

ACCU WEATHER SALES AND SERVICE, INC.  
ACCU NET™/AP® PHOTO ARCHIVE DIVISION  
PLAIN LANGUAGE SUBSCRIBER AGREEMENT

August 1, 2000

1. Name and Address of Parties:

A. AccuWeather Sales and Service, Inc., 385 Science Park Road, State College, PA 16803-2215 (referred to as AccuWeather Sales and Service)

B. Subscriber:

California Digital Library

University of California at Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz and Office of the President

Subscriber Site(s)

University of California and campuses

Name of Subscriber

300 Lakeside Drive

Street Address

Oakland, CA 94612

City, State, Zip Code

Primary Contact Person

Subscriber Telephone Number

E-Mail Address

2. Start Date: August 1, 2000

3. Length of User Agreement:  One Year  Two Years  Three Years  Other 15 months

4. Service Level:

Subscriber Fee \_\_\_\_\_ Per Year - Payable Annually in Advance

Number of Concurrent Users Authorized: twenty-five (25)

The maximum number of subscribers users logged on to the service at any given point in time.

5. Subscriber shall be granted electronic access to the AccuNet/AP Photo Archive (the Archive) solely for the purpose of electronically viewing individual photographs and images in the Archive and making laser or desk jet prints of such content and downloading and making a digital copy for specific purposes as allowed in 5 (1)-(4) limited to low resolution. Subscriber acknowledges that it understands that the image resolution of the Archive content, when printed, is 72 dots per inch. The Archive shall be used by Subscriber for the following purposes:

- (1) Printed copies of images for book reports, term papers, theses, class handouts and research,
- (2) "Power Point" type presentations, overhead projection, slide shows, and other similar multimedia presentations whose usage is confined to Authorized Users of the licensed Subscriber. 'Authorized Users' are defined as faculty, staff, students, located in the facilities of the following University of California campuses: Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz and the Office of the President, whose use is confined to educational material, research and information only.
- (3) Transmitting an individual image to a specific e-mail user, who is an Authorized User of the licensed Subscriber.
- (4) Archive photographs shall not be used or published in newspapers, magazines, brochures, catalogs, commercial announcements, calendars, posters, yearbooks, playbills, newsletters, on t-shirts, or promotional items, or for commercial use or gain of any kind.
- (5) The content of the Archive shall be that normally provided by AccuWeather Sales and Service from time to time.
- (6) Unless expressly authorized by AccuWeather Sales and Service in writing and subject to payment of additional licensing fees specified by AccuWeather Sales and Service, all other forms of access and use of the Archive and its constituent elements are expressly disallowed, including, by way of example and not limitation:
  - (a) accessing or using the Archive while being delinquent with respect to any applicable fees hereunder, or
  - (b) electronically downloading, manipulating or creating derivative works in any media except as allowed in this Agreement,
  - (c) electronically transmitting the Archive and/or its constituent elements, or other such activity, except as allowed in this Agreement
- (7) In addition to the permitted uses described above, Subscriber may also allow Subscriber's users to access the Archive remotely [i.e., from off-site via computer]; provided that (i) only persons who are Authorized Users (teachers/students/staff) of Subscriber shall be permitted to remotely access the Archive, (ii) each person remotely accessing the Archive shall count toward the maximum number of persons permitted to be logged on at any given time, and (iii) all of the terms and conditions applicable under this Agreement to users who access or view the Archive at Subscriber's premises shall apply to persons remotely accessing the Archive.

6. Subscriber hereby certifies that it is an educational institution or a public library. Subscriber agrees to use the Archive for educational interest and information only. Subscriber agrees not to use the Archive for any commercial or commercially related, business or business related, purpose whatsoever except as specified herein.

THE SUBSCRIBER ACKNOWLEDGES THAT SUBSCRIBER HAS READ AND UNDERSTANDS THIS AGREEMENT AND HAS HAD THE OPPORTUNITY TO HAVE IT REVIEWED BY LEGAL COUNSEL, IT SHALL NOT BE CONSTRUED MORE STRICTLY AGAINST ONE PARTY THAN THE OTHER AND THE MEANINGS AND PURPOSES ATTACHED TO ITS VARIOUS PROVISIONS SHALL BE THOSE REASONABLY INTENDED BY ACCU WEATHER, INC.

THE PARTIES, INTENDING TO BE LEGALLY BOUND, HAVE EXECUTED THIS AGREEMENT. THE SIGNERS REPRESENT THAT THEY HAVE FULL AUTHORITY TO EXECUTE THIS AGREEMENT ON BEHALF OF ACCU WEATHER, INC. AND SUBSCRIBER RESPECTIVELY AND TO LEGALLY BIND SAME AND THAT THEY HAVE READ AND UNDERSTAND THE IMPORTANT TERMS AND CONDITIONS ON PAGE 1 AND 2 AND WHICH ARE A PART OF THIS AGREEMENT.

ACCU WEATHER SALES AND SERVICE, INC.

DATE: 8/8/00

BY

PRINT NAME HERE

AccuWeather Sales and Service/A/PPhoto/©AccuWeather Sales and Service, Inc./B.L.Myers02/07/00

SUBSCRIBER

DATE: Aug 2, 2000

BY

PRINT NAME HERE

Director, Shared Content, California Digital Library

TITLE

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## SERVICE TERMS AND CONDITIONS

**A. Equipment.** Subscriber shall, at its own cost, obtain, maintain and operate all terminals, communication devices and other equipment needed for accessing the Archive. Subscriber acknowledges that AccuWeather Sales and Service shall not be liable for the suitability, delivery, performance or maintenance of any terminal or other equipment or for the hook-up of any terminal or equipment to suitable telephone lines or other communications links.

**B. Access.** During the term of this Agreement, AccuWeather Sales and Service will provide the Archive through communication facilities it may from time to time select and Subscriber shall have access rights to the Archive. Access to the Archive shall be authorized by AccuWeather Sales and Service to begin upon the Starting Date and end upon termination of this Agreement. Subscriber agrees that it shall make the Archive available only to Authorized Users of the licensed Subscriber listed in this Agreement. Subscriber shall be fully responsible for making reasonable efforts to make the Archive available to Authorized Users at the sites listed herein. If Subscriber becomes aware of unauthorized use, it is Subscriber's responsibility to immediately notify in the normal course of business AccuWeather Sales and Service in writing upon becoming aware of unauthorized use or users.

**C. Subscription Fees.** Subscriber agrees to pay to AccuWeather Sales and Service the fee set forth in this Agreement. The fees may be invoiced in advance. Subsequent year prices shall be based on that of the year immediately preceding plus either (1) eight percent or (2) the increase in the Consumer Price Index during the year immediately preceding, whichever is greater. Each increase, after being computed, will be rounded up to the next whole dollar to arrive at a monthly or yearly price. This is a fixed fee, lump sum contract; the total contract sum equals the total number of periodic payments multiplied by the amount of each periodic payment. This Agreement may provide monthly payments as an accommodation to Client to facilitate budgeting and cash flow planning. Payment shall be due and payable at AccuWeather Sales and Service office in State College, Pennsylvania at the beginning of each contract month or contract year without notice. Failure of payment shall render due and payable all sums payable during the initial period of this Agreement and any subsequent renewal period plus a late payment charge of one and one-half percent per month. All prices stated herein are in U.S. dollars. In the event the CPI were to exceed an eight percent annualized rate, AccuWeather Sales and Service would have the right to calculate price adjustments more frequently than annually. Subscriber shall pay the fees that are due and owing under this Agreement to AccuWeather Sales and Service within 30 days from the date of invoice. If Subscriber fails to perform any of its obligations under this Agreement, including but not limited to, failure to pay the fees that are due and owing, AccuWeather Sales and Service will have the right to notify Subscriber of such failure and Subscriber will have 30 days to cure such failure. If the failure is not cured within the 30-day cure period, AccuWeather Sales and Service will have the right to terminate this Agreement at any time thereafter immediately upon notice to Subscriber.

**D. Term.** This Agreement shall remain in full force and effect for the period specified on the front hereof, beginning on the specified Starting Date and it shall remain and continue in full force and effect for subsequent periods equal in length to the original term hereof or one year, whichever is longer, unless written notice of termination is received by one party from the other party at least sixty (60) days prior to the initial expiration date of any subsequent expiration date. Time is of the essence of this paragraph. If an initial free trial period was granted, such free trial period shall not be carried into a renewal period but is time that shall be considered as part of the initial term. If a Length of User Agreement is indicated as more than one year but less than two years, the renewal term shall be one year at a time.

**E. Copyright, Storage and Ownership of Service.** All information, data, images and other things comprising the Archive are to be considered copyrighted by AccuWeather Sales and Service or The Associated Press and they remain the sole and exclusive property of their owner. Subscriber is authorized to store such information during the time of the Agreement. Subscriber may not store for future use such information beyond that period, nor develop a library of such information. Upon termination of this Agreement all stored data shall be destroyed by Subscriber. Subscriber acknowledges that The Associated Press retains sole and exclusive right, title and interest in and to the copyrights for all photos in the Archive and understands and acknowledges that no title or ownership in the photos or the Archive database itself are hereby transferred to Subscriber hereunder.

**G. Assignability.** Neither party may assign directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed and written acceptance of the contract by the Assignee. This Agreement constitutes the entire agreement between the parties. No collateral or prior statements, representations, understandings or agreements survive or are a part of this Agreement. No modifications to this Agreement shall be made except by written addendum signed by both parties hereto. The invalidity of any paragraph, subparagraph or portion of this Agreement shall not affect the validity of any other paragraph, subparagraph or portion hereof. The failure of AccuWeather Sales and Service to require the performance of any term of this Agreement or the waiver by AccuWeather Sales and Service of any breach under this Agreement shall not prevent a subsequent enforcement of such term by AccuWeather Sales and Service nor be deemed a waiver of any subsequent breach.

**H. Performance.** In the case of failure of payment by Subscriber, AccuWeather Sales and Service shall have the right to claim a sum equal to twenty-five percent of such payment due but not paid, that AccuWeather Sales and Service, may sustain by reason of Subscriber failure to so perform this Agreement, Subscriber breach of any of the terms, covenants or conditions of this Agreement or other claims against AccuWeather Sales and Service, Inc. arising from this Agreement as a liquidated amount for attorneys fees. AccuWeather Sales and Service, Inc. shall defend, indemnify, and hold harmless Subscriber, their officers, agents and employees from all damages, liabilities, costs, fees, including, but not limited to, attorney's fees, resulting from any judgment or settlement agreement arising out of the claim of a third party that AccuWeather Sales and Service, Inc.'s sale of products to Subscriber or Subscriber's use of said products consistent with the terms of this Agreement constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Subscriber shall give prompt notice of an infringement claim to AccuWeather Sales and Service Inc., provide such cooperation and assistance to AccuWeather Sales and Service, Inc., as is reasonably necessary to defend the claim, and shall allow AccuWeather Sales and Service, Inc. to have sole control of the defense, provided, however, that Subscriber retains the right to participate in the defense at its own expense.

**I. Damages.** NEITHER ACCUWEATHER SALES AND SERVICE, INC. AND THE ASSOCIATED PRESS, NOR SUBSCRIBER WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF DATA, BUSINESS INTERRUPTION, OR LOSS OF PROFITS ARISING, ARISING OUT OF THE ABILITY OR INABILITY TO ACCESS THE PHOTOS IN THE ARCHIVE. NEITHER PARTY WILL BE LIABLE FOR DAMAGES FOR ANY DELAY OF DEFAULT IN PERFORMING HEREUNDER IF SUCH DELAY IS CAUSED BY CONDITIONS BEYOND ITS CONTROL, INCLUDING BUT NOT LIMITED TO ACTS OF GOD, GOVERNMENTS RESTRICTIONS, WARS, INSURRECTIONS, STRIKES, OR OTHER WORK STOPPAGES AND/OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF THE PARTY WHOSE PERFORMANCE IS AFFECTED. ACCUWEATHER SALES AND SERVICE, INC. AND THE ASSOCIATED PRESS'S SOLE LIABILITY TO SUBSCRIBER FOR FAILURE TO RECEIVE ACCESS TO THE ARCHIVE PURSUANT TO THIS AGREEMENT OR INABILITY TO USE THE ARCHIVE AS AUTHORIZED HEREUNDER, SHALL BE LIMITED TO THE FEE PAID BY SUBSCRIBER TO ACCUWEATHER HEREUNDER.

**J. Warranties.** ACCUWEATHER AND THE ASSOCIATED PRESS WHICH OWNS THE ARCHIVE AND PROVIDES SUBSCRIBERS WITH ACCESS TO THE ARCHIVE HEREUNDER WARRANT THAT THEY HAVE THE RIGHT TO LICENSE THE RIGHTS GRANTED UNDER THIS AGREEMENT TO USE THE ARCHIVE, THAT THEY HAVE OBTAINED ALL THE NECESSARY PERMISSIONS FROM THIRD PARTIES TO LICENSE THE ARCHIVE, AND THAT USE OF THE ARCHIVE BY AUTHORIZED USER IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT WILL NOT INFRINGE THE COPYRIGHT OF ANY THIRD PARTY. ACCUWEATHER AND THE ASSOCIATED PRESS HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, CONCERNING ANY PRODUCTS OR WHETHER EXPRESS OR IMPLIED, CONCERNING ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR. THE ARCHIVE IS BEING PROVIDED TO SUBSCRIBER ON AN "AS IS" BASIS.

**K Headings and Captions.** The headings and captions used in this Agreement are for convenience only, they are not to be considered a part of the Agreement; they in no way define, limit, or describe the scope of intent of the paragraphs of this Agreement nor in any way affect this Agreement.

**L. APs Status.** AP is an express third party beneficiary of the rights afforded AccuWeather Sales and Service hereunder.

**M. Authentication.** The parties shall cooperate in the implementation of additional security procedures as they are developed.

**N. Dual Licenses.** No notice, statement or disclaimer displayed to Authorized Users through the publisher's web site or by other means shall supercede, limit, or otherwise modify the provisions of this Agreement.

**O. ADA Compliance.** AccuWeather Sales and Service, Inc. shall comply with the American with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, voice-activated input, and alternate keyboard or pointer interfaces in a manner consistent with the WAI [Web Accessibility Initiative] Accessibility Guidelines: Page Authoring, which may be found on the Web at <http://www.w3.org/wai/gl/wd-wai-pageauth>.

**P. Y2K.** AccuWeather Sales and Service, Inc. certifies that the product being provided to the University of California is year 2000 compliant; that is, it will operate properly in the Year 2000 and beyond and in situations where dates of the year 2000 are used.

**Q. Server Availability.** AP Photo Archive shall use reasonable effort to provide consistent, quality service.

Initials: BM Date: 8/3/00

IP Address: \_\_\_\_\_