

LICENSE AGREEMENT

Between

Oceanweather Inc., LICENSOR

and

Monterey Bay Aquarium Research Institute (MBARI), LICENSEE

For Results from Oceanweather's

GLOBAL REANALYSIS OF OCEAN WAVES (GROW)

LICENSE AGREEMENT

THIS AGREEMENT made effective as of this December 1, 2010 by and between Oceanweather Inc. a corporation in the state of New York with offices located at Cos Cob, CT hereinafter referred to as “LICENSOR”, and Monterey Bay Aquarium Research Institute (MBARI), on behalf of client IFREMER, with offices in Moss Landing, CA hereinafter referred to as “LICENSEE,” WITNESSETH THAT:

WHEREAS, LICENSOR has produced information relating to “Global Reanalysis of Ocean Waves” hereinafter GROW;

WHEREAS, LICENSEE desires to obtain a license for the use of certain results of GROW as specified in a PRODUCT SPECIFICATION delivered to and received by LICENSEE as attached in Exhibit A and delivered in a form hereinafter referred to as the Licensed Data;

WHEREAS, LICENSOR is willing to grant to LICENSEE such license;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements hereinafter set forth, the parties do hereby covenant and agree as follows:

1. Subject to the terms and conditions of this Agreement, LICENSOR hereby grants to LICENSEE a nontransferable, nonexclusive, worldwide right and license to use the Licensed Data. For purposes of this license, the term LICENSEE shall include LICENSEE and its affiliates. The term Affiliates shall mean any company (“parent company”) which holds or controls directly or indirectly fifty (50) percent or more of the shares carrying the right to vote at a general meeting, or its equivalent, of the party in question, and any company with respect to which a parent company holds or controls directly or indirectly fifty (50) percent or more of the shares carrying the right to vote at a general meeting, or its equivalent, and any company in which the party in question holds or controls directly or indirectly fifty (50) percent or more of the shares carrying the right to vote at a general meeting, or its equivalent.
2. LICENSEE shall treat as confidential all or any portion of Licensed Data which has been or may hereafter be made available to it, directly or indirectly, by LICENSOR; shall use it only to the extent necessary for the purpose of this Agreement; and shall not disclose it to any third party unless such third party agrees to confidentiality, nondisclosure and use restrictions no less binding than set forth in this paragraph and paragraphs 3, 4, and 5. Further, such third party shall not have the right to copy the Licensed Data and upon termination of its need to refer to Licensed Data on behalf of LICENSEE shall deliver the Licensed Data to LICENSEE retaining no copies. LICENSEE may disclose all of any portion of the Licensed Data to governmental authorities if required to do so in the course of obtaining permits.
3. Nothing contained herein shall in any way restrict or impair LICENSEE’s right to use, disclose or otherwise deal with any information within the Licensed Data which (a) is or becomes generally available to the public through no wrongful act of LICENSEE, (b) was in LICENSEE’s possession prior to the time it was acquired from LICENSOR and which was not acquired, directly or indirectly, from LICENSOR, or from others under an obligation of secrecy, or (c) is independently made available as a matter of right to LICENSEE by a third party without obligations of secrecy, provided such third party did not acquire such information directly or indirectly from LICENSOR.

4. For the purposes of the provision of Paragraph 3 above, information within the Licensed Data specific to certain conditions or features shall not be deemed to be generally available to the public or in the possession of LICENSEE merely because they or combinations thereof are embraced by general disclosures generally available to the public or in the possession of LICENSEE, but only if the combination itself and its principle of operation are generally available to the public or in the possession of LICENSEE prior to disclosure thereof by LICENSOR.
5. LICENSEE shall not make known or cause to be known to any third party except as provided in Paragraph 2 hereinabove any correlation, identity, similarity or relationship between information within the Licensed Data acquired by LICENSEE hereunder and information, data or know-how available to LICENSEE from any other source.
6. In the event this Agreement is terminated for any reason, LICENSEE shall destroy all copies of the Licensed Data in its possession, except for one archival copy.
7. In consideration of the license and other rights granted herein, LICENSEE hereby agrees to pay LICENSOR a royalty of \$2,500 (US) for one copy of the Licensed Data. Payment will be made by the LICENSEE at the end of the month immediately following a period of thirty-days after the receipt of the relevant and adequately documented invoice.
8. All royalties payable by LICENSEE hereunder shall be paid to LICENSOR in United States of America Dollars and in the total amounts provided for in this Agreement.
 - a) LICENSOR shall be responsible for and shall pay all taxes assessed or levied against LICENSOR by any jurisdiction of the United States (US) government in connection with Licensed Data.
 - b) LICENSOR shall indemnify and hold LICENSEE completely harmless against all costs and liabilities which LICENSEE may incur with respect to LICENSOR's failure to make any of the payments referenced in this section.
9. LICENSEE shall not, without the express written consent of LICENSOR, make any verbal or written statements or perform any act indicating that LICENSOR endorses or approves, or has endorsed or approved, any portion of the Licensed Data.
10. The waiver of a breach of this Agreement or the failure of LICENSOR or LICENSEE to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.
11. This Agreement shall continue in full force unless this Agreement is previously terminated as follows:
 - a) Should LICENSEE be in default as to any obligation hereunder, including payment of royalties, and fail to remedy such default within (60) days after written notice thereof is given by LICENSOR specifying the nature of such default, then LICENSOR may terminate this Agreement by giving written notice to LICENSEE of such termination, and such termination will become effective immediately upon the giving of such notice;
 - b) LICENSOR may terminate this Agreement by giving written notice to LICENSEE in the event LICENSEE experiences any of the following events: dissolution, insolvency, filing of a voluntary

petition in bankruptcy, adjudication as a bankrupt pursuant to an involuntary petition, appointment by a court of a temporary or permanent receiver, trustee or custodian for its business, or an assignment for the benefit of creditors, and such termination will become effective immediately upon the giving of such notice.

12. Termination of this Agreement for any reason shall not relieve any party of any obligation incurred hereunder prior to termination.
13. There shall be no warranty, expressed or implied, as to the accuracy or utility of any information within the Licensed Data made available to LICENSEE. LICENSOR hereby warrants that the use of the Licensed Data will not infringe any United States or foreign patent, copyright or trade secret and agrees to indemnify LICENSEE against any liability arising from the breach of such warranty. The Licensed Data is made available hereunder to LICENSEE on an "as is" basis. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED HEREUNDER. In no event will LICENSOR or its affiliates be liable for consequential damages resulting or arising from the use of the Licensed Data by LICENSEE or theirs, even if advised of the possibility of such damages.
14. For the convenience of LICENSOR, any report, document, disk or other product the subject of this Agreement may be delivered to LICENSEE by Oceanweather, Inc. in a physical copy or by electronic transfer. Notwithstanding this facility, LICENSEE shall look to LICENSOR and to LICENSOR only to cure any defect in any such deliverable.
15. Except as provided to the contrary in Paragraph 13, LICENSEE shall indemnify and hold LICENSOR and its affiliates harmless against all liabilities, demands, damages expenses, or losses arising out of LICENSEE's licensing of the Licensed Data, any use by LICENSEE of the Licensed Data furnished under this Agreement, or out of any use, or other disposition by LICENSEE of products made or services performed by use of the Licensed Data, whether authorized or unauthorized.
16. The making, execution and delivery of this Agreement of LICENSOR and LICENSEE have been induced by no representation, statement, warranties, or other agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties hereto and supersedes any previous agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement may be amended or modified only by an instrument of equal formality signed by duly authorized representatives of the respective parties.

17. This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of the state of CT, USA, excluding any choice of law rules, which may direct the application of the laws of any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names by duly authorized representatives of the respective companies.

LICENSOR

By: _____

Oceanweather Inc.

Position: _____

Date: _____

(Typed/Printed Name)

LICENSEE

By: Mark P. Chaffey

Monterey Bay Aquarium Research Institute
(MBARI)

Position: Electrical Engineer

Date: December 9, 2010

Mark Chaffey
(Typed/Printed Name)

Technical contact:

Mark Chaffey

MBARI

7700 Sandholdt Road

Moss Landing CA 95039

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EXHIBIT A. GROW PRODUCT SPECIFICATION

GROW DESCRIPTION. See GROW Product Description. See Chapter 4.1 for a description of Fields. See Chapter 4.2 for a description of Statistics. See Chapter 4.3 for a description of Spectra.

1. GROW GLOBAL GRID

Latitude	Longitude	Grid Point #	Years	Fields	Statistics	Spectra
37.5 N	32.5 W	39366	1970-2009	No	Yes	No

Selected Deliverables Options

Time Series: [NO]
 Time Series Format (if applicable) [ASCII]
 Derivative Statistics: [YES]

