing Law; Submission to Jurisdiction**

1. The Agreement and any claim arising under the Agreement will be governed, construed and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.
2. Any legal suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New York, in each case located in the City of New York, and County of New York and each party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action or proceeding.

## **§ 9**

### Miscellaneous Provisions

1. All non-public, confidential or proprietary information of UBIMET, including, but not limited to, the Data and the terms and conditions set forth in any Order Form and any other specific agreement between UBIMET and Client, whether disclosed orally or disclosed in writing, whether or not marked or designated as "confidential" is confidential and shall not be disclosed by Client without the prior written consent of UBIMET. To the extent necessary for the function of its business, Client may disclose such confidential information only with its officers, agents, employees and contractors bound by confidentiality obligations of similar scope.
2. Client shall have no right of set-off or retention under the Agreement.
3. Client shall not assign the Agreement, including any rights, obligations or claims under or arising therefrom, without the prior written consent of UBIMET. UBIMET shall have the right to assign the Agreement and any rights or obligations under the Agreement to a third party, and Client hereby gives its irrevocable consent to such assignment in advance.
4. The Agreement contains the entire agreement between UBIMET and Client with respect to the Services, and any prior understanding, agreement, representation or warranty, verbal or written, relating to the Services is replaced by the Agreement and shall have no further effect.
5. Any amendment or supplement to the Agreement must be in a writing signed by an authorized representative of both parties to be valid.
6. No waiver by either party of any breach of the Agreement will constitute a waiver of any other breach of the same or other provisions of the Agreement. No waiver by either party will be effective unless made in writing and signed by an authorized representative of that party.
7. The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.
8. Client shall reimburse UBIMET for UBIMET's costs and expenses (including reasonable attorneys' fees and court costs) incurred in connection with UBIMET enforcing its rights under this Agreement.
9. UBIMET shall not be liable or responsible to Client, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any terms of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of UBIMET, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities, terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes, or restraints or delays affecting carriers or inability or delay in obtaining applicable information; provided, that if the event in question continues for a continuous period in excess of 60 days, Client may terminate the Agreement upon written notice.
10. If individual provisions of the Agreement are or become invalid or unenforceable or the General Terms and Conditions are deemed incomplete, the other provisions of the Agreement will be unaffected and will remain valid and enforceable. Upon such determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify the Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.
11. Provisions of the Agreement, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of the Agreement, including, but not limited to, the following provisions: the entirety of Sections 4, 5, 8 and 9.
12. Any notices and communications under the Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, (c) sent by overnight express carrier, or (d) transmitted by telecopy or electronic mail, addressed in each case as set forth on the Order Form or to any other address a party under the Agreement shall designate in a written notice to the other party to the Agreement. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next business day immediately following the day sent, (iii) if sent by registered or certified mail, then on the earlier of the third business day following the day sent or when actually received or (iv) if sent by telecopy or electronic mail, on the date of receipt if received by recipient by 17:00 (local time) or the following date if received by recipient after 17:00 (local time).

Version: November 2015