



**EARTH NETWORKS PROFESSIONAL AGREEMENT**

12410 Milestone Center Drive,  
 Suite 300, Germantown, MD 20876  
 EARTH NETWORKS dba WEATHERBUG  
 herein referred to as "Earth Networks"



**Customer Contact Information**

<b>Business Name:</b>	Town of Cutler Bay	<b>Business Address:</b>	10720 Caribbean Blvd Suite 105 Cutler Bay, FL 33189
<b>Contact Name:</b>	Rafael G. Casals Town Manager		
<b>Contact Phone:</b>	(305) 234-4262	<b>Contact Fax:</b>	(305) 234-4251

**Customer Billing Information (if different from above)**

<b>Business Name:</b>	Town of Cutler Bay	<b>Business Address:</b>	10720 Caribbean Blvd., Ste 105 Cutler Bay, Florida 33189
<b>Contact Name:</b>	Etienne Bejarano		
<b>Contact Phone:</b>	(305) 234-4262	<b>Contact Fax:</b>	(305) 234-4262

**Earth Networks Contact Information**

<b>POC:</b>	Sean P Acton	<b>Email Address:</b>	sacton@earthnetworks.com
<b>Contact Phone:</b>	(301) 250-4124	<b>Contact Fax:</b>	(301) 258-5210

**Schedule of Products and Services**

Product Name	Notes	Quantity	Unit Price	Total Price
Installation: Horn		4	\$2,250.00	\$9,000.00
Outdoor Alerting System (OAS)		4	\$6,500.00	\$26,000.00
Streamer RT – Gov't / Comm (3 Seat License)		1	\$1,500.00	\$00.00

Initial Term of Contract:  
 1 year

Quotation valid through: 2/29/16

<b>Sub Total:</b>	\$35,000.00
<b>Discount:</b>	\$3,500.00
<b>Sales Tax:</b>	
<b>Grand Total:</b>	\$31,500.00

**Remarks:**

The buyer agrees to payment terms of Net 45 unless otherwise documented. Late payment fees will be charged as one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late. **StreamerRT and lightning alert feeds provided at no charge in Year 1. The annual fee for these services including unlimited maintenance site visits excluding parts following year one shall be \$xx/per year.**

Installation and/or maintenance costs quoted above are valid for standard installations only. Any installation or maintenance work that requires non-standard equipment, materials, or regulatory expense may be subject to an additional charge. Furthermore, customer is responsible for providing all communication and electrical infrastructure. This quotation identifies the quantity of OAS units estimated for adequate coverage and has been agreed to by both parties as per (name and date of summary document). If additional units are required or desired after installation, they can be added for \$8,750.00 per unit installed.

Please allow six to eight weeks for delivery of hardware.

The parties agree to be bound by the Earth Networks terms and conditions.

**CUSTOMER:**

**EARTH NETWORKS**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Sean Acton

Title: \_\_\_\_\_

Title: Enterprise Solutions Specialist

Date: \_\_\_\_\_

Date: 2/5/2016

Please fax all pages of the signed agreement directly to Earth Networks at (301) 258-5210



## Customer Check List

Earth Networks thanks you in advance for your business. In order for us to expedite your order, please be sure that you have signed and returned the following information:

- Signed Earth Networks Professional Agreement
- Sign and date the bottom right page of Standard Terms and Conditions where it asks for "Customer Signature and Date"
- Signed Purchase Order, Check or Credit Card Authorization
- Tax Exempt Certificate (if applicable)

If you should have any questions please feel free to contact your POC:

**NOTE:** AWS Convergence Technologies Inc. officially changed its name to **Earth Networks Inc.**, January 2011. Please ensure that you have made the name change to all documents submitted to **Earth Networks** for processing.

POC: Sean P Acton

Phone: (301) 250-4124

Email Address: [sacton@earthnetworks.com](mailto:sacton@earthnetworks.com)

Fax: (301) 258-5210

ATTACHMENT 1 - TERMS AND CONDITIONS

**1. Payment.** The Buyer agrees to payment terms per Remarks section of Schedule. Late payment fees will be charged as follows: (a) one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late; (b) Payment should be made to:

Earth Networks  
Dept 0152, PO Box 120152  
Dallas, TX75312

**2. Inspection and Acceptance.** It is Buyer's responsibility to inspect and accept each unit at the time of delivery. Failure of Buyer to inspect and accept the unit at that time waives Buyer's rights to inspection and acceptance as a term of the contract. However, any actions under this clause shall not be deemed a waiver of any warranty contained herein.

**3. Web Services.** As part of this package purchase, Seller agrees to provide to Buyer: (1) complete access to the web service specified on the Schedule; (2) Provide adequate bandwidth and server capacity; (3) Provide toll-free technical support. The above services will be provided for as long as Seller maintains support for the applicable web service.

**4. Term and Termination.** The web services shall have an initial term as specified on the Schedule. Unless otherwise specified on the Schedule, the web services subscription shall automatically renew for successive 12 month terms, unless terminated by either party with at least 30 days written notice prior to the expiration of the then current term.

**5. Dispute.** The parties agree that any dispute, other than those relating to payment, due and owing from Buyer to Seller, arising out of or relating to this Agreement, shall be subject to binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The parties shall jointly request that an Arbitrator be appointed by the Alternative Dispute Resolution Administrator for the Circuit Court for Montgomery County, Maryland, to serve as the final arbitrator of any dispute. Any award of the Arbitrator shall be enforceable in the applicable court for enforcement. Both Buyer and Seller agree that the finding of the arbitrator is binding and no other remedy, including legal remedies, is permitted.

**6. Warranty.** The Seller warrants the hardware and software purchased by the Buyer against defects in workmanship and materials for a period of one (1) year from date of delivery under this contract. The Seller shall, at its sole option, either repair or replace defective items. Buyer is responsible to return of defective items to Seller by means specified by the Seller. The Buyer shall bear all shipping expenses. Packing of defective items for return is responsibility of Buyer. Damage due to natural causes (storms, lightning, flying debris, etc.) is not covered by this warranty. Damage resulting from Buyer negligence or mishandling of hardware and software is not covered by this warranty.

**7. Alterations and Attachments.** If Buyer makes alterations or attaches a device or any other item to the Earth Networks unit as sold and installed, the warranty is voided and Seller has no further obligation under the warranty.

**8. Disclaimer of Implied Warranties.** EXCEPT AS PROVIDED ABOVE, THE WEB SERVICES AND DATA DISPLAYED THEREIN ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS PROVIDED IN SECTION 6 ABOVE, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO BUYER, OR TO ANY AUTHORIZED USER OR THIRD PARTY, INCLUDING ANY WARRANTIES OF QUALITY, ACCURACY, PERFORMANCE, COMPATABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT SELLER IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION OR DATA CONTAINED IN THE SERVICES, AND SELLER SHALL NOT BE LIABLE FOR ANY LOSSES RESULTING FROM BUYER'S OR ANY AUTHORIZED USER'S RELIANCE ON ANY SUCH INFORMATION OR DATA UNDER ANY CIRCUMSTANCES.

**9. Lightning Disclaimer.** Experience has shown that the resolution, timeliness, and format in which lightning data are

presented within various displays and products, does not provide a total solution with regard to addressing concerns regarding the presence of convective activity and/or lightning and their potential impact on the safety of personnel and/or safeguarding of facilities, whether it be of immediate or short term concern. Interpretation and application of the data, as well as any comparative analysis and/or prognosis or similar activities done by any user, are done so solely at the user's risk and have not directly or indirectly been implied, condoned or recommended by Seller, and/or its data suppliers.

**10. Liability.** Buyer and subsequent users of hardware and software agree to waive any liability of Seller for damage caused by hardware and software installation and operation on any user premises.

**11. Limitations of Liability.** Except for damages caused by Seller's willful misconduct, recklessness, or gross negligence, the parties agree that to the extent permitted by applicable law, Seller limits or disclaims liability related to the manufacture, delivery, or use of the equipment, the software and/or supplies used in connection with the equipment or the provision of services for the equipment, as follows: (a) For direct damages, Seller liability is limited to the amounts paid by Buyer for the equipment, software, supplies or services giving rise to, or which are the subject of the claim, whether such claim alleges breach of contract, or tortious conduct including but not limited to negligence or any other theory; (b) Seller disclaims liability for indirect, incidental, special, or consequential damages (including but not limited to, loss of use, revenue, or profit) whether such claim alleges breach of contract, tortious conduct including but not limited to negligence, or any other theory.

**12. Data Rights.** Seller retains all rights to data and/or video images (hereinafter "data") generated by the Earth Networks system(s). Seller grants Buyer a limited license for use of such data, in connection with Buyer's internal business/educational purposes, but for no other purpose. Seller has exclusive rights for resale or to otherwise use data from the installed system(s). Buyer and users of hardware and software under this contract cannot provide access to third parties without the express written consent of Seller. Requests for access must be in writing to the Seller at the Seller's place of business. Seller grants Buyer a royalty free license to use and disseminate data generated by the Buyer's Earth Networks system for educational purposes, save and except that Buyer is expressly prohibited from disseminating data to media outlets (such as TV stations, cable channels, radio stations, newspapers, and magazines). Buyer is expressly prohibited from disseminating data from any other Earth Networks system.

**13. Access To Communication Line.** Buyer agrees to connect, at Buyer expense, the Earth Networks unit(s) to a dedicated, full-time Internet connection. Buyer further agrees to maintain the Earth Networks system in an operational mode at all times and to permit Seller authorized outside access to system data through the telecommunication line. Telecommunication line expense is solely the obligation of Buyer. Buyer agrees to follow all procedures outlined in the Operations Manual to ensure system access is maintained.

**14. Non-Waiver of Rights.** The failure of Buyer or Seller to insist upon strict performance of the terms and conditions of this Contract or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of same rights or to rely on any such terms or conditions at any time thereafter.

**15. Governing Law.** This Agreement shall be governed by the laws of the State of Maryland.

**16. Attorney's Fees/Costs.** In any action by a party to enforce its rights hereunder, the non-prevailing party

shall pay the prevailing party's costs and expenses (including reasonable attorney's fees & other arbitration costs).

**17. Extraordinary Circumstances.** Except for obligations of payment, neither Seller nor the Buyer shall be liable for nonperformance caused by circumstances beyond their control, including but not limited to, work stoppages, floods, lightning and all other acts of God.

**18. Breach.** Either party may terminate this Agreement on breach by the other party of any material term or condition hereof 10 days after written notice is given to the breaching party by the non-breaching party if such breach is not cured.

**19. Order Fulfillment.** If this is a multiple unit order and/or includes promotional goods, credits, services, and the Buyer does not fully complete the terms of the Order agreement, Seller reserves the right to re-bill at standard prices or to retrieve the promotional items, unless the Buyer reconciles by acquiring another Earth Networks product eligible for such promotional items/discounts.

**20. Patent Indemnity.** Seller will defend the Buyer from, and pay for ultimate judgment or liability for infringement in the United States by equipment or operating system software ("Software") of any patent, trademark, trade secret, protected semiconductor chip mask work, or copyright if Buyer promptly notifies Seller in writing of any alleged infringement, allows Seller to defend, and cooperates with Seller. Seller is not responsible for any non-Earth Networks litigation expenses or settlements unless Earth Networks agrees to them in writing. Seller is not liable for any infringement due to equipment or software being made or modified by the Buyer or Buyer requested specification or designs, or being used or sold in combination with equipment, software, or supplies not provided by Seller. IMPORTANT: SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY OF NON-INFRINGEMENT AND HAS NO OTHER LIABILITY FOR INFRINGEMENT OR ANY DAMAGES THEREFROM. To avoid an infringement (even if not alleged) Seller may, at its option, at no charge to Buyer, obtain a license to use, modify, or substitute an equivalent item for the infringing equipment or software.

**21. Purchase Orders.** Except for identifying goods, services or software ordered, prices and quantities, the terms and conditions contained or referenced in Buyer purchase order or other ordering documents shall be of no force or effect.

**22. Necessary Maintenance by Earth Networks.** Buyer will provide, upon reasonable notice by Seller, access to the system(s) for the purpose of supplying necessary maintenance and/or the installation of additional sensor equipment.

**23. Severability/Assignability.** If any provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain valid and enforceable. Neither party may assign this Agreement or any of its rights and obligations hereunder to any person, firm or corporation, without the prior written consent of the other, which consent shall not be unreasonably withheld, provided however that either party may assign this Agreement to a successor in interest as a result of a sale of all or substantially all of its stock or assets.

**24. Modification.** This contract shall not be varied in its terms or conditions by any oral Agreement or representation, but only by an instrument in writing of even or subsequent date thereto, properly executed by both the Seller and Buyer.

**25. Entire Agreement.** The terms and conditions contained or referenced in this Order Agreement are the complete and entire agreement between Seller and Buyer respecting the subject matter of this Agreement.

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Customer Signature and Date