

**STANDARD ARCHIVED DATA LICENCE AGREEMENT FOR RESEARCH
AND EDUCATION**

THIS AGREEMENT is made this**day of ****200*

BETWEEN:

- (1) **THE EUROPEAN CENTRE FOR MEDIUM-RANGE WEATHER FORECASTS (“ECMWF”)** whose principal place of business is at Shinfield Park, Reading, RG2 9AX, United Kingdom (“the Licensor”) and;
- (2) ***** whose registered office or principal place of business is at ***** (“the Licensee”).

WHEREAS:

The Licensor and its own licensors are the sole and exclusive owner of the data referred to in the Schedule to this Agreement (the “Data”) and upon execution of this Agreement, the Licensor hereby grants and the Licensee hereby accepts a non-exclusive, non-transferable Licence to Use (as hereinafter defined) the Data upon the terms and subject to the conditions contained herein.

IT IS AGREED as follows:

1. Definitions

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

<i>Expression</i>	<i>Meaning</i>
“Authorized Computers”	the computers authorized for Use in connection with the Data, as specified in the Schedule;
“Licence Fee”	the fee or fees payable in respect of the Data as specified in the Schedule;
“Data”	the Data identified in the Schedule including all Upgrades which may be delivered to the Licensee from time to time;
“Use”	utilisation of the Data by copying, transmitting or loading the same into temporary memory (RAM) or installing into the permanent memory (eg hard disk, CD ROM or other storage device) of the Authorized Computers for the processing of the Data; copying the Data which is in machine readable form for Use by the Licensee of the Authorized Computers for the purposes of back up; storing the whole or any part of the Data on the Authorized Computers or other storage unit or disk;

utilising any instructional and/or operational manuals relating to the Data.

2. Licence

- 2.1 Use of the Data for research or educational purposes is granted under the conditions specified at Annex 1.
- 2.2 Redistribution of the Data in whole or in part for research or educational purposes is outside the scope of this Agreement.
- 2.3 Risk in the storage media embodying the Data shall pass to the Licensee 3 months after the delivery to give reasonable time for the Licensee to check all Data. If any part of the media shall thereafter be lost, destroyed or damaged the Licensor shall at the request of the Licensee replace the same promptly (embodying the relevant part of the Data) subject to the Licensee paying the cost of such replacement.

3. Licence Fees

- 3.1 In return for the Licensor's covenants and undertakings, the Licensee shall observe all its covenants and undertakings and, where agreed, pay the Licence Fee as a one-time fee as specified in the Schedule to this Agreement.
- 3.2 The Licensee shall pay such fee within 30 days after receipt by the Licensee of the Licensor's invoice.
- 3.3 All charges hereinbefore referred to are exclusive of and net of any taxes, duties or such other additional sums, including without limitation value added/purchase tax, excise tax (tax on sales, property or use) import or other duties, and whether levied in respect of this Licence, the Data its use or otherwise.

4. Licensee's Undertakings

- 4.1 The Licensee shall not, except as expressly permitted by this Agreement and save to the extent and in the circumstances expressly required to be permitted by law, rent, lease, sub-license, loan or create derivative works based on the whole or any part of the Data or its associated documentation.
- 4.2 In addition, the Licensee undertakes:
 - (a) to supervise and control Use of the Data in accordance with the terms of this Agreement;
 - (b) to reproduce and include the copyright and database right notices of the Licensor on all and any copies of the Data, whether in whole or in part, in any form.

5. Warranty

- 5.1 The Licensor warrants that it has the authority to grant this Licence by virtue of Article 1(4) of its Convention.
- 5.2 Although the Licensor does not warrant that the Data supplied hereunder shall be free from all known viruses, the Licensor warrants that the Data has been prepared

with reasonable skill and care. The Licensee acknowledges that the Data is of such complexity that it may have certain defects when delivered and the Licensee agrees that the Licensor's sole liability and the Licensee's sole remedy in respect of any breach of the said warranty shall be for the Licensor to use reasonable endeavours to provide corrections of errors.

- 5.3 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

6. Licensor's Liability

- 6.1 The Licensor does not exclude liability for death or personal injury to the extent that the same arises as a result of the negligence of the Licensor, its employees, agents or authorized representatives.

- 6.2 Subject to Clause 6.1 above, the Licensor shall not be liable to the Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Data, its use or otherwise, except to the extent to which it is unlawful to exclude such liability under the applicable law.

- 6.3 Notwithstanding the generality of Clause 6.2 above, the Licensor expressly excludes liability for any indirect, special, incidental or consequential loss or damage which may arise in respect of the Data, its Use or in respect of equipment or property, and for loss of profit, business, revenue, goodwill or anticipated savings.

- 6.4 To the extent that the Licensor is liable for loss or damage that may lawfully be limited, such liability shall be limited to the annual or one-time Licence Fee as the case may be.

7. Indemnities

- 7.1 The Licensee acknowledges that any and all of the copyright, database right, trademarks, trade names, patents and other intellectual property rights subsisting in or used in connection with the Data including all documentation and manuals relating thereto, are and shall remain the sole property of the Licensor and its licensors.

- 7.2 The Licensee shall notify the Licensor immediately if the Licensee becomes aware of any unauthorized use of the whole or any part of the Data by any person.

- 7.3 The Licensor agrees to indemnify and save harmless and defend at its own expense the Licensee from and against any and all claims of infringement of copyright, database right, patents, trade marks, industrial designs, or other intellectual property rights affecting the Data PROVIDED THAT (i) the Licensee shall not have done, permitted or suffered to be done anything which may have been or become an infringement of any rights in any copyright, patent, trade mark or other rights as hereinbefore provided, (ii) such indemnity shall be limited in the case of any intellectual property rights belonging to licensors of the Licensor to the terms of any indemnity the benefit of which rests with the Licensor and (iii) the Licensee shall have exercised a reasonable standard of care in protecting the same; failing

which, the Licensee shall indemnify the Licensor against all actions, proceedings, costs, claims and expenses incurred in respect thereof.

- 7.4 The Licensee undertakes that the Licensor shall be given prompt notice of any claim specified in Clause 7.3 that is made against the Licensee and the Licensor shall have the right to defend any such claims and make settlements thereof at its own discretion and the Licensee shall give such assistance as the Licensor may reasonably require to settle or oppose any such claims.
- 7.5 In the event that any such infringement occurs or may occur, the Licensor may at its sole option and expense:
- (a) procure for the Licensee the right to continue using the Data or infringing part thereof; or
 - (b) modify or amend the Data or infringing part thereof so that the same becomes non-infringing; or
 - (c) replace the Data or infringing part thereof by other Data of similar capability; or
 - (d) repay to the Licensee the Licensee Fee relating to the whole or the infringing part of the Data.
- 7.6 The Licensee shall indemnify the Licensor and keep the Licensor indemnified on demand and against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Licensor may sustain or incur, or which may be brought or established against it by any person and which in any case arise out of or in relation to or by reason of any breach by the Licensee's obligations under this Agreement or any unauthorized action or omission by the Licensee or its employees. However, the licensee expressly excludes liability for any indirect, special, incidental or consequential loss or damage that may arise in respect of the Licensee's said breach of its obligations or unauthorized action or omission by the Licensee or its employees.
- 7.7 To the extent that the Licensee is liable for loss or damage that may lawfully be limited, such liability shall be limited to the annual or one-time Licence Fee as the case may be.

8. Data support and maintenance

Neither data support nor maintenance is included in this Agreement

9. Termination

- 9.1 The Licensor may terminate the Agreement on giving notice in writing if:
- (a) The Licensee commits any material breach of this Agreement and (in the case of any breach capable of being remedied) shall have failed to remedy the breach within 30 days after receipt of a request in writing from the Licensor so to do (such request to contain a warning of the Licensor's intention to terminate);

(b) The Licensee being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) or shall call a meeting for its creditors, or shall have a receiver or administrator of all or any of its undertakings or assets appointed, or shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts or shall suffer any of the like events under any jurisdiction.

9.2 The termination of this Agreement (howsoever occasioned) shall not affect any accrued rights of either party, nor shall it affect the coming into force or the continuance in force of any provision that is expressly or by implication intended to come into or continue in force on or after such termination.

10. Force Majeure

The Parties of this Agreement shall be under no liability to each other in respect of anything that may constitute breach of this Agreement arising by reason of force majeure, namely circumstances beyond the control of the parties.

11. Assignment

The Licensee shall not assign or otherwise transfer its rights in all or part of the Data or this Licence without the prior written consent of the Licensor.

12. Waiver

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

13. Notices

Any notices to be given by either party to the other may be sent by recorded delivery to the address of the other party as appearing hereunder or such other address as such party may from time to time have communicated to the other in writing and if so sent shall be deemed to be served 7 days following the date of posting:

ECMWF, Shinfield Park, Reading, RG2 9AX, United Kingdom

14. Headings

The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretations of any of the terms and conditions of this Licence.

15. Severability

In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provision which shall continue to be valid to the fullest extent permitted by law.

16. Governing Law

Unless otherwise agreed in writing, the Laws of England shall govern the validity, construction and performance of this Agreement.

17. Disputes

In the event of a dispute arising in connection with this Agreement, the parties shall attempt to settle their differences in an amicable manner. In the event that any dispute cannot be settled, it shall be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by 3 arbitrators appointed in accordance with the said rules; unless otherwise agreed in writing, the Arbitrators shall sit in England. In accordance with sections 45 and 69 of the Arbitration Act 1996, the right of appeal by either party to the High Court on a question of law arising in the course of any arbitral proceedings or out of an award made in any arbitral proceedings is hereby agreed to be excluded.

18. Entire Agreement

This Agreement supersedes all prior agreements, arrangements, understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof and the parties agree that save as provided in this Agreement all representations, warranties and undertakings are hereby excluded save where fraudulently made. No addition to or modification of any provisions of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorized representative of each of the parties.

THE SCHEDULE above referred to

Description of the Data:

Authorized Computer(s): any

Licence Fee:

The licence fee for the Data shall be GBP *****.

AS WITNESS the hands of the parties or their duly authorized attorneys or representatives the day and year first above written.

SIGNED for and on behalf of **ECMWF:** **SIGNED** for and on behalf of *****:

By :

By:

Signature:

Signature:

Title:

Title:

Witness:

Witness:

Annex:

1. Conditions Attached to the Free and Unrestricted Access to ECMWF Meteorological Data and Products by research and Education. (*link*)