

# TERMS AND CONDITIONS FOR ACCESS TO EcoCONNECT™

These terms and conditions govern all access to and use of EcoConnect, the Services and all associated Information. By accessing and/or using EcoConnect, the Services or Information you the User agree, and are deemed, to be bound by these terms and conditions. If you do not agree with these terms and conditions then you must cease using EcoConnect, the Services and Information immediately.

## 1. GRANT AND SCOPE OF LICENCE:

- 1.1 NIWA grants the User a non-exclusive, non-transferable licence to use the Information, Services and Licensed Intellectual Property, upon the terms of this Agreement.
- 1.2 The User acknowledges and agrees that it may
  - (a) access by electronic means EcoConnect, the Services and Information; and
  - (b) copy and use the Information and the Licensed Intellectual Property for its own Internal Purposes only.
- 1.3 The Information and Services made available to the User may be varied from time to time by NIWA without prior notice to the User.
- 1.4 The User must treat the Information, Services and Licensed Intellectual Property as private and confidential to NIWA (whether that information is confidential or not) and shall take all reasonable steps to protect the Information from unauthorised use, reproduction, distribution or publication. The User must not disclose the Information, Services or Licensed Intellectual Property to any person (unless reasonably necessary to do so to fulfil its Internal Purposes), or use the Information or Services for any purpose, except in accordance with this Agreement.
- 1.5 The Information and Services shall only be used for lawful purposes, and shall not be used for any purpose(s) that NIWA may from time to time exclude. Nothing contained within this Agreement is to be construed as overriding, or as granting approval, consent or authorisation under, any laws or legal requirements.
- 1.6 All proprietary rights (including all intellectual property rights) in, or associated with the Information, Service and Licensed Intellectual Property are, and shall remain, vested solely in NIWA (or any other relevant third party who has contributed Intellectual Property for which NIWA acts as custodian). The licence contained within this Agreement does not give the User (by implication or otherwise) any right to, or interest in, the Information, Services or Licensed Intellectual Property other than the limited licence contained within this Agreement. Any rights not specifically granted in this Agreement are reserved by NIWA.
- 1.7 This Agreement does not cover access to and use of Information or Intellectual Property owned by third parties which is available via EcoConnect or as part of the Services.

## 2. TERMS OF THE LICENCE:

- 2.1 The grant of the licence in clause 1 is subject to the following conditions of use:
  - (a) The User shall not use, nor will it sell or make available to any person, the Information, Services or Licensed Intellectual Property for the purpose of issuing independent forecasts, or undertaking or providing meteorological or other environmental research, advisory or consultancy services.
  - (b) Where the Information is reproduced, the User must ensure that it is:
    - (i) reproduced accurately;
    - (ii) not presented in a way which is, or may be, misleading; and
    - (iii) NIWA is acknowledged as its source, in the following manner "NIWA/EcoConnect™ Environmental Forecasting System", or otherwise as approved.
  - (c) Subject to sub-clause 2.1(b)(iii), the User must not, without NIWA's prior written consent, use or permit to be used NIWA's name or any words, marks or devices or any information which may imply a connection with NIWA; and
  - (d) The User must not use the Information, Services or Licensed Intellectual Property in a manner which in NIWA's opinion would, or is likely to, adversely affect national meteorological services or environmental forecasting of another country. Accordingly, the User will not use,

deal with, sell or make available the Information, Services or Licensed Intellectual Property outside New Zealand without first obtaining NIWA's written consent.

- 2.2 The User agrees not to remove, cover, overlay, obscure or change any copyright notices, legends, or terms of use which NIWA may post on EcoConnect or applied (either explicitly or implicitly) to any Services or Information.
- 2.3 The Information and software which operates EcoConnect is proprietary software. You shall not use that Information or software independently of EcoConnect, or outside the terms of this Agreement. Any other use or purported licensing, modification, enhancement or interference is strictly prohibited.
- 2.4 If the User makes use of any interactive features or Services available through EcoConnect including, but not limited to, any text or email alerts, it shall ensure that its contact details are correct and up to date. The User is solely responsible for monitoring any such device or account. NIWA accepts no responsibility for non-delivery or delay of any alert or warning due incorrect contact details or delays caused, or contributed to, by a third party.

### **3. INFRINGEMENT AND INDEMNITY:**

- 3.1 If the User becomes aware of any infringement or threatened infringement by a third party of the Information or Licensed Intellectual Property ("Infringement"), they must immediately notify NIWA in writing. If appropriate, the Parties may discuss proposals for action to be taken in relation to the Infringement.
- 3.2 If NIWA elects to commence proceedings (whether via Court, alternative dispute resolution or other methods) to curtail the Infringement, the User must provide NIWA with reasonable assistance in any such proceedings.
- 3.3 The User fully indemnifies, and agrees to hold harmless, NIWA against all liability, loss, damage, claim, cost or injury (including indirect or consequential loss and damage and legal costs on a solicitor client basis) suffered by NIWA, or any other party, resulting from:
  - (a) any breach of this Agreement by the User, including any:
    - (i) unauthorised use, copying, alteration, modification or adaptation of the Information, Services or the Licensed Intellectual Property; or
    - (ii) unauthorised disclosure or dissemination of the Information, Services or Licensed Intellectual Property to a third party and any loss or damage caused, or contributed to, by that third party;
  - (b) the User's access to, use or disclosure of, or reliance upon, the Information, Services or Licensed Intellectual Property (other than in accordance with this Agreement); or
  - (c) any interruption to the continuing operation of EcoConnect caused by the User's breach of this Agreement.

The User's liability to NIWA under this Agreement shall not exceed \$500,000.

### **4. LIMITATION:**

- 4.1 The User acknowledges that there is inherent uncertainty in meteorological and environmental forecasts. While NIWA uses all reasonable endeavours to ensure the accuracy of the Information on EcoConnect, the Information and Services are provided "as is" without warranties of any kind, either express or implied, including accuracy, completeness, correctness, timeliness or fitness for any particular purpose. Accordingly, NIWA does not give any representation or warranty that:
  - (a) the Information contains no errors, is complete or up to date;
  - (b) the Information may be used for any particular purpose, or give any particular results or outcomes;
  - (c) the flow or provision of the Information or Services from NIWA will not be interrupted for whatever reason, or available at particular times; and/or
  - (d) the Information or Licensed Intellectual Property will not infringe any third party's intellectual property rights.
- 4.2 The User acknowledges and agrees that it assumes the sole risk of assessing, evaluating, interpreting and applying the Information and that NIWA is not in any way liable for any loss, damage or injury suffered by the User, or any other person (whether in contract, tort (including

negligence) or otherwise) due to the User's use or possession of the Information or Licensed Intellectual Property or the existence of any errors therein.

- 4.3 Subject to conditions or warranties implied by law which are incapable of exclusion, restriction or modification or where to do so is illegal or would render any provision of this Agreement void:
- (a) the User agrees that where it is obtaining the Information or Licensed Intellectual Property for the purposes of its usual trading activities, or a business, the provisions of the Consumers Guarantees Act 1993 do not apply; and
  - (b) NIWA's liability to the User for a breach of any condition or warranty is limited to, at NIWA's sole discretion, the replacement of the Information or Service or the payment of the cost of replacing the Information or Service.
- 4.4 While NIWA uses reasonable endeavours to prevent the introduction of viruses or other destructive features to EcoConnect, NIWA does not guarantee or warrant that EcoConnect or the Information do not contain such destructive features. The User agrees that it accesses EcoConnect solely at its own risk.
- 4.5 In any event, the User agrees that NIWA's maximum aggregate liability associated with its provision of the Information, Services or Licensed Intellectual Property, or the User's use thereof, shall under no circumstances exceed the total licence fee the User has paid to NIWA in the preceding twelve (12) calendar month period.

## **5 SUSPENSION AND TERMINATION:**

- 5.1 If NIWA, upon reasonable grounds, believes that the User is breaching any term of this Agreement it reserves the right to immediately, and without notice to the User, suspend the User's access to EcoConnect.
- 5.2 NIWA may terminate this Agreement:
- (a) at any time upon thirty (30) days written notice; or
  - (b) immediately, if the User breaches any of the terms of this Agreement and fails to remedy this breach within 5 days of receiving notice from NIWA to remedy the breach.
- 5.3 The User shall deliver up to NIWA or destroy on oath, within seven (7) days of termination or expiration of this Agreement any copies of the Information or Licensed Intellectual Property (in any form) within the User's power, possession or control, and any equipment belonging to NIWA. Save to the extent that a User is subject to the Public Records Act 2005 (the "Act"), in such a case, the User may retain one copy of the Information solely for record keeping purposes, if required by the Act to do so.

## **6. MISCELLANEOUS:**

- 6.1 The User authorises NIWA and its agents to collect that information about the User, and hold any such information at either NIWA's registered, or Wellington regional offices. NIWA may use this information for statistical analysis, to provide services to the User, for marketing services or for research and development purposes. If the User is an individual they may request access to, and correction of, any personal information NIWA holds in relation to them.
- 6.2 This Agreement represents the entire understanding and agreement between the Parties and supersedes any prior proposal, representation or agreement, written or oral. This Agreement may be modified by the User only by agreement with NIWA in writing, which is signed by both Parties.
- 6.3 Failure or delay by NIWA in enforcing any provision of the Agreement, shall not act as a waiver, and does not mean that NIWA no longer regards that provision as binding. A waiver by NIWA of a breach of a provision of this Agreement does not constitute a waiver of any other breach of the Agreement.
- 6.4 The User must not assign charge, offer for security or otherwise deal with, either in whole or in part, the benefit or burden of this Agreement without the prior written consent of NIWA; such consent may be withheld by NIWA at its absolute discretion.
- 6.5 Any provision of this Agreement that is unlawful, void or for any reason unenforceable will be deemed severable from, and will in no way affect the validity or enforceability of, the remaining provisions of the Agreement.
- 6.6 This Agreement shall be governed by and construed in accordance with the law of New Zealand and the User submits to the jurisdiction of the Courts of New Zealand.

6.7 In this Agreement, unless the context requires otherwise, the following expressions have the following meanings:

|                                |   |
|--------------------------------|---|
| EcoConnect                     | a website, domain or application(s) established by NIWA that hosts the Services and/or displays the Information and which can be accessed through use of appropriate communications facilities, including the internet, SOAP or other appropriate protocols. EcoConnect may be accessed through URL <a href="http://www.niwa.co.nz">www.niwa.co.nz</a> or <a href="http://www.niwascience.co.nz">www.niwascience.co.nz</a>  |
| Information                    | environmental, meteorological and other information, including, but not limited to, all data, graphical representations, user manuals or documentation and underlying software or code, made available to the User, pursuant to this Agreement, whether through EcoConnect, a Service or otherwise.   |
| Intellectual Property          | all copyright, and all rights under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks (including service marks), registered designs, circuit layouts, confidential information (including trade secrets and know-how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.  |
| Internal Purposes              | A User's usual internal operational and planning functions, which where the User has a public safety or interest function, includes use for public good purposes such as issuing public safety warnings, or carrying out its prescribed regulatory functions. However, for the avoidance of doubt expressly excludes the issuing of independent meteorological or environmental forecasts, or undertaking or providing meteorological or other environmental research, advisory or consultancy services.                                  |
| Licensed Intellectual Property | any Intellectual Property in the Information and/or Services belonging to NIWA  |
| NIWA                           | National Institute of Water and Atmospheric Research Limited  |
| Services                       | means the services made available to the User, or any party using a User Identification, via EcoConnect including, without limitation: environmental or meteorological forecasts (including data and/or graphical representations) either for some specified area and/or time or by location for multiple times; location specific environmental or meteorological observations; scenario based environmental or meteorological simulations; satellite based environmental or meteorological observations; and other climate information. |
| User                           | a party that accesses and uses EcoConnect, the Services or Information, which includes any party to which NIWA issues a User Identification for the purpose of accessing and using the Services and every person, authorised or unauthorised, who accesses or uses the Services by using a User Identification.   |
| User Identification            | a unique username and password assigned to a User by NIWA   |