

Weather Medic Service Agreement

**BY CLICKING THE "I AGREE" BUTTON, YOU ARE INDICATING THAT YOU UNDERSTAND AND AGREE TO THE FOLLOWING CONTRACT:**

**NOTICE AUTOMATED SEARCHING PROHIBITED: All access to and use of the Services via mechanical, digital (robotic, scripted or other automated means) is strictly prohibited. Use of the Services is permitted only via manually conducted, discrete, individual search and retrieval activities.**

**Your acceptance is also a declaration that you are authorized to make this selection.**

By Subscriber clicking "I Agree", Subscriber and Weather Medic agree:

1. "Subscriber" and "you" mean the person or company (regardless of legal form) specified in the sign-up.
  - 1.1. Subscriber promises the information identifying it (provided in the sign-up process or otherwise) is true and correct, that it is a real company or person over the age of 18, and its name is not a nickname, pseudonym, alias, false or fictitious.
  - 1.2. Subscriber promises to keep its identifying information up-to-date, including the contact person, credit card numbers and expiration dates.
2. Subscriber promises to pay Weather Medic's fees listed in the sign-up process, plus any sales and use taxes. Payment is due in advance by PayPal. Any arrears that accrue will carry an 18% APR finance charge.
3. Subscriber promises to provide all telephone, computer equipment and services necessary to access the Internet. Subscriber's software may not be capable of accessing WeatherMedic.com, now or as WeatherMedic.com changes. Subscriber is responsible for acquiring equipment and services compatible with the Browser Specs listed in the sign-up process.
4. Subscriber shall use its own log-in name and password. Unauthorized use of another Subscriber's name and password, or improper solicitation of another Subscriber's name and password, are grounds for termination of your Subscribership, and may be illegal or criminal. Subscriber will promptly inform WEATHER MEDIC if it suspects any breach of security, such as loss of or unauthorized use of log-in name, password or credit card number stored on Weather Medic.
5. WeatherMedic.com's programming, design and website is protected by copyright law. Subscriber may not reproduce all or any portion other than as permitted herein. Subscriber will comply with all applicable portions Federal, State and Local regulations, including but not limited to copyrights, trademarks, patents, trade secrets.
6. Non-Exclusive License. Weather Medic grants Subscriber a non-exclusive, non-transferable license to access and use the weather forecasting and meteorological information and services at <WeatherMedic.com> (hereafter collectively referred to as "Data"). All rights, title and interest in Data, including copyrights, are the exclusive property of Weather Medic and its Data suppliers, such as U.S. National Weather Service, WeatherTap and portable weather stations.
  - 6.1. Place. Subscriber is licensed to use the Data world-wide.
  - 6.2. Purpose. Subscriber is licensed to use the reports it generates from the Data for any purpose except resale, repackaging or including Data in other products or services for commercial use. Notwithstanding the foregoing, Subscriber may not remove or obscure any portion of Weather Medic's notices, trademarks, or other content including advertising, if any.
  - 6.3. Media. Subscriber may use the Data only as embodied in the report<sup>2</sup> which results from using the services. Subscriber may not otherwise copy, download, display, transmit, broadcast, scrape or resell Data. Subscriber may not commercially resell or redistribute (in any medium) the forecasts, services or Data.
  - 6.4. Time.
    - 6.4.1. Subscriber selects the duration of service desired when signing-up for service: for example, onetime, weekly, monthly or yearly access.
7. Service Limits. Weather Medic's service is subject to interruption, inaccuracy and delay due to causes beyond its control, such as:
  - 7.1. The atmosphere itself, limiting accuracy of forecast due to the spin of the earth, heating by the sun, local

- topography and water in all its forms - liquid, solid and gas. The smaller the weather feature, geographic area and time from the forecast, the more accurately and the shorter time ahead weather can be predicted.
- 7.2. loss of your or its phone, internet and/or e-mail service,
  - 7.3. failure of electric power to your or its computer and/or phone equipment,
  - 7.4. failure of your or its computer and/or phone equipment, including a busy signal or other (even temporary) loss of phone connection or service, and/or you change your e-mail or phone number without notifying Weather Medic,
  - 7.5. inability to obtain necessary services or supplies, such as inability to access Data suppliers, Weather Medic cannot guarantee that it will be able to maintain the supply of Data from any particular source,
  - 7.6. lack of Data sufficient to provide forecast in the promised detail, including geographic area or time frame desired,
  - 7.7. acts of God, acts of government, war, civil disorder, labor disputes and the like,
8. Subscriber Information Privacy.
    - 8.1. Weather Medic will use good faith efforts to keep Subscriber's information from being sold or shared, except as legally required.
    - 8.2. Nonetheless, Subscriber is responsible for ensuring it does not provide Weather Medic with trade secrets, confidential information or the like. If such disclosure occurs, and a separate confidentiality agreement is not in place between Subscriber and Weather Medic, then Weather Medic promises to use its best efforts to treat Subscriber's information in the same manner as Weather Medic treats its own secret information.
9. Site Security.
    - 9.1. Subscriber acknowledges that the Internet is not a secure medium, is not owned or controlled by anyone; and that the Internet is subject to human errors, random atmospheric and geographic interference, and acts of God. Weather Medic therefore makes no guarantee that Subscriber's will be able to access any particular service from or part of WeatherMedic.com at any given time.
    - 9.2. If Weather Medic believes, in its sole discretion, that immediate action is necessary or appropriate to maintain the integrity of its site, other sites or the Data, Weather Medic may immediately block, filter or remove a Subscriber's account.
    - 9.3. Subscriber assumes all responsibilities related to maintaining the physical and digital security of its passwords and its equipment which contain its passwords.
    - 9.4. Subscriber promises not to circumvent user authentication or security of any host, network, or account. This includes, but is not limited to, linking to a subscriber's-only page, accessing Data not intended for the Subscriber, logging into a server or account the Subscriber is not expressly authorized to access, or probing the security of other networks.
    - 9.5. Subscriber promises not to reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of WeatherMedic.com.
    - 9.6. Subscriber promises not to interfere with service to any user, host, or network ("denial of service attacks"). This includes, but is not limited to, "flooding" of networks, deliberate attempts to overload a service, and attempts to "crash" a host. Subscriber will not disrupt or undermine the security or integrity of Weather Medic's computers, network, servers, vendors, other Subscriber's computers or network connections (nor attempt to do so); nor gain unauthorized access to other accounts (nor attempt to do so).
    - 9.7. Subscribers who violate system or network security may incur criminal or civil liability. Weather Medic will cooperate with investigations of violations with affected sites and law enforcement.
10. Weather Medic's Limited Warranty and Limitation of Liability
    - 10.1. Weather Medic's forecasts, services and Data are provided **AS IS** and **AS AVAILABLE**.
    - 10.2. The forecasts, services and Data are subject to change. Weather Medic cannot guarantee that it will receive prior notice of changes that would cause an earlier forecast to be inaccurate; nor that it will be able to disseminate any notices of changes or updated forecasts in enough time to effectively inform Subscriber of the changes.
    - 10.3. WEATHER MEDIC PROVIDES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTIES' RIGHTS, TIMELINESS, COMPLETENESS, ERRORS IN OR OMISSIONS FROM OR ACCURACY OF FORECASTS, SERVICES OR DATA.
    - 10.4. WEATHER MEDIC DOES NOT PROMISE SUBSCRIBER THAT ACCESS TO WEATHERMEDIC.COM, ITS SERVICES AND DATA WILL BE UNINTERRUPTED, SECURE, COMPLETE, USEABLE OR ERROR FREE. NOR DOES WEATHER MEDIC MAKE ANY

WARRANTY AS TO THE LIFE OF ANY URL.

- 10.5. SUBSCRIBER'S EXCLUSIVE REMEDY (AND WEATHER MEDIC'S, ITS AFFILIATES AND/OR SUPPLIERS' ENTIRE LIABILITY UNDER THIS AGREEMENT) FOR ANY CLAIM(S) FOR DAMAGES RELATING TO WEATHER MEDIC, ITS FORECASTS, SERVICES, DATA OR THE OPERATION OR FUNCTION OF WEATHERMEDIC.COM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE REFUND OF THE SUBSCRIPTION FEE FOR THE MONTH IN WHICH THE CLAIM OCCURRED.
- 10.6. IN NO EVENT SHALL WEATHER MEDIC, ITS AFFILIATES AND/OR SUPPLIERS BE LIABLE TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO:
  - 10.6.1. SUBSCRIBER'S INABILITY OR FAILURE TO RECEIVE FORECASTS OR DATA, PERFORM RESEARCH.
  - 10.6.2. ANY DECISION MADE OR ACTION TAKEN BY SUBSCRIBER IN RELIANCE UPON WEATHER MEDIC'S FORECASTS, SERVICES OR DATA,
  - 10.6.3. ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS UNDER THIS AGREEMENT OR USE OF, OR INABILITY TO USE, WEATHER MEDIC'S FORECASTS, SERVICES OR DATA, EVEN IF WEATHER MEDIC, ITS AFFILIATES AND/OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR
  - 10.6.4. PROCURING, COMPILING, INTERPRETING, EDITING, WRITING, REPORTING, USING OR DELIVERING FORECASTS, SERVICES OR DATA.
11. Termination. Notwithstanding the foregoing,
  - 11.1. Weather Medic may terminate this Agreement immediately, without notice, if Subscriber materially breaches this agreement.
  - 11.2. Weather Medic may at any time, without notice or liability, change or eliminate any Weather Medic content, service, functioning or use of any portion of WeatherMedic.com, including limiting the time of its availability, the amount of use permitted, or the Subscribers who are permitted to use it. Any changes or restrictions may be applied regardless of whether a multiple month service has been purchased or an advance payment of the service fee has been made. If Weather Medic materially changes its service or this agreement, Subscriber may terminate this Agreement immediately upon emailing notice to "termination@Weather Medic.com" for a pro-rata refund.
12. Limitations Of Time. No claim, regardless of form, arising out of this Agreement may be made more than one year after the basis for the claim becomes known to the party asserting it.
13. Indemnity. Subscriber shall indemnify Weather Medic, its assignees, and suppliers, and the officers, directors, employees, and agents of the foregoing, against all claims and expenses, including reasonable attorney's fees, arising out of or in connection with Subscriber's breach of this Agreement, or a claim against indemnitees related to Subscriber's use of the forecasts, services or Data, whether such claims relate to negligence, product liability, breach of contract, warranty, guarantee, or infringement of trademark, trade name, trade secret, copyright, or patent. To the fullest extent permitted by law, the foregoing indemnity shall apply regardless of the fault, negligence, or breach of warranty or contract by any of the Indemnitees.
14. Force Majeure. Weather Medic's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary services, supplies and the like.
15. Modification. These terms and conditions, including charges, may be changed by sending Subscriber an email Notice of Changes, or by posting Notice of Changes on WeatherMedic.com. By using the forecasts, services or Data thereafter, Subscriber promises to new terms.
16. Transfer. Subscriber may not assign, sublicense or otherwise this Agreement without Weather Medic's prior written consent.
17. Whole Agreement. This Agreement embodies the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter.

18. Choice of Law, Venue. This Agreement shall be construed in accordance with the laws of New York. The parties agree
- 18.1. that any legal action (including arbitration if agreed to by the parties) that relates to this Agreement will occur in Erie County, New York, and
  - 18.2. to waive any objection to personal jurisdiction, inconvenient forum or improper venue in any action brought in Erie County, New York.