NONEXCLUSIVE BULK DATA SERVICE AGREEMENT

THIS AGREEMENT, effective August 1, 2014, sets forth the understanding between The Board of Regents of the University of Oklahoma by and on behalf of Integrated Robust Assured Data Services (IRADS; hereinafter referred to as the UNIVERSITY) and Company (hereinafter referred to as SUBSCRIBER), in regard to services to be provided by the UNIVERSITY via IRADS.

WHEREAS, UNIVERSITY receives and adapts certain NCEP data and distributes it to subscribers which have need of the data, all in accordance with the Memorandum of Agreement (MOA) between the UNIVERSITY and the National Centers for Environmental Prediction (NCEP) for adapting and distributing;

WHEREAS, SUBSCRIBER has need of such weather data and desires to subscribe to the UNIVERSITY’S data distribution services as provided herein; and

WHEREAS, the UNIVERSITY, has the capability to distribute certain weather data to SUBSCRIBER on a non-exclusive basis and to use this capability to further its educational and service missions.

NOW THEREFORE, the parties agree as follows:

1. SERVICE

1.1 The purpose of this data distribution service is for the UNIVERSITY, via IRADS, to provide streaming CONDUIT data (Cooperative Opportunity for NCEP Data Using IDD Technology (CONDUIT)), on a nonexclusive basis, to industry, academia, and government in fulfillment of its public service mission. SUBSCRIBER understands that the charge for provision from IRADS source server is for one (1) copy-instance of the data feed. The UNIVERSITY places no restriction on the use of Data or products created therefrom, or their distribution or re-distribution.

1.2 The fee schedule is set forth in Exhibit A attached hereto and incorporated herein by reference.

1.3 “Data” is defined as any data set provided as part of the CONDUIT project as defined by NCEP.

2. TERM and TERMINATION

2.1 This Agreement shall commence on the 1st day of XXX XXXX and shall expire on the 30th day of XX XXXX, unless earlier terminated as provided herein. Should this Agreement commence after XXXX X, XXXX the SUBSCRIBER shall receive a prorated fee through the end date of XXXX X, XXXX
2.2. BUYER and UNIVERSITY shall each have the right to terminate this Contract without cause upon thirty (30) days prior written notice. Provided, the NCEP exercises discretionary control over UNIVERSITY’S access to the Data and may, depending upon NCEP’ obligations, requirements and resources, terminate the agreement with the UNIVERSITY at any time. In such event, this Agreement shall automatically and immediately terminate and UNIVERSITY shall give BUYER prompt notice thereof and pro rate the fee accordingly.

2.3 In the event that either party shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy the default or breach within ten (10) days after receipt of written notice thereof from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending written notice of termination in accordance with Article 6 to the defaulting party and the termination shall be effective as of the date of the receipt of the notice.

3. PAYMENT

3.1 For services provided, SUBSCRIBER agrees to pay the UNIVERSITY the prorated amount of One Thousand Three Hundred Seventy Five Dollars ($1,375.00). SUBSCRIBER is to pay the prorated initial one-quarter of the annual charge of Two Hundred Fifty Dollars ($250.00) upon commencement of this Agreement and Three Hundred Seventy Five Dollars ($375.00) quarterly thereafter, prior to the delivery of service, until the full amount is paid.

3.2 Payments shall be due and payable not later than thirty (30) days after the date of the invoice. If payments are received after 30 days of invoicing a late fee of 1.5% shall be imposed. All monies due the UNIVERSITY under this Agreement shall be made payable to the University of Oklahoma. Delivery of service is contingent upon prior payment for service and delivery of Data will be suspended by the UNIVERSITY if account is not current. Failure of payment shall result in Termination as provided in Article 2.

4. LIABILITY

4.1 SUBSCRIBER shall indemnify, defend and hold harmless the UNIVERSITY, its regents, officers, agents and employees, from all liability for all claims, demands, loss, liability, damages, penalties and costs of any nature (including court costs and attorneys’ fees) arising in connection with, but not limited to, any personal injury, economic loss, product liability and/or property damage in any way caused by or alleged to arise out of, in whole or in part, the actions of SUBSCRIBER hereunder. The terms of this paragraph shall survive the expiration or termination of the Agreement.

4.2 In no event will the UNIVERSITY, its regents, employees, agents or students be liable for any consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including lost profits, lost data, or opportunity costs) arising out of the operation and performance of this agreement regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including negligence), or otherwise.
4.3 NWS/NCEP CONDUIT data stream contents and disclaimer. Subscribers of CONDUIT data acknowledge the following: UNIDATA Internet Data Distribution of NWS/NCEP Model Products: 
http://www.unidata.ucar.edu/data/conduit/ldm_idd/index.html

“These data streams are provided using the Unidata LDM/IDD distribution system to create a timely and reliable delivery of products for research and education. While every attempt is made to ensure high quality data delivery, all users should note that this is not considered "Operational" data since 24 hour support is not possible, and some data may be experimental in nature. These data feeds are designed to be flexible to meet the needs of the user community, and therefore contents may change as necessary to reflect the requirements of the recipients”.

4.4 Subscribers of CONDUIT data understand and acknowledge the following: As the CONDUIT data stream is research based and sporadic, monitoring and outage reporting for CONDUIT data is very limited. In the event of a reported CONDUIT data outage, upstream support is limited to an email push notification both during and after business hours.

4.5 IRADS support for CONDUIT subscribers. IRADS provides automated monitoring of some CONDUIT data (currently NDFD products only). Monitoring includes time required to receive products from their origin and network traverse times. Statistical graphs are available at irads.net, as well as notification alerts where CONDUIT products are absent for more than 4 hours. (CONDUIT data bursts tend to be hourly).

In general, IRADS support response is similar for all data feeds. Critical support requests are handled via phone call, 24x7 at (405) 325-4078, or (866) 33-IRADS. Less critical issues, questions, can be requested via email at irads@irads.net. Follow up is handled via email typically. IRADS troubleshooting first determines if an issue is internal or with an upstream provider. Issues within our system will be mitigated (disable certain hosts or feeds) until repairs can be made during regular business hours. For upstream issues, IRADS will attempt to mitigate the problem to return the customer to normal data flow, while working with the provider to fully resolve the problem. If IRADS is unable to mitigate the problem, we will notify all affected customers. IRADS will still accept CONDUIT support calls outside business hours, and will send information to providers 24/7. However, customers should be aware that upstream response to CONDUIT issues are subject to lengthy delays, with no response over weekends.

5. DISCLAIMER AND NO WARRANTIES AND REPRESENTATIONS

5.1 Although the UNIVERSITY will make reasonable efforts to provide service and continued access to the Data, the Data originates with the NCEP and not with the UNIVERSITY. Therefore, the UNIVERSITY cannot guarantee access to the Data nor ensure the timeliness, quality, consistency, regularity or reliability of transmission of the Data. Accordingly, SUBSCRIBER understands and agrees that the UNIVERSITY shall have no liability for the actions or inactions, errors or omissions in the Data, materials, technology or other services or items provided by NCEP and to the extent such affect the Data distribution services of the UNIVERSITY, the UNIVERSITY shall have the right to immediately modify, suspend or terminate this Agreement and otherwise conform its services with the NCEP transmitted data.
5.2 The UNIVERSITY makes no warranties, either express or implied, as to any data, product or any other output resulting from this agreement whatsoever, including without limitation, its merchantability or its fitness for subscriber's purpose.

5.3 SUBSCRIBER understands that the CONDUIT data is a research data and will not hold the UNIVERSITY responsible for quality of data or changes in data.

6. NOTICES

Notices and communication shall be submitted to the offices identified below. Contractual notices and communications hereunder shall be deemed made as of the date of mailing if given by overnight courier service or by registered or certified mail, postage prepaid, and addressed to the party to receive such notice or communication at the address given below, or such other address as may hereafter be designated by notice in writing.

If to SUBSCRIBER (Administrative):

Name:
Address: street address
City, State, Zip Code
Phone/Fax:
Email: email

If to the UNIVERSITY (Administrative):

Name: Chance Grubb, Partnership Manager
Address: University of Oklahoma
City, State, Zip Code: 3200 Marshall Ave. Suite 120
Phone: (405) 325-6157
Email: cgrubb@ou.edu

If to UNIVERSITY (Technical):

Name: Elliot Robertson
University of Oklahoma
Integrated Robust Assured Data Services (IRADS)
350 David L. Boren Blvd, Room 1430
7. USE OF NAMES OR MARKS

SUBSCRIBER shall not state or imply in any publication, advertisement or other medium that any product or service bearing any of SUBSCRIBER’S names or trademarks and manufactured, sold, or distributed by SUBSCRIBER, has been approved or endorsed by the UNIVERSITY. SUBSCRIBER will not use any UNIVERSITY logos or marks without the UNIVERSITY’S prior written permission or use the name of the UNIVERSITY nor any of its employees or agents, in any publicity, advertising or news release without the prior written approval of an authorized representative of the UNIVERSITY. The UNIVERSITY will not use the name of SUBSCRIBER, nor any employee of SUBSCRIBER, in any publicity without the prior written approval of SUBSCRIBER.

8. COLLABORATION

Should the parties hereto determine to collaborate on a joint research or development project in the future, the parties shall enter into a separate joint research or development agreement to set forth special terms and conditions appropriate to such agreements; e.g., intellectual property rights, confidentiality, etc.

9. GENERAL

9.1 This Agreement may not be assigned by either party in whole or in part without the prior written permission of the non-assigning party.

9.2 This Agreement shall be governed by the laws of the State of Oklahoma, without giving force and effect to its choice of law provisions, and the United States of America. Any legal action in connections with this Agreement shall be filed in a court of competent jurisdiction in the State of Oklahoma to which jurisdiction and venue both parties expressly agree.

9.3 Should the parties to this Agreement be unable to amicably resolve between themselves any dispute arising from any of the provisions within this Agreement, each party shall have recourse under the law. In the event that either party commences an action in law or equity to enforce any provision of the Agreement, the losing party shall pay to the prevailing party, reasonable attorneys’ fees as fixed by a court of competent jurisdiction.

9.4 If any provision(s) of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9.5 This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior and/or contemporaneous discussions, representations, or agreements of
the parties relating to the work to be performed, whether written or oral. This agreement may be extended, renewed or otherwise amended at any time by the written agreement signed by parties.

9.6 This Agreement may be executed in several counterparts, each of which shall be deemed the original, but all of which shall constitute one and the same instrument.

9.7 The parties agree that they shall comply with all applicable export control regulations of the United States of America and each shall be responsible for obtaining all information regarding such regulations that are necessary for compliance with such regulations. Each agrees that it will comply with all the applicable laws, order and regulations relating to export control.

9.8 Neither party is authorized or empowered to act for the other for any purpose and shall not enter into any Agreement, warranty, and/or representation as to any matter on behalf of the other. Neither shall be bound by the acts or conduct of the other.

9.9 In compliance with all applicable federal and state laws and regulations, the University of Oklahoma does not discriminate on the basis of race, color, national origin, sex, age, religion, disability, sexual orientation, political beliefs, genetic information, or status as a veteran in any of its policies, practices, or procedures. This includes but is not limited to admissions, employment, financial aid, and educational services.

9.10 The parties agree that this Agreement shall be binding upon their respective successors, assign or transferees of any nature, if assignment and/or transfer is permitted in accordance with the terms of this Agreement.

9.11 Neither party shall be held responsible for any losses if the fulfillment of any terms or provisions of this Agreement are delayed or prevented by any cause not within the control of the party who’s interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent.

IN WITNESS THEREOF, this Agreement was entered into on the above noted effective date.

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<tr>
<th>UNIVERSITY</th>
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<tr>
<td>By: ______________________________</td>
<td>By: ______________________________</td>
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<tr>
<td>Title: OU Procurement Manager</td>
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# Exhibit A

## SERVICE RATE

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<tr>
<td>CONDUIT Data</td>
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