

## METFLIGHT COMMERCIAL & METJET AGREEMENT

### 1 Terms and Conditions

- 1.1 These terms and conditions (**the Agreement**) constitute an agreement made between the User and Meteorological Service of New Zealand Limited in respect of access to and use of the Service.

### 2 Interpretation

- 2.1 **Definitions:** In this Agreement, unless the context requires otherwise, the following terms have the following meanings:

**“Effective Date”** means the date from which MetService will provide the User access to the Service.

**“Information”** means aviation meteorological and other information, including the format of the meteorological information, published by MetService on the Site from time to time.

**“Initial Term”** means six months.

**“MetService”** means the Meteorological Service of New Zealand Limited.

**“Service”** means the service by which MetService provides certain Information via the Site to the User for a Subscription in accordance with this Agreement.

**“Site”** means either the MetService MetFlight Commercial Website at <http://metflight.metra.co.nz> or the MetJet Website at <http://metjet.metra.co.nz> as applicable and, in either case, any replacement site made available by MetService via which the Service may be accessed.

**“Subscription”** means the charges that the User will pay to MetService for the Service as agreed between MetService and the User on, before or after the Effective Date, and as may be varied by MetService from time to time in accordance with this Agreement.

**“User”** refers to the organisation that is being supplied by MetService.

**Interpretation:** For the purposes of interpretation and construction of this Agreement:

- a. words importing one gender include the others;
- b. words importing the singular or plural number include the plural and singular number respectively;
- c. references to clauses are references to clauses in this Agreement unless expressly stated otherwise;

- d. headings are inserted for the sake of convenience of reference only and do not affect the interpretation of the Agreement;
- e. references to the parties or their personnel include (insofar as consistent with the provisions of the Agreement) their respective officers, employees, agents, contractors, their respective successors in title and permitted assigns; and
- f. any act by an end-user which, if carried out by the User would be a breach of this Agreement, is deemed to be a breach of this Agreement by the User.

### **3 Amendment and Application**

3.1 This Agreement may be amended or replaced at any time by MetService giving the User notice of the amended or replacement Agreement. By continuing to use the Site following receipt of such notice, the User is deemed to have accepted the Agreement as amended or replaced.

3.2 As a condition of using the Service the User agrees to:

- a. provide true, current and complete information about the User and its business as prompted by the Registration Form; and
- b. notify MetService promptly of any change to that information as required to keep such information true, current and complete.

### **4 User Identification**

4.1 When MetService registers the User for access to the Service, the User will be allocated a username and password. The number of individual end-users permitted to concurrently use a particular username and password combination will be stipulated by MetService. Additional end-users will not be permitted to use the Service until such time as another end-user using the same user name and password logs off. An end-user must be a member of the User's personnel. The User is responsible for all use of the Information, Site and Service made using the User's username and password, whether or not the use is made by the User or by someone else using the User's username and password. The User is responsible for protecting and securing the User's username and password from unauthorised use. If the User believes there has been a breach of security of the User's username or password, such as theft or unauthorised use, the User must notify MetService immediately by e-mail to [amy.dreverman@metservice.com](mailto:amy.dreverman@metservice.com) and immediately take all reasonable steps to stop and/or mitigate such breach, theft or unauthorised use.

### **5 Duration of Agreement**

5.1 This Agreement will commence on the Effective Date and, subject to MetService's right of earlier termination under clause 8.1, will continue for the Initial Term. Upon expiry of the Initial Term, the Agreement will continue until terminated under clause 8.1 or by either party giving not less than 30 days written notice to the other party.

## 6 The Service

- 6.1 MetService will provide the Service to the User on a non-exclusive basis upon the terms and conditions contained in this Agreement.
- 6.2 MetService reserves the right to change, modify, suspend or discontinue any or all parts of the Service at any time (**additions and changes**). MetService reserves the right to restrict the User's access to parts or all of the Service without notice or liability. All additions and changes will be notified to the User by being posted on the Site. It is the User's responsibility to refer to these additions and changes. By continuing to use the Site, the User is deemed to have accepted them.

## 7 Use

- 7.1 The User must only use the Service and Information for the User's own internal business purposes. The User must not resupply (or enable the resupply of) all or part of the Service or Information (whether for consideration or not) to any other person, or permit any other person (other than its personnel) to use the User's user identification to gain access to the Service or the Information. In addition to the previous restriction, the User may only make use of the Service and the Information for lawful purposes.
- 7.2 The User must not access, or endeavour to access, the Service or the Information through any means except via the Site's login page. Access to the Service and Information by any other method (including, without limit, via a non-MetService website or by scraping, harvesting, data mining, use of a robot or spider, automation, or any similar data gathering or extraction method) is prohibited.
- 7.3 The User must not attempt to damage or interfere with, nor act in a way which does damage or interfere with, the Service, the Site or the underlying software (including, without limit, by introducing any virus, worm, Trojan horse or other malware).

## 8 Termination

- 8.1 MetService may terminate this Agreement, or at MetService's sole discretion, suspend the User's ability to access or make further use of the Service immediately without notice in the event that MetService considers the User has failed to observe any of the terms or conditions of this Agreement. Upon termination of this Agreement the User shall not attempt to access or make further use of the Service.

## 9 Indemnities

- 9.1 As a condition of the User's use of the Service the User agrees to indemnify MetService from and against:
- a. all liability, damage or loss that MetService may incur or suffer as a result of any action, inaction or omission by the User or from any breach of this Agreement by the User; and
  - b. all claims made against MetService by third parties arising from any use made by the User of the Information.

- 9.2 Subject to clause 9.3, MetService will indemnify the User against all costs, loss, or damages resulting from, and at its own cost defend or settle, any claim, suit, action or proceeding (collectively called “Action”) brought against the User to the extent that the Action is based on or an allegation that the Information or the Service infringes a third party patent, copyright, design, trade mark, or other intellectual property or confidential information right, provided that the User:
- a. promptly notifies MetService in writing of any Action upon becoming aware of it;
  - b. makes no admission without MetService’s prior written consent;
  - c. provides MetService with a reasonable level of assistance; and
  - d. gives MetService full opportunity to control the response to and the defence of any Action, including any agreement relating to the settlement of any such Action.
- 9.3 MetService will not be liable for any Action that any modified Information infringes a third party’s patent, copyright, design, trade mark or other intellectual property or confidential information right if the Information, in its original form, would not have infringed that third party’s intellectual property rights. MetService will not be liable to the extent that any Action arises as a result of the User acting in breach of this Agreement.

## 10 **Subscription**

- 10.1 The User must pay to MetService all Subscriptions invoiced, electronically in cleared funds, without deduction or set off by the 20<sup>th</sup> day of the month following the month of invoice. All fees are exclusive of New Zealand Goods and Service Tax (GST) and are in New Zealand dollars (NZD). If fees are not paid on the due date, MetService may charge interest of 5% per annum above MetService’s trading bank’s lending rate, calculated from the due date to the date of actual payment.
- 10.2 The Subscription will be invoiced monthly in arrears, on or around the 20<sup>th</sup> of the month, based upon projected flight activity of the User. MetService reserves the right to review the Subscription payable by the User annually. Such review will be based on the actual flight activity of the User.

## 11 **Exclusion of Warranties**

- 11.1 The User must make its own evaluation of the accuracy, completeness and timeliness of the Information and the suitability of the Service for the User’s purpose. Although MetService will use reasonable endeavours to obtain and supply accurate Information and to ensure that the Service is free from material error, the User acknowledges the uncertainty inherent in forecast predictions. MetService does not give any warranty or other assurance as to the content or accuracy, completeness, timeliness, availability or fitness for any particular purpose of the Information the Site or the Service.
- 11.2 Access to the Service and Site may be interrupted, restricted or delayed from time to time. MetService does not guarantee or warrant the User’s ability to access the Service or Site at any particular time or for any particular period. MetService will not be liable for damages, loss or refunds should the Site or Service become temporarily unavailable or delayed, or access to the Site or Service becomes impeded for any reason. Although MetService intends

to take reasonable steps to prevent the introduction of viruses or other destructive materials to the Service, MetService does not guarantee or warrant that the Service or Information does not contain such destructive features. MetService will not be liable for any damages or harm attributable to such features.

- 11.3 The User acknowledges and agrees that the User will be using the Service, the Site and the Information for business purposes in terms of the Consumer Guarantees Act 1993, and the guarantees provided under the Consumer Guarantees Act 1993 shall not apply in relation to that use.

## 12 Limitation of Liability

- 12.1 The User acknowledges that MetService shall not be responsible for errors or omissions in the Information. To the full extent permissible at law, MetService shall not be liable to the User for damages or losses (including, without limitation, financial loss, loss of revenue, loss of profits or savings, indirect or consequential losses) arising in contract, tort (including negligence) or otherwise from the User's use of, or inability to use the Site, the Service or the Information, or from any action or decision taken as a result of using the Site, Service or Information. Without limiting the previous sentence, MetService will not be liable for any loss or damage resulting from:

- a. acts, defaults or omissions of any person other than MetService, its employees or agents; or
- b. any cause that is outside MetService's control.

- 12.2 If for any reason MetService is liable to the User, notwithstanding the exclusion of liability in clause 12.1, in no case shall MetService's aggregate liability under or in connection with this Agreement exceed the amount of the Subscription paid by the User in the six month period preceding any claim or notice of damages.

## 13 Intellectual Property

- 13.1 The User acknowledges that all title, ownership and intellectual property rights in (i) the Information, the Service and the Site; (ii) the design, texts, graphics, photographs, audio and visual elements, interfaces and the selection and arrangement of the Information, the Service and the Site; and (iii) any copies, modifications or derivative works of any of the foregoing, belongs to MetService or its licensors. The User obtains no intellectual property rights in the Information, the Service, or the Site by its use of same. Except to the extent necessary to use as permitted under this Agreement, the User must not adapt, copy, distribute, display, publish, reproduce or create derivative works from any part of the Information, the Service or the Site.

- 13.2 The name and logo of MetService and certain other logos used on the Site are registered trade marks belonging to MetService or to the owners of such marks who have licensed MetService to use such marks in relation to the Service. The User is not permitted to use or reproduce or allow anyone to use or reproduce these trade marks for any reason without MetService's express written permission. The software which operates the Site and the Service is proprietary software and the User is not permitted to use it except as expressly allowed under these terms and conditions. Any other use or purported licensing, modification, enhancement or interference is strictly prohibited. The User must not

translate, adapt, modify, disassemble, decompile or reverse engineer any part of the Site or the underlying software.

## 14 Links and Advertising

14.1 Where the Service and Site contains links to other web sites, MetService does not accept any responsibility or liability in relation to any content on other web sites that are not under MetService's direct control. In accordance with Internet protocol, MetService requires the User to obtain MetService's permission before establishing any link to the Service and Site. If the User wishes to establish such a link, the User should e-mail its request to: [amy.dreverman@metservice.com](mailto:amy.dreverman@metservice.com).

14.2 Responsibility for the content of any advertisements appearing on the Service and Site (including hyperlinks to advertisers' own web sites) rests solely with the advertisers. The placement of such advertisements does not constitute a recommendation or endorsement by MetService of the advertisers' products. Each advertiser is solely responsible for any information contained in its advertisement.

## 15 Privacy

15.1 When the User uses the Service, MetService may obtain information about the User and its business. By using the Service the User authorises MetService and its agents to collect information about the User and hold it at MetService's head office. MetService will make use of this information for statistical analysis, to provide services to the User, for marketing services and for research and development purposes. The User may request access to and correction of any personal information MetService holds in relation to the User. Such requests must be in writing and MetService may charge a fee for the reasonable costs incurred in responding to the User's requests, provided that MetService discloses those costs to the User before they are incurred.

## 16 Survival

16.1 The following sections will survive the termination or expiry of this Agreement:

- a. Limitation of Liability;
- b. Intellectual Property; and
- c. Privacy.

## 17 Notices

17.1 The User may serve a notice on MetService for the purposes of this Agreement by sending it by e-mail to [amy.dreverman@metservice.com](mailto:amy.dreverman@metservice.com) or by facsimile to the MetService Service Desk [04]473 5231. MetService may serve a notice on the User by sending it to the User's e-mail address or facsimile number appearing under the lists of contacts, or in the case of notice of amended terms and conditions to the Agreement, by posting the amended Agreement on the Site. Notices will be deemed to have been served one hour after transmission by e-mail or at the time of transmission of a facsimile provided in either case that the sender has not received a notice of failure of delivery.

**18 Governing Law and Jurisdiction**

18.1 This Agreement (and any additional terms and conditions in relation to the Service) and any other agreements with MetService arising from the Service are deemed to have been made in New Zealand and are governed by New Zealand Law. The Information has been prepared in accordance with New Zealand law for the supply of products and services to persons resident in New Zealand only. Any dispute relating to this Agreement shall be referred to the New Zealand courts and the New Zealand courts shall have non-exclusive jurisdiction to hear and determine such dispute.

**19 Severability**

19.1 If at any time any of the terms and conditions of this Agreement or any part thereof is held to be unenforceable, then such shall be severed and the remaining provisions shall continue in full force and effect.

**20 Relationship**

20.1 MetService is an independent contractor of the User. No other relationship (e.g. joint venture, agency, trust or partnership) exists under this Agreement.

**21 Transfer**

21.1 The User must not assign or transfer any of its rights under this Agreement without the prior written approval of MetService.

**22 Entire Agreement**

22.1 This Agreement contains all of the terms and conditions, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement.