

Terms and Conditions for the Provision of Settlement Services

By signing our Contract you will be deemed to have accepted these Conditions to the exclusion of all other terms and conditions put forward by you or on your behalf, whether by way of purchase order, order acknowledgement, acceptance or otherwise.

1. DEFINITIONS AND INTERPRETATION

In these Conditions:

- 1.1 **"Affiliates"** means, with respect to any entity at the time in question, any other entity controlling, controlled by or under common control with such entity. For purposes of the foregoing, "control," including the terms "controlling," "controlled by" and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise;
- 1.2 **"Conditions"** means these terms and conditions;
- 1.3 **"Contract"** means the contract signed by us and you in relation to the provision of the Service to you and includes the Conditions, unless the context requires otherwise;
- 1.4 **"Contract Period"** means the contract period described in the Contract;
- 1.5 **"Data"** means the meteorological data which may include historical data or forecasts or graphical outputs or documents or data for settlement of derivative or similar contracts as part of a product provided by us under the terms of the Contract;
- 1.6 **"Fee"** means the fee set out in the Contract for the provision of the Service;
- 1.7 **"Service"** means our service of providing you with Data as described in the Contract;
- 1.8 **"we", "us", "our", "ourselves", "Speedwell"** means Speedwell Settlement Services Limited of Mardall House, Vaughan Road, Harpenden, Herts, AL5 4HU
- 1.9 **"you", "your", "yourselves", "Client"** means the person, firm or corporation, and any Affiliates listed in the Contract, instructing us to provide the Service by confirming your acceptance of the Contract and these Conditions by signing the Contract.

1.11 The terms and conditions of this Contract are the result of negotiations between the parties. The parties intend that this Contract should not be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation or drafting of the Contract.

2. THE SERVICE

2.1 Use of Service

In consideration of you paying us the Fee, we will grant you a non-exclusive non-transferable permit for you to use the Service to view print and/or use the Data solely for your internal business requirements including any settlement data contract to which you are a party. We will not be obliged to provide the Service to you until we have received payment of the Fee in full, cleared funds in accordance with Condition 5.

3. USE OF DATA, WEB-DELIVERED TOOLS & SECURITY

You may display, read and use the Service. Except as expressly provided herein and the Contract **you are not permitted to lend, share, resell, re-distribute, sub-licence or allow any third party to view or use the Service or the Data or any rights in the Service or Data whether in whole or in part. You shall not copy, extract, export, insert or otherwise use the Service or Data in whole or in part unless expressly authorised by this clause 3 other than for internal purposes and any settlement data contract to which you are a party, provided that Data may be presented externally subject to Speedwell or its relevant affiliate clearly being shown as the source. Without limiting the generality of the foregoing you shall not use the Data or any part thereof to create or distribute any list database or other compilation regardless of whether such list database or other compilation contains more or less information than that provided by us or organize such information in the same or different manner than as received by you.**

4. SUSPENSION OF SERVICE

4.1 Suspension

We reserve the right at any time to suspend provision of the Service for the purposes of repair, maintenance or support, or in the event of any actual or suspected breach of these Conditions, or if there is or we believe or suspect there is any fault in the Service or in any system used by you. In consideration of your requirements, whenever possible, as with scheduled maintenance, we will inform you of planned suspensions.

5. CHARGES

5.1 Payment of Fee

You will pay us any Fees inclusive of any applicable taxes in full within 30 days from the date of the invoice that we send to you ("Due Date").

5.2 Non-payment

If you fail to pay any amount when it is due then, without prejudice to our other rights and remedies, we may:

5.2.1 decline to supply the Service and/or suspend the Service which will result in you being denied access to the Service until such time as any unpaid amount together with any reasonable costs incurred by us have been paid in full; and

5.2.2 charge interest on the amount outstanding (as well after as before any judgment), from the Due Date for payment until you make payment at a rate of 12% per annum or 6% over base rate per annum whichever is the higher.

6. WARRANTIES

6.1 ACCURACY OF DATA

WE WILL USE REASONABLE SKILL AND CARE IN THE PRODUCTION OF THE DATA AND SERVICES AND MAKE EVERY REASONABLE EFFORT TO ENSURE THAT THE DATA IS ACCURATE, BUT WE DO NOT WARRANT OR GUARANTEE THE ACCURACY OR COMPLETENESS OF THE DATA OR SERVICES OR ITS FITNESS FOR ANY PURPOSE AND DO NOT ACCEPT ANY LIABILITY FOR ANY LOSSES INCURRED BY YOU AS A RESULT OF YOUR RELIANCE ON THE DATA OR SERVICES.

6.2 RIGHT TO DISTRIBUTE DATA AND PROVIDE SERVICES

WE REPRESENT AND WARRANT THAT WE HAVE THE RIGHT TO DISTRIBUTE/LICENSE THE DATA TO YOU AND PROVIDE THE SERVICE TO YOU AS SET FORTH HEREIN AND YOUR USE OF THE DATA AND RECEIPT OF THE SERVICE AS PERMITTED HEREUNDER WILL NOT VIOLATE OR INFRINGE UPON ANY RIGHTS HELD BY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO INTELLECTUAL PROPERTY RIGHTS HELD BY ANY INDIVIDUAL OR ENTITY.

6.3 IMPLIED WARRANTIES

WE EXCLUDE ALL OTHER WARRANTIES, CONDITIONS, TERMS, UNDERTAKINGS AND OBLIGATIONS WHETHER EXPRESS OR IMPLIED BY STATUTE OR OTHERWISE TO THE FULLEST EXTENT PERMITTED BY LAW.

6.4. WARRANTY DISCLAIMER

THE EXPRESS WARRANTIES CONTAINED IN THIS CONTRACT AND THESE CONDITIONS ARE IN LIEU OF ALL OTHER WARRANTIES REPRESENTATIONS AND GUARANTEES OF ANY KIND BY US. EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT AND THESE CONDITIONS ALL PRODUCTS, SERVICES AND OTHER MATERIALS (IF ANY) ARE FURNISHED BY US AND ACCEPTED BY YOU "AS IS". ALL OTHER WARRANTIES WHETHER STATUTORY EXPRESS OR IMPLIED ARE SPECIFICALLY EXCLUDED AND DISCLAIMED BY US INCLUDING WITHOUT LIMITATION ANY IMPLIED OR OTHER WARRANTIES OF OR AGAINST (1) INTERFERENCE WITH QUIET ENJOYMENT, WORKMAN LIKE EFFORT, QUALITY, ACCURACY, TIMELINESS, COMPLETENESS, TITLE, COMPATIBILITY, INTEGRATION, NO ENCUMBRANCES, NO LIENS, TITLE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE (2) THAT ANY PRODUCTS, SERVICES OR OTHER MATERIALS WILL CONFORM TO ANY DEMONSTRATION OR PROMISE BY US OR (3) OR THAT MAY ARISE THROUGH ANY COURSE OF DEALING BETWEEN THE PARTIES.

WE DO NOT WARRANT THAT THE PRODUCT, SERVICES OR ANY OTHER MATERIALS PROVIDED HEREUNDER WILL MEET YOUR REQUIREMENTS OR THAT THEIR ACCESS OR USE WILL BE UNINTERRUPTED, ERROR FREE OR COMPLETELY SECURE. EXCEPT AS EXPRESSLY PROVIDED IN THIS CLAUSE THE ENTIRE RISK AS TO THE PRODUCT, SERVICES AND OTHER MATERIALS PROVIDED IS WITH YOU FOR QUALITY AND PERFORMANCE AND FOR ACCURACY OR QUALITY OF ANY INFORMATION TRANSMITTED, RECEIVED OR OTHERWISE DELIVERED VIA THE PRODUCTS AND SERVICES.

7. LIABILITY

7.1 EXCLUSION OF INDIRECT DAMAGES

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION FOR LOSS OF PROFITS, FOR LOST SAVINGS, LOST DATA OR OTHER SPECIAL DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS CONTRACT OR ANY PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED UNDER THIS CONTRACT OR THE USE THEREOF EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

7.2 ABSOLUTE CAP ON LIABILITY

THE MAXIMUM AGGREGATE LIABILITY OF US UPON ANY CLAIM HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE PRODUCTS, SERVICES FURNISHED OR TO BE FURNISHED BY US UNDER THIS AGREEMENT (WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) WILL IN ANY EVENT BE ABSOLUTELY LIMITED TO THE DIRECT DAMAGES ACTUALLY INCURRED BY YOU UP TO THE AMOUNT PAID BY YOU TO US UNDER THIS AGREEMENT FOR THE APPLICABLE PRODUCTS AND / OR SERVICES.

7.3 BASIS OF THE BARGAIN; FAILURE OF ESSENTIAL PURPOSE

YOU ACKNOWLEDGE THAT WE HAVE SET OUR PRICE AND ENTERED INTO THIS CONTRACT IN RELIANCE UPON THE WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY SET FORTH IN THIS CONTRACT AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THE LIMITATION OF LIABILITY SPECIFIED IN THIS CONTRACT WILL SURVIVE AND APPLY EVEN IF THE WARRANTY DISCLAIMER OR ANY LIMITATION OF REMEDIES IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING NOTHING CONTAINED HEREIN SHALL LIMIT OUR LIABILITY FOR OUR WILLFUL OR WANTON CONDUCT.

8. PROPRIETARY RIGHTS

8.1 Ownership

Any and all proprietary rights in the Data and the Service are owned by Us or by our licensors and are subject to copyright and other intellectual property rights protection. Notwithstanding any provision in the Contract or these Conditions to the contrary, you may use the Data and Service to build and populate other models. Such models and their output may include, or may generate information partially or entirely derived from, the Data and the Service, subject to the constraint that such outputs must be a non-trivial derivations of the original Data and from which the original Data may not easily be imputed ("Derivative Works"). We shall have no rights whatsoever with respect to such models, output, or Derivative Works.

8.2 Retained rights

Nothing in these Conditions transfers to you the copyright or database rights or any other intellectual property rights in the Data or in any software, software tools, design concepts, know-how, techniques or methodologies which we use in providing the Service and the Data, the ownership of which remains absolutely with us.

8.3 Enforcement of rights

You will give us any assistance we may reasonably require to enable us to obtain, defend and enforce the proprietary and intellectual property rights in the Data and the Service.

9. TERMINATION

9.1 Right to terminate

9.1.1 Either you or we may terminate the Contract immediately on giving notice to the other party that it has committed any material breach of any of these Conditions or the Contract and in the case of a breach, which is not persistent, and which is capable of being remedied, have failed, within 30 days after such party has requested the other party in writing, to remedy the breach;

9.1.2 Either you or we may terminate the Contract immediately on giving notice to the other party if such non-terminating party has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a resolution for winding-up or dissolution (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or if it enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun, or if it ceases or threatens to cease to carry on business.

9.2 Rights to suspend or terminate

Despite anything else contained in these Conditions, we may, at our option, suspend or terminate the Service immediately on giving notice to you if you fail to pay any amount due under these Conditions for more than 14 days after we have given you notice that that it is overdue for payment or are otherwise in material breach of the Contract and such breach is either incapable of remedy or, if remediable, not remedied by you within 14 days of our giving you written notice of such breach, requiring its remedy.

9.3 Suspension

Any suspension of the Service on our part will not prejudice our right to terminate the Service later, for the same or a different reason.

9.4 Accrued fees

Should we terminate the Service under Condition 9.2, you will remain liable to pay us any portion of the Fee which remains unpaid together with any expenses we have incurred or have agreed to incur in connection with any work done or to be done for you.

9.5 Consequences of termination

The termination or expiry of the Service for any reason:

9.5.1 will not affect any accrued rights or liabilities which either you or we have, nor will it affect the coming into force or the continuance in force of any of these Conditions which is expressly, or by implication, intended to come into or to continue in force on or after termination;

9.5.2 will not entitle you to any refund of the Fee except for the situation where We are in material breach whereby We will promptly refund an amount equal to the last fee paid, prorated from the date of such breach.

10. GENERAL

10.1 Waiver

No failure or delay by either party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right, power or remedy.

10.2 Confidentiality

Each party acknowledges that its employees and agents may be exposed to or acquire confidential or proprietary information concerning the other party's products or customers or business. Each party agrees to hold such confidential or proprietary information in strict confidence. We agree, except as required by law, not to use such information for any purpose other than providing the Service to you hereunder.

Each party agrees not to disclose such confidential information to third parties, and to advise any of its employees who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential. Each party will not, without first obtaining the other's written consent, in any manner disclose to third parties the terms of this Contract, the specific or general nature of the Contract, or any information, issues or other matters developed, analysed, collated or discovered by us in connection with this Contract. We will not, without first obtaining your permission disclose the existence of our relationship with you or your Affiliates or the existence of this Contract.

The following is not Confidential Information: Information that: is or becomes publicly available without a breach of this Contract; was lawfully known to the receiver of the information without an obligation to keep it confidential; is received from another source who can disclose it lawfully and without an obligation to keep it confidential; is independently developed; or is a comment or suggestion one party volunteers about the other's business, products or services. The provisions in this paragraph shall survive termination of this Contract.

10.3 Entire agreement and variation

These Conditions and the Contract supersede all prior agreements, arrangements, representations and understandings between you and us and constitute the entire agreement between you and us relating to the Service. Nothing in this Condition or elsewhere in these Conditions is intended to prevent either you or us taking action in respect of pre-contract misrepresentations made fraudulently, if any, upon which either you or we relied in circumstances where it was reasonable to rely. We may vary these Conditions only upon a written agreement signed by both parties.

10.4 Assignment

You may not assign, transfer, sub-contract or sub-license your rights or obligations under these Conditions or sell-on or share any Data, whether in whole or in part, without first obtaining our written consent.

10.5 Notices

All notices to be given must be in writing and be sent to us at our address at Condition 1.8 or e-mailed to us at the contact e-mail address from time to time given on our Website (provided the email notice is followed by a confirmatory hard copy of the notice), or be sent to you at your registered office or principal place of business or any contact e-mail address you give us from time to time. Any notice shall be deemed to have been received:

10.5.1 if delivered by hand, on signature of a delivery receipt at the proper address;

10.5.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the [fifth] business day after posting or at the time recorded by the delivery service.

10.5.3 if sent by email, at [9.00 am] on the next business day after transmission, provided that the confirmatory hard copy notice has also been sent on the same day as the email notice.

10.6 Headings

The headings to these Conditions are for ease of reference only, and do not affect the interpretation or construction of these Conditions.

10.7 Severability

If any (or any part) of these Conditions are, for any reason, held to be unenforceable, illegal or invalid, that unenforceability, illegality or invalidity will not affect any other conditions (or parts) which will continue in full force and effect.

10.8 Force majeure

Each party excludes all liability for any delay in performing or failure to perform its obligations hereunder caused by circumstances beyond such party's reasonable control and such party will be granted a reasonable extension of time for the recommencing of that Service. If the period of delay or non-performance continues for 1 month, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

10.9 No third party rights

No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

10.11 Law

This Contract and performance under it shall be governed by and construed in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to deal with any dispute that arises out of or in connection with these Conditions

Signed on behalf of the Client

Signed by

Name:

Position:

Date:

Signed on behalf of Speedwell Settlement Services Limited

Signed by

Name:

Position:

Date:

