

FWSYS Application End User Licence Terms and Conditions

These terms and conditions are between you (**User**) and the Fire and Emergency New Zealand (**FENZ**) (the **parties**) and govern your access to and use of the FWSYS Application, Licensed Intellectual Property and the Information.

By accessing and/or using the FWSYS Application, Licensed Intellectual Property or the Information you agree to be bound by these terms and conditions. If you do not agree to these terms and conditions then you must cease accessing and using the FWSYS Application, Licensed Intellectual Property and the Information immediately.

1. Grant and Scope of Licence

- 1.1 FENZ grants the User a non-exclusive, non-transferable, revocable licence without a licence fee to, in accordance with these terms and conditions:
 - (a) access by electronic means the FWSYS Application, Licensed Intellectual Property and the Information; and
 - (b) copy and use Licensed Intellectual Property and the Information for Fire Weather Purposes only.
- 1.2 All proprietary rights (including all Intellectual Property rights) in, or associated with, the FWSYS Application, Licensed Intellectual Property and the Information are, and shall remain, vested solely in FENZ (or any other relevant third party who has licensed Intellectual Property to FENZ).
- 1.3 The User agrees that Information made available to the User may be varied from time to time.
- 1.4 Subject to disclosure required in accordance with Fire Weather Purposes, the User must not disclose the Information or Licensed Intellectual Property to any person and shall take all reasonable steps to protect the Information and Intellectual Property from unauthorised use, reproduction, distribution or publication.

2. Terms of the Licence

- 2.1 The grant of the licence in clause 1 is subject to the following conditions:
 - (a) the User will not:
 - (i) use, deal with, sell or make available to any person Licensed Intellectual Property or the Information for the purpose of issuing independent forecasts, or undertaking or providing meteorological or other environmental research (except for fire weather related research), advisory or consultancy services;
 - (ii) remove, cover, overlay, obscure or change any copyright notices, legends, or terms of use which FENZ may post on the FWSYS Application or applied (either explicitly or implicitly) to any of the Information;
 - (iii) use proprietary software in the FWSYS Application independently of the FWSYS Application, or outside of these terms and conditions;
 - (iv) use, licence, modify, enhance or interfere with the proprietary software in the FWSYS Application;
 - (v) use the Licensed Intellectual Property or the Information in a manner which would, or is likely to, adversely affect national meteorological services or environmental forecasting of another country.
 - (b) where the Information is reproduced, the User must ensure that:
 - (i) it is reproduced accurately;
 - (ii) it is not presented in a way which is, or may be, misleading; and
 - (iii) FENZ is acknowledged as its source, in the following manner "FENZ Fire Weather System", or otherwise as approved;

- 2.2 If the User makes use of any interactive features or services available through the FWSYS 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. Neither FENZ nor the Support Services Supplier will be responsible for non-delivery or delay of any alert or warning due to incorrect contact details or delays caused, or contributed to, by a third party, or issues, delays or outages of telecommunication networks required to transmit the alert or warning notice.
- 2.3 FENZ and/or the Support Services Supplier may monitor a User's access to, and usage of, the FWSYS Application for statistical, market research and product development purposes, and to ensure the User is complying with its obligations under these terms and conditions. Such monitoring may include User access logs and audit logs, recording User log-ins, User Identification, date & time, to the extent possible within the FWSYS Application.

3. Support Services

- 3.1 To obtain support services for the FWSYS Application, the User may contact the FWSYS help desk on the telephone number or email address notified to the User from time to time by various means and included on the FENZ website (<https://fireandemergency.nz>)
- 3.2 The User will provide the FWSYS help desk with the following information during the call or email request for support:
- (a) contact name/telephone number/email address;
 - (b) full description of the issue;
 - (c) priority of the call and if there are any workarounds;
 - (d) any screenshot to show the problem; and
 - (e) any other information that is specific to the issue.
- 3.3 The User will make itself available during the resolution timeframe to provide feedback to technical support in order to assist timely resolution.
- 3.4 The User:
- (a) is responsible for promptly reporting any observed fault or problems with its service to the FWSYS help desk;
 - (b) agrees to co-operate with the FWSYS help desk and provide the FWSYS help desk with sufficient details of each fault logged to enable the FWSYS help desk to reproduce, simulate or otherwise clearly identify the fault being logged;
 - (c) undertakes to be available via the supplied contact method at the specified feedback times for the duration of the fault; and
 - (d) will not use the support services received under these terms and conditions in a fraudulent or abusive manner.

4. FWSYS Maintenance

- 4.1 From time to time it will be necessary for FENZ and/or the Support Services Supplier to carry out work on the FWSYS in order to maintain and enhance its security and performance. FENZ reserves the right to schedule reasonable periods of downtime to allow such work to be carried out.

5. Infringement

- 5.1 If the User becomes aware of any infringement or threatened infringement by a third party of Licensed Intellectual Property or the Information ("Infringement"), it must as soon as practicable notify FENZ in writing. The User must provide FENZ with reasonable assistance with any action to be taken or in any such proceedings commenced in relation to the Infringement.

6. Indemnity and Limitation

6.1 The User fully indemnifies and agrees to hold harmless FENZ and the Support Services Supplier against all liability, loss, damage, claim, cost or injury (including direct or consequential loss and damage and legal costs on a solicitor client basis) suffered by FENZ and the Support Services Supplier resulting from:

- (a) any breach of these terms and conditions by the User, including any:
 - (i) unauthorised use, copying, alteration, modification or adaptation of the FWSYS Application, Licensed Intellectual Property or Information; or
 - (ii) unauthorised disclosure or dissemination of Licensed Intellectual Property or Information 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 Licensed Intellectual Property or Information (other than in accordance with these terms and conditions); or
- (c) any interruption to the continuing operation of the FWSYS Application caused by the User's breach of these terms and conditions.

6.2 The User acknowledges that there is inherent uncertainty in meteorological and environmental forecasts and that the FWSYS Application and Information are provided "as is" without warranties of any kind, either express or implied, including accuracy, completeness, correctness, timeliness or fitness for any particular purpose. FENZ does not make any representations or give any warranties that:

- (a) the Information is error free, 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 from the FWSYS Application will not be interrupted for whatever reason, or available at particular times; and/or
- (d) the FWSYS Application, Licensed Intellectual Property or the Information will not infringe any third party's intellectual property rights.

6.3 To the extent permitted by law, the User acknowledges and agrees that it assumes the sole risk of assessing, evaluating, interpreting and applying the FWSYS Application and the Information and that FENZ 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 FWSYS Application, Licensed Intellectual Property or the Information or the existence of any errors therein.

6.4 The User agrees that as it is accessing the FWSYS Application and obtaining Licensed Intellectual Property and the Information for the purposes of its business, the provisions of the Consumers Guarantees Act 1993 do not apply.

7. Suspension and Termination

7.1 FENZ may terminate these terms and conditions on 3 months' prior written notice to the User.

7.2 If FENZ and/or the Support Services Supplier believes that the User is breaching any term of these terms and conditions FENZ reserves the right to immediately, and without notice to the User, suspend the User's access to the FWSYS Application.

7.3 FENZ may terminate these terms and conditions immediately, if the User breaches any of the terms of these terms and conditions and fails to remedy this breach within 7 days of receiving notice from FENZ to remedy the breach.

7.4 The User shall deliver up to FENZ any copies of Licensed Intellectual Property or the Information (in any form) within the User's power, possession or control or if directed to destroy on oath, within seven (7) days of termination of these terms and conditions, and return any equipment belonging to FENZ as soon as reasonably practicable. 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.

8. Contracts (Privacy) Act 1982

- 8.1 Unless these terms and conditions expressly provide otherwise, it is not intended to confer a benefit on any person or class of persons who are not a party to it.
- 8.2 For the purposes of section 4 of the Contracts (Privacy) Act 1982, the indemnity in clause 6.1 is intended to create a benefit in favour of and be enforceable by the Support Services Supplier.

9. Miscellaneous

- 9.1 The User authorises FENZ and their agents to collect information about the User, and hold any such information at FENZ's National Headquarters. FENZ may use this information for statistical analysis, to provide services to the User, for technical support services with the Support Services Supplier or for research and development purposes.
- 9.2 These terms and conditions may be modified by the User only by agreement with FENZ in writing, which is signed by the parties.
- 9.3 Failure or delay by FENZ in enforcing any provision of these terms and conditions, shall not act as a waiver, and does not mean that FENZ no longer regards that provision as binding. A waiver by FENZ of a breach of a provision of these terms and conditions does not constitute a waiver of any other breach of these terms and conditions.
- 9.4 The User must not assign, charge, offer for security or otherwise deal with, either in whole or in part, the benefit or burden of these terms and conditions without the prior written consent of FENZ, such consent may be withheld by FENZ at its absolute discretion.
- 9.5 Any provision of these terms and conditions 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 these terms and conditions.
- 9.6 These terms and conditions 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.

10. Interpretation

10.1 In these terms and conditions, unless the context requires otherwise, the following expressions have the meanings set out in the table below.

Fire Weather Purposes	fire management purposes pursuant to the statutory functions under the Fire and Emergency Act 2017, including making available to the public Licensed Intellectual Property and Information contained in and generated by the FWSYS Application. However, for the avoidance of doubt expressly excludes the issuing of independent environmental, meteorological or climatological forecasts, or undertaking or providing meteorological or other environmental research (except for fire weather related research), advisory or consultancy services.
FWSYS	The rural fire weather system including all software and hardware components, applications, infrastructure and transmission networks required to transmit and interpret information from Remote Automatic Weather Stations (RAWS) to the FWSYS Application and FENZ websites and internal systems; excluding the RAWS.
FWSYS Application	FWSYS rich internet application licensed for use under these terms and conditions as made available to the User by FENZ.
Information	environmental, meteorological and other information, including, but not limited to, all data, graphical representations, user manuals documentation, underlying software, models or code made available to

	the User, pursuant to these terms and conditions, through the FWSYS Application.
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, confidential information (including trade secrets and know-how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
Licensed Intellectual Property	any Intellectual Property in the FWSYS Application belonging or licensed to FENZ.
NRFA	National Rural Fire Authority.
FENZ	New Zealand Fire Service Commission.
Support Services Supplier	National Institute of Water and Atmospheric Research Limited, or such other supplier notified to the User in writing by FENZ.
User	a party (other than FENZ or its employees, agents or subcontractors) that accesses and uses the FWSYS Application which includes any party to whom FENZ issues a User Identification for the purpose of accessing and using the FWSYS Application and every person, authorised or unauthorised, who accesses or uses the FWSYS Application by using a User Identification.
User Identification	a unique username and password assigned to a User by FENZ.