

# **MASTER EQUIPMENT AND SERVICES AGREEMENT**

**By and Between**

**WIRELESS SEISMIC, INC.**  
13100 SOUTHWEST FREEWAY  
SUITE 150  
SUGAR LAND, TX 77478

and

[\_\_\_\_\_]  
[ADDRESS]  
[ADDRESS]

On this \_\_\_\_ day of \_\_\_\_\_, 2015

**WIRELESS SEISMIC, INC.**  
**Master Equipment and Services Agreement**

This Master Equipment and Services Agreement (“Agreement”), dated as of \_\_\_\_\_, 2015, is by and between Wireless Seismic, Inc. (“WSI”) and \_\_\_\_\_ and any subsidiary thereof (collectively “Customer” provided that the entity entering into this Agreement shall remain primarily liable for all of its subsidiaries’ obligations hereunder) (each a “Party” and collectively, the “Parties”). This Agreement shall be effective as of the earlier of (1) the date first written above or (2) the date Products or Services are first provided to Customer, (the “Effective Date”).

**WHEREAS**, WSI has developed a proprietary, land-based, seismic data recording system integrated with specialized software (“Product,” which term also refers to software and other components included in Products) and provides certain services related to the Products (“Services”); and

**WHEREAS**, Customer desires to procure Products or Services from WSI, and WSI desires to supply Products or Services to Customer under the terms of this Agreement,

**NOW, THEREFORE, IN CONSIDERATION** of the mutual promises, conditions and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto mutually agree as follows:

**1. Scope; Term; Effect of Termination.**

**1.1** This Agreement does not obligate Customer to procure Products or Services, from WSI nor does it obligate WSI to supply Products or Services (other than through submission and acceptance of Orders or Leases (each as defined below).

**1.2** Customer may purchase Products or Services as defined by WSI in an applicable Proposal by issuing a written order for the Products or Services as specified in the Proposal or by executing an addendum to this Agreement in the form provided by WSI (an “Order” which term includes and incorporates the applicable Proposal). Customer may lease or rent Products by executing an addendum to this Agreement in the form provided by WSI (a “Lease” which term includes and incorporates the applicable Proposal). All accepted Orders and Leases (including those executed prior to the Effective Date) shall automatically become part of this Agreement and are hereby incorporated by reference.

**1.3** This Agreement shall remain in full force and effect until terminated. Either Party may terminate this Agreement at any time by providing written notice to the other Party at least 30 days prior to such termination, subject to the cancellation terms set forth below. Notwithstanding the foregoing, Sections 8 (Payment), 9 (Title), 10 (Lease Terms), 11 (Software), 15.6 (Disclaimer and Liability Limitation), 19 (Intellectual Property Rights), 20 (Liability), 22 (Arbitration), 23 (Additional Terms), and any other rights or obligations that, by their nature, would ordinarily be expected to survive, will survive the termination of this Agreement.

**2. Proposals.** Each written proposal or sales quotation for Products or Services issued to Customer by WSI (a “Proposal”) remains in full force and effect for the period of validity as stated on the Proposal and shall be deemed cancelled thereafter. Once cancelled, a Proposal may not be revived, except through acceptance by WSI of an Order or Lease incorporating such Proposal.

**3. Orders and Leases.** WSI shall be bound by an Order or Lease only upon WSI’s acceptance of such Order or Lease by (1) written acknowledgment to Customer, (2) by commencement of performance under such Order or Lease, (3) execution by both WSI and Customer of an addendum to this Agreement, or (4) according to WSI’s then-current acceptance process.

**4. Cancellation.**

**4.1 Orders.** Customer may cancel, terminate, suspend or issue a hold on an accepted Order in whole or in part only following written approval by WSI. Without prejudice to any other right of WSI under this Agreement or under applicable law, such consent, if given, will require Customer to pay to WSI: (1) the sales price for Products already delivered or Services already performed; (2) the sales prices for Products manufactured or being manufactured or ready to be delivered in fulfillment of an Order; and (3) a sum equal to 15% of the total value of such Order to compensate WSI for any additional costs and expenses resulting from the cancellation of such Order.

**4.2 Leases.** Customer may only cancel, terminate or suspend an accepted Lease following WSI’s failure to cure a material breach of this Agreement within 30 days of receipt from Customer of written notice specifying such breach. In the event of any such breach with respect to a Lease, Customer’s sole and exclusive remedy shall be to terminate such Lease and immediately surrender the leased Products to WSI as specified in Section 6.2. Rent shall continue to be due and payable until the leased products are surrendered and, upon surrender, WSI shall promptly refund unearned prepaid rent, subject to any applicable deduction thereof. Upon surrender of the leased products, the applicable Lease shall terminate and WSI shall be released and relieved of all liability thereunder.

**4.3 Purchase Option.** If Customer is not in default hereunder, Customer shall have the right and option to purchase any leased Products at any time during the term of the applicable Lease for a sum equal to the list price for such Products as set forth on the applicable Lease and in accordance with the terms and conditions set forth herein. The period of the limited warranty provided herein for purchased Products shall commence as of the date such Products were delivered to Customer pursuant to the applicable Lease, and Customer will be only entitled to the remaining portion of such warranty period, if any. Exercise of the foregoing option to purchase and payment of the purchase price shall terminate the applicable Lease.

**5. Drawings and Data.** All information supplied by WSI regarding weights, sizes, performance, functionality and technical information of any kind in brochures, circulars, advertisements and price lists are approximate and shall be taken as generally representing the Products. WSI shall be entitled to modify the Products descriptions and specifications and to replace (prior to delivery) any part, element or component thereof by any other having substantially similar technical specifications.

## **6. Shipment and Delivery; Surrender.**

**6.1 Shipment and Delivery.** Unless otherwise specified in the applicable Order or Lease, all Products are shipped and delivered EX WORKS the shipping location designated by WSI (Incoterm 2010). Customer will pay all transportation costs and bear all risk relating to the Products from the shipping location designated by WSI to their final destination. Unless otherwise specified in an Order or Lease, the delivery date set forth in any communication from WSI is not binding and failure to perform or ship on such dates shall not be considered a breach by WSI. Delivery shall be deemed made upon transfer of possession to Customer or the applicable carrier at the EX WORKS point. Partial deliveries are permitted. WSI is entitled to suspend any delivery should Customer not fulfill any terms of this Agreement. If the Customer has not collected the Products within 14 days from the notice given by WSI to Customer, WSI may terminate the Order or Lease, without liability or prejudice to any other remedy available to WSI. Any and all shortages or deficiencies in the delivered Products must be notified by Customer to WSI within thirty (30) days from the delivery date. Prices do not include special packing in addition to the standard packing used by WSI. Customer agrees not to remove, alter, erase, deface or cover over any markings on the Product or its packaging.

**6.2 Surrender.** On the expiration, or earlier termination, of a Lease, Customer shall return the Products subject to such Lease to WSI in good repair, condition and working order (ordinary wear and tear resulting from proper use thereof excepted) by delivering such Products at Customer's sole cost and expense to WSI at 12503 Exchange, Suite 500, Stafford, TX 77477, or to such other address as shall be specified by WSI. Customer shall continue to bear all risk of loss until has been received by WSI.

**7. Prices.** Unless otherwise agreed, the prices set forth in any Order or Lease are firm and not subject to revision. WSI is entitled to revise prices in the case delivery is suspended or delayed due to Customer's breach of this Agreement. All prices are for delivery under the terms of this Agreement. Prices exclude any other tax, duty, deduction in connection with the operations under this Agreement and which are due in any country (including but not limited to value added tax (VAT), turnover tax, sales tax or similar taxes, customs duties or withholding taxes). If such taxes are applicable they shall be paid separately by Customer and in addition to the prices applicable under this Agreement.

**8. Payment.** Payments will be made in the US dollars and according to the terms stated in the Order or Lease. All payments shall be without any discount, rebate, set-off or holdback for any cause or reason whatsoever. WSI reserves the right to require alternative payment terms including, without limitation, letter of credit or payment in advance. If Customer is delinquent in the payment of any invoice then Customer will be deemed to be in breach of this Agreement, and any addendums related thereto, and any outstanding obligations on the part of WSI will be deemed null and void. If Customer is otherwise in breach of this Agreement, WSI may, at its discretion, stop performance of services or withhold shipment (including partial shipments) of any Order and may, at its option, require Customer to pre-pay for further performance or shipments or delivery of services. In case of failure of Customer to pay any fees, assessments, charges (including but not limited to charges for repairs and maintenance) and taxes, with respect

to leased Products, WSI shall have the right, but shall not be obligated, to pay such fees, assessments, charges and taxes, as the case may be, and, in that event, the cost thereof shall become additional rent and shall be due and payable to WSI on demand. All payments not received within 5 days of when due shall be subject to an additional charge equal to the lesser of 1.5% per month of the unpaid amount or the maximum rate permitted by law, until the date of full payment. It is intended that all interest charges due and payable pursuant to an Order or Lease conform strictly to the applicable usury laws and, notwithstanding anything to the contrary contained in this Agreement, it is agreed that the aggregate of all consideration which constitutes interest under applicable law that has been taken, reserved, contracted for, charged or received under this Agreement or any other agreement entered into connection with a Lease, shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited by WSI to Customer. Any interest charges pursuant to this Section 8 are separate from and are not to be construed as related to interest resulting from financing arrangements between WSI and Customer for the purchase of WSI Product or payment for WSI Services.

## **9. Title.**

**9.1 Purchased Products.** WSI retains full ownership of the delivered Products until the price, in principal and accessories, has been received in full. Customer grants WSI a security interest in Products (excluding Services) purchased under this Agreement to secure payment for those Products purchased (and, if requested by WSI, Customer agrees to execute financing statements to perfect such security interest).

**9.2 Leased Products.** Although WSI and Customer acknowledge and agree that each Lease is intended to be a lease and not a sale or security agreement, Customer agrees to execute and deliver to WSI upon execution of each such Lease, and upon request of WSI from time-to-time during the term of this Agreement, such financing statements or notices of security registration describing the applicable Products as WSI may request, and WSI may file such financing statements or registrations as a precaution in order to perfect a security interest in or charge against such Products under applicable law, in the event such Lease is ever deemed to be a sale or a security agreement. The Products subject to a Lease are and shall at all times be and remain, the sole and exclusive personal property of WSI, notwithstanding that such Products or any part thereof may be or hereafter become, in any manner affixed or attached to, or embedded in or permanently resting on, marine craft, real property or any building thereon, or attached in any manner to that which is permanent as by means of cement, plaster, nails, bolts, screws or otherwise. Customer shall have no right, title or interest in such Products except as expressly set forth in this Agreement. It is recognized and agreed by the parties hereto that such Products described are easily removable and under no circumstances or for any purpose should such Products be considered an accession or a fixture to any other property, real or personal. Customer shall not lease, sublease, mortgage or otherwise encumber or part with possession of any leased Products or any part thereof. It is understood that WSI may assign any Lease or mortgage WSI's interest in leased Products, and that such assignee may further assign any such Lease.

**9.3 General.** In case of non-payment for the Products at the due date, WSI shall be entitled to demand the return of the Products at the costs and to the risk of Customer and to keep any advance payment already made by Customer. In addition, WSI shall have the right to take possession of all or any part of the Products in Customer's possession or control and may lawfully and without breach of the peace enter upon any premises upon which any of the Products are situated and remove the same therefrom without any liability for trespass or damages thereby occasioned unless arising out of WSI's gross negligence or willful misconduct. Any provisions in contradiction to the present provisions shall be deemed null and void.

## **10. Lease Terms.**

**10.1 Location.** Customer agrees to provide written notice to WSI, on the first day of each month during the term of each Lease, as to the location of the leased Products and shall, from time-to-time, within 24 hours after written request by WSI, notify WSI of the specific location of the leased Products. Customer further agrees that it shall notify WSI in writing each time it moves the leased Products to a different state, territory or jurisdiction and shall advise WSI in writing of the location to which the leased Products will be moved. Notwithstanding the above, Customer agrees that the leased Products shall be used solely and only exclusively with the boundaries of the jurisdictions listed on the applicable Lease.

**10.2 Markings.** If at any time during the term of a Lease, WSI supplies Customer with labels, plates, or other markings, stating that the leased Products are owned by WSI, Customer shall affix and keep the same in a prominent place on the leased Products.

**10.3 Notice of Attachment.** Customer shall give WSI immediate notice of any attachment or other judicial process affecting any leased Product or part thereof.

**10.4 Alterations and Improvements.** Without the prior written consent of WSI, Customer shall not make, nor cause to be made, any changes, alterations, additions, or improvements to any leased Product.

**10.5 Insurance.** Throughout the term of each Lease, Customer shall pay all premiums for insurance required under this Section 10.5, when due. Insurance required hereunder shall be with companies satisfactory to WSI, at its sole discretion. All such policies of insurance shall (i) name WSI as a co-insured and loss payee and (ii) provide that such policies may not be canceled or terminated except upon thirty (30) days prior written notice to WSI. Customer agrees to provide WSI with certificates of insurance to evidence such coverage on or prior to the effective date of each Lease. In the event Customer fails to provide such insurance coverage or such coverage is terminated, WSI shall have the right to obtain its own insurance and Customer shall reimburse WSI for the cost of such insurance coverage upon demand thereof. Customer shall, at Customer's sole expense, obtain and keep enforced during the term of each Lease, a policy or policies of insurance covering all loss or damage to the leased Products in the amount of full replacement value thereof, from each and every risk of loss whatsoever, including, but not limited to, fire, vandalism, theft, malicious mischief, and special extended perils (all risk). Customer shall, at Customer's sole expense, obtain and keep in full force and effect during the term of each Lease, a policy of

comprehensive public liability insurance insuring WSI and Customer against any liability arising out of the ownership, use or maintenance of the leased Products.

**10.6 Default for Non-Payment.** If Customer fails to pay amounts due and payable pursuant to an Order or Lease, or if any execution or any other writ of process shall be issued in any action or proceeding against Customer whereby any leased Product may be seized, taken, or detained or any insolvency or bankruptcy proceeding shall be instituted by or against Customer or its property, or if Customer shall enter into any arrangement or composition with its creditors, WSI shall have the right to exercise any one or more of the following remedies: (a) to declare the entire amount(s) owed immediately due and payable, without notice or demand to Customer; (b) to sue for and recover payments then accrued or thereafter accruing; (c) to take possession of any or all Products without demand or notice, wherever the same may be located without any court order or other process of the law, and Customer hereby waives any and all damages occasioned by such taking of possession; (d) to terminate an applicable Lease or Order between WSI and Customer as to any or all Products or Services; and (e) to pursue any other remedy at law or in equity. Any repossession shall not constitute a termination of a Lease or Order as unless WSI expressly so notifies Customer in writing.

**10.7 Other Default.** If Customer fails to observe, keep or perform any other provisions of this Agreement required to be observed, kept or performed by Customer, WSI shall, if such default shall continue for 10 days after written notice thereof, have the right to exercise the following remedies: (a) to terminate the applicable Lease or Order; or (b) to pursue any other remedy, at law or in equity, including but not limited to seeking damages or specific performance and/or obtaining an injunction. The remedies in (a) and (b) are cumulative and may be exercised concurrently or separately. Notwithstanding any repossession or any other action that WSI may take, Customer shall be and remain liable for the full performance of all its obligation under the applicable Lease or Order, including the payment of rents.

**11. Software.** If any operating system or other firmware or software (“Software”) is incorporated into or otherwise provided on or in connection with the Products or Services, WSI does not transfer ownership (which shall remain solely with WSI) but only grants to the Customer a personal, non-exclusive, non-transferable license to use the object code version of the Software solely in connection with the Product with or on which the Software was provided and only for Customer’s internal use in connection with the intended use of that Product. For general purpose Software, Customer may install, use and execute only one copy of the Software for use on only one computer at a time. Customer receives no other rights in or to any Software. Customer shall not and shall not permit any third party to copy, reproduce, distribute, republish, upload, post, decompile, disassemble, reverse engineer, modify or transmit the Software in any form or manner.

**12. Software Maintenance.** Unless otherwise provided in the Order or Lease, the above license shall not include any obligation on the part of WSI to provide Customer with any updates of such Software or any maintenance or technical support with respect thereto.

**13. Services and Advice.** Customer will provide WSI with a job site that is clean, clear, with secure and safe access and will furnish at its own expense all reasonable assistance with its personnel, logistics and accommodation. Any advice and/or recommendations which may be provided by WSI to Customer in connection with any Services or Products are provided by WSI according to its reasonable knowledge and belief based upon its experience and without any warranty or guarantee of any kind whatsoever, and Customer is free to use or not such advice. Customer waives any claim Customer has for damages resulting from any Services or Customer's reliance on any Services. The foregoing paragraph shall apply to any kind of assistance provided by WSI for the use of the Products.

**14. Risks.** Notwithstanding any other provision of this Agreement, the risks over the Products are transferred to Customer in accordance with the applicable provisions of the Incoterm 2010. Any damage to or loss of the delivered Products occurring prior to delivery (or during transport, if applicable based on the Incoterm 2010) must be stated on the delivery note countersigned by Customer or by the common carrier, as the case may be, and confirmed by a registered letter sent to WSI or the common carrier (with a copy sent to WSI), as the case may be, within 3 days from the delivery date or within such shortest period and under such other form required by the applicable laws and regulations. Failure of Customer to strictly adhere the provisions of this Section 14 shall be deemed an absolute and irrevocable waiver of any claim regarding such loss or damage. Any claim or action against the carrier has to be carried out by Customer under its sole responsibility and at its expense. In the case of leased Products, Customer shall bear the entire risk of loss and damage to such Products from each and every cause at all times until such Products are received and accepted by WSI. No loss or damage to any leased Product or any part thereof shall affect any obligation of Customer under a Lease, which shall continue in full force and effect, including, but not limited to, the obligations of Customer to pay the lease payments for such Products.

## **15. Exclusive Warranties.**

**15.1 General.** Notwithstanding any provision to the contrary (but subject to the operation of any law to the extent it cannot be excluded), WSI warrants each Product (other than Software and Services, each as separately warranted below) for which Customer has paid all applicable amounts in accordance with this Agreement, against defects in material and workmanship under normal use for the specified time period listed below ("Warranty Period"), in each case commencing upon the date of delivery:

<u>Specified Product</u>	<u>Warranty Period</u>
Wireless Remote Units (WRU)	36 months
Line Interface Units (LIU)	36 months
WRU Battery Chargers	24 months
WRU Batteries	12 months
Central Electronics (other than Software)	12 months

WSI's sole and exclusive obligation to Customer, and Customer's sole and exclusive remedy, at WSI's sole option, is to repair or provide a replacement Product for any Product which has been returned to WSI under the return procedures defined below and which in the reasonable opinion of WSI is determined to meet the terms of this warranty. All Products that are designated in the Order or Lease as experimental Products, prototypes or Products used in field trials, are not warranted. All third parties' Products (including software) sold by WSI carry only the original manufacturer's warranty applicable to Customer, and Customer is responsible for enforcement of any such warranty directly with such original manufacturer. WSI will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party. Any Product repaired or replaced under this warranty is only warranted for the period of time remaining in the original warranty for the Product. WSI reserves the right, at its sole option, to issue a credit note for any defective Product as an alternative to repair or replacement.

**15.2 Services.** WSI warrants that Services will be performed in a good and workmanlike manner in accordance with standards reasonably applicable to the Services. WSI's sole and exclusive obligation to Customer, and Customer's sole and exclusive remedy, is to re-perform any Services that WSI determines are not in compliance with this warranty and that Customer brings to WSI's attention, in writing, on or before 15 days immediately following completion of the applicable Service.

**15.3 WSI Software.** WSI warrants that the media containing the Software developed by WSI and incorporated into or otherwise provided on or in connection with the Products ("WSI Software") shall be free from defects in material and workmanship under normal use for a period of 30 days from the date of delivery. WSI's sole liability and Customer's sole remedy for a breach of the WSI Software warranty shall be WSI's good faith efforts to replace the media so that it will be free from defects in material and workmanship. Any media containing any WSI Software replaced under this warranty is only warranted for the period of time remaining in the original warranty for the media.

**15.4 Exclusions.** The warranties contained in this Agreement do not cover and are void in the case of: (1) breach of this Agreement; (2) damage caused by Customer; (3) damage resulting from misuse, abuse, neglect, accident, modification or alteration; (4) use in any manner contrary to the instructions or specifications provided by WSI; (5) damage caused by acts of God or nature; (6) damage resulting from alteration, repair or attempted repair other than as authorized by WSI; (7) failure to perform proper routine maintenance; (8) continued use of the Product after partial failure of any item or notice from WSI; (9) items that have been used with an improper accessory; (10) installation of third party software not explicitly approved by WSI; or (11) damage caused during shipment unless WSI expressly agrees in writing, in advance of shipment, to assume the risks of damage caused during shipment.

**15.5 Warranty Procedure.** Customer must make any claim under any warranty under this Agreement via WSI's online return merchandise authorization ("RMA") system no later than 30 days after the circumstances giving rise to the claim are initially discovered by Customer (or should reasonably have been discovered by Customer). WSI reserves the right to reject any Product

shipped to WSI by Customer if received without a valid RMA number. Customer must make all claims under these warranties and no claim will be accepted from any third party. Customer must notify WSI in writing of any claim under any warranty in this Agreement by notifying WSI in accordance with this Section 15.5. As directed by WSI, Customer must ship any Product (including Software media) subject to a warranty claim to WSI or to WSI's designated representative, along with a detailed description of the nature of the warranty claim and a return shipping address. Written notification and detailed description of warranty claims can be provided on the online RMA system. Customer shall be responsible for any freight charge associated with delivering any such Products to WSI or its designated representative; if such freight charges are not paid by Customer, WSI shall bill Customer for any such fees incurred by WSI. If WSI determines that a warranty claim relating to a Product shipped to WSI or its representative is valid, WSI shall pay any freight charges associated with returning the repaired, adjusted or replaced Product to Customer. In addition, Customer shall be responsible for any travel expenses incurred by WSI to satisfy the terms of this Warranty at Customer's place of business or other site as requested by Customer. **COMPLYING WITH THESE WARRANTY PROCEDURES IS A CONDITION PRECEDENT TO WSI'S OBLIGATIONS UNDER ALL WARRANTIES.**

**15.6 DISCLAIMER AND LIABILITY LIMITATION.** EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 15, WSI MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND AND NO WARRANTY, CONDITION OR REPRESENTATION, WHETHER EXPRESS, IMPLIED, ORAL OR STATUTORY, IS PROVIDED TO CUSTOMER OR ANY THIRD PARTY. WITHOUT LIMITING THE FOREGOING, WSI EXPRESSLY EXCLUDES AND DISCLAIMS ANY WARRANTY, CONDITION OR REPRESENTATION: (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE; (2) THAT ANY PRODUCTS (INCLUDING SOFTWARE) WILL BE FREE FROM INFRINGEMENT OR VIOLATION OF ANY RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS, OF THIRD PARTIES; OR (3) THAT THE OPERATION OF ANY PRODUCT (INCLUDING SOFTWARE) WILL BE UNINTERRUPTED OR ERROR FREE. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTIES HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES HEREUNDER AND THE ONLY LIABILITY OF WSI IS EXPRESSLY LIMITED TO THE TERMS OF THE AGREEMENT. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, OR ANY THIRD PARTY, FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR INDIRECT COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, LOSS OF DATA, PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF WSI EXCEED THE AMOUNT ACTUALLY PAID TO WSI FOR PRODUCTS FROM WHICH SUCH LIABILITY AROSE FOR PURPOSES OF THIS SECTION, A PARTY INCLUDES SUCH PARTY'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS. Some states and

non-U.S. jurisdictions do not permit the exclusion or limitation of incidental or consequential damages, or limitations on how long an implied warranty may last. Therefore, the above limitations or exclusions may not apply to all Customers. This Agreement gives Customers specific legal rights, and certain Customers may also have other rights that vary from state to state, or country to country.

**16. Force Majeure.** WSI shall not be liable for any delay or failure in performance whatsoever due to acts of God, earthquakes, floods, shortages, accidents, transportation difficulties, labor disputes, governmental actions, riots, war, fire, explosion, epidemics, or other occurrences beyond WSI's reasonable control or due to any unforeseen circumstances.

**17. Export Restrictions.** Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Customer will indemnify and hold WSI harmless for any violation or alleged violation by Customer of such laws, rules, policies or procedures. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Products or any technical data (including processes and services) received from WSI, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Customer also certifies that none of the products or technical data supplied by WSI under this Agreement will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.

**18. Repairs and Returns.** Products may only be serviced, repaired or modified by WSI or by an authorized WSI representative, except as otherwise directed in writing by WSI. No Products shall be accepted for return or repair without WSI's authorization utilizing WSI's RMA processes. All returns shall be subject to inspection. All non-warranty repairs shall be invoiced to Customer at WSI's then current price list. Customer shall be responsible for any loss or damage to returned Products. Customer shall ship all repair items to WSI in accordance with Section 15.5.

**19. Intellectual Property Rights.** All right, title and interest in or to any intellectual property rights, including, without limitation, any and all patents, trademarks, trade secrets, copyrights and rights to mask works, moral or contractual rights, and other forms of intellectual property or proprietary rights (whether or not subject to statutory protection) (collectively, "IPR"), in or relating to: (1) any Product, or (2) any inventions, discoveries, improvements, methods, ideas, works, computer and other programs and related documentation, and other works of authorship embodying or relating to any Product or which may be otherwise made, created, developed, written, conceived or first reduced to practice by WSI solely, jointly or on its behalf, shall belong to and be the sole and exclusive property of WSI. Customer agrees and hereby does make all assignments necessary to vest the foregoing rights in WSI. Software contained in or relating to any Product sold or leased hereunder is licensed and not sold. As between Customer and WSI or a third-party licensor, WSI or such third-party licensor retains any IPR in and to any such Software and does not convey any proprietary interest therein other than the limited license

granted herein. Customer agrees that the transfer of title in and to any Product sold hereunder does not transfer title to any IPR contained in or relating to such Product except for the limited license granted hereunder as necessary for such Product's intended use.

## **20. Liability.**

**20.1** Customer shall indemnify, hold harmless and defend WSI and its directors, officers, employees, agents, representatives, subcontractors, and suppliers from and against any liabilities, claims, demands, proceedings, damages, arising directly or indirectly out of this Agreement as a consequence or result of breach of this Agreement or any injury, illness or death of or to, or any loss of or damage to any equipment or property of, WSI, Customer (including Customer's customers and its and their directors, officers, employees, agents, representatives, subcontractors, and suppliers) or any third party, howsoever caused including the negligence or breach of statutory duty by WSI. In respect of such illness, injury, death, loss or damage, Customer waives any right of recourse against WSI and shall request its insurers to waive their right of recourse and subrogation accordingly.

**21. FCC Rules and Regulations Compliance.** The Federal Communications Commission (FCC) regulates the use of antennas in the "Code of Federal Regulations – Title 47, Part 15 – Radio Frequency Devices, Subpart C – Intentional Radiators, Section 15.203 Antenna Requirement." The Products have been tested and found to comply with the limits for a Class A digital device, pursuant to part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference when the Products are operated in a commercial environment. The Products generate, use, and can radiate radio frequency energy and, if not installed and used in accordance with the instruction manual, may cause harmful interference to radio communications. Operation of the Products in a residential area is likely to cause harmful interference in which case Customer will be required to correct the interference at its own expense. When used as intended, the RT System 2 complies with FCC Section 15.203 requirements as follows:

- The RT System 2 antennas shall be installed and handled by professionals specifically designated for this purpose.
- Changes or modifications not expressly approved by WSI can void the users' authority to operate the Equipment.
- The RT System 2 shall be used with only the supplied antennas attached to the WRU or LIU as specified in the provided Deployment Guide.
- Internal photographs of any WSI Products are proprietary and confidential to WSI, the Customer shall not distribute internal photographs of WSI Products outside of their organization without the express written consent of WSI.

**WARNING:** In order to comply with FCC radio frequency (RF) exposure requirements, the RT System 2 units must be installed so that a minimum separation distance of 20 cm is maintained between the antenna(s) and all persons at all times during normal operation.

**22. Arbitration.** In the event there shall exist any dispute or controversy between the parties to this Agreement, the parties hereto agree to seek in good faith to resolve such dispute or controversy by mutual agreement. If such dispute or controversy is unable to be resolved by agreement within 60 days following notice of the nature of such dispute or controversy setting forth in reasonable detail the circumstances and a basis of such dispute or controversy any party hereto may require that such dispute or controversy be resolved by binding arbitration. It is hereby agreed that the dispute shall be referred to a USA&M office to be designated by USA&M National Headquarters for arbitration in accordance with the applicable United States Arbitration and Mediation Rules of Arbitration. The arbitrator's decision shall be final and legally binding and judgment may be entered thereon. Each party shall be responsible for its own fees related to arbitration.

### **23. Additional Terms.**

**23.1** Waiver by WSI of any provision of this Agreement must be in writing and signed by WSI and shall not be deemed to be a waiver of such provision in the future or of any other provision. Any modification or amendment of this Agreement must be in writing and signed by the Parties.

**23.2** This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties. Neither this Agreement nor any rights under this Agreement, shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of WSI.

**23.3** If any of the terms of this Agreement, apart from payment, become or are declared to be invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement, but only to the extent that such term is illegal, it being the intent and agreement of the parties that the Agreement shall be deemed amended by modifying such term to the extent necessary to make it legal while preserving its intent or, if that is not possible, by substituting therefor another term that is legal and achieves the same objective.

**23.4** In the event of Customer's default of any provision of this Agreement, Customer will pay all costs and expenses, including reasonable attorneys' fees, incurred by WSI in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

**23.5** Time is of the essence in this Agreement.

**23.6** Customer acknowledges receipt of a true copy of this Agreement, and to the extent permitted by law, waives all rights to receive from WSI a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this Agreement or any supplemental or collateral security granted to WSI.

**23.7** Customer shall manage and bear all liabilities and costs relating to the disposal of electronic and electric waste resulting from the Products sold by WSI according to all applicable regulations and shall fully indemnify WSI in relation thereto.

**23.8** Notice provided under this Agreement shall be sufficient if given personally or mailed to a Party at the address set forth above or such other address as is provided by such Party in writing from time to time.

**23.9** Customer has no right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of WSI or bind WSI in any respect whatsoever. WSI neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for WSI with regard to this Agreement or the Products or Services provided hereunder.

**23.10** This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, apart from existing non-disclosure or confidentiality agreements.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement upon the date shown in several counterparts, each of which shall be considered as an original.

WSI: Wireless Seismic, Inc.

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

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

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

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

CUSTOMER:

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

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

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

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