**DATA SUPPLY AGREEMENT**

Between ENVIRONMENT PROTECTION AUTHORITY a body corporate incorporated pursuant to the *Environment Protection Act 1970* (Vic) (“EPA”)

And the party described in Item 1 of Schedule A (“Customer”)

THE PARTIES AGREE as follows:

**1. Licence**

The EPA grants a non-exclusive, non-transferable licence to the Customer, to use the data described in Schedule B (“Data”) for the purposes set out in Item 2 of Schedule A.

**2. Term of licence**

The licence granted pursuant to this Agreement commences on the date specified in Item 3 of Schedule A and expires on the date specified in Item 4 of Schedule A.

**3. Fees and payment**

The Customer must pay the fee or fees specified in Item 5 of Schedule A in accordance with the payment structure outlined in Item 6 of Schedule A.

**4. Goods and services tax**

4.1 For the purposes of this clause unless the context otherwise requires "GST" means any tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) ("the GST Act") and any related imposition Acts of the Commonwealth.

4.2 The parties acknowledge that the fee or fees payable under this Agreement are exclusive of GST, unless specified to the contrary in Schedule A.

4.3 If a fee or fees are payable under this Agreement, EPA will provide the Customer with a tax invoice in accordance with the GST Act.

**5. Limitations on use**

5.1 The EPA permits the Customer to use the Data solely for the purposes and in the manner described in Item 2 of Schedule A.

5.2 The Customer must not, and must ensure that its employees, agents and any sub-contractor or third party to this Agreement do not, use the Data in any way other than for the purpose and in the manner set out in Item 2 of Schedule A, without the prior written consent from the EPA.

5.3 Unless otherwise agreed by the parties, the Customer must not distribute the Data to any person without the prior written consent of the EPA.

5.4 Unless specified in Item 2 of Schedule A, the Customer must not use the data to produce materials for sale to a third party, or for general sale, without the prior written consent of the EPA.

**6. Intellectual property**

6.1 This Agreement does not confer on the Customer, any rights of ownership in the Data.

6.2 All intellectual property rights in the Data, including but not limited to copyright, remain vested in the EPA and are unaffected by this Agreement.

6.3 In using the Data or producing any materials or derivative data from the Data, the Customer must acknowledge EPA in the manner set out in Item 7 of Schedule A.

**7. Confidentiality**

7.1 The Customer must treat the Data as private and confidential and must take all reasonable steps to keep the Data private and confidential. To this end the Customer must:

(a) maintain a system for the safe custody of the Data and copies of the Data;

(b) copy the Data for its own purposes only;

(c) disclose the Data only to those of its employees whose duties require a knowledge of, or access to, the Data and take all reasonable steps to minimise the risk of disclosure of the Data by those employees;

(d) on becoming aware that a breach of this Agreement has occurred immediately advise the EPA of the nature of the breach and what action has been taken or will be taken to protect the interests of the EPA.

7.2 Except as provided in this Agreement or as required by law, the Customer must not, without the prior written consent of the EPA, disclose the Data to a third party and, if that consent is given, the Customer must make known to the third party to whom the Data is disclosed that the EPA is the owner of the Data and the copyright therein and shall require the third party to give to the Customer a written undertaking, in a form satisfactory to the EPA, that it shall observe and perform with respect to the Data terms and conditions similar to those contained in this Agreement.

**8. Warranty**

8.1 The EPA gives no warranty as to the condition, quality or fitness of the Data for the Customer’s requirements. The Customer is responsible for ensuring that the Data supplied meets its individual needs.

8.2 The EPA shall not be liable for any loss, damage or injury suffered by the Customer or any third party that may arise from the supply, use or disclosure of the Data or any materials or derivative data which are based on or incorporate the Data.

**9. Indemnity**

9.1 The Customer shall indemnify and keep indemnified the EPA, its officers, employees and agents against any loss, costs, expenses (including legal expenses), damages and liability of any kind, which the EPA may sustain or incur arising directly or indirectly from:

1. a breach of this Agreement by the Customer; or

(b) any claim relating to any materials or derivative data produced by or on behalf of the Customer which are based on or incorporate the Data.

9.2 If any indemnity payment is made by the Customer under this clause, the Customer must also pay to the EPA an additional amount equal to any tax which is payable by the EPA in respect of that indemnity payment.

9.3 It is not necessary for the EPA to incur expense or make payment before enforcing a right of indemnity under clause 9.1.

**10. Termination**

10.1 Either party may terminate this Agreement at any time by the giving of 30 days notice in writing to the other party.

10.2 If the Customer is found to be in breach of the Agreement, the EPA may terminate the Agreement immediately by notice in writing to the Customer.

10.3 Upon termination or expiration of this Agreement the following will happen:

(a) All rights granted by the EPA to the Customer will cease;

(b) The Customer must promptly return to the EPA all copies of the Data in its possession and delete or destroy all copies of the Data held by the Customer in electronic or magnetic form, unless otherwise agreed by the parties.

**11. Surviving Clauses**

All of the following clauses will survive termination or expiration of this Agreement:

(a) Clause 5 (Limitations on Use);

(b) Clause 6 (Intellectual Property);

(c) Clause 7 (Confidentiality);

(d) Clause 8 (Warranty); and

(e) Clause 9 (Indemnity).

**12. Notices**

12.1 Notices under this Agreement may be delivered by prepaid postage or certified mail, by hand, by facsimile transmission or by electronic mail.

12.2 Notices are deemed given:

(a) five (5) days after deposit in the mail with postage prepaid or certified;

(b) when delivered by hand;

(c) if sent by facsimile transmission, upon completion as evidenced by a fax transmission record

(d) if sent by electronic mail, only upon the other party acknowledging receipt by any means..

12.3 For the purposes of this clause the address for service of each party is that set out in Items 8 and 9 of Schedule A.

**13. Special conditions**

The provisions of this Agreement shall be subject to the Special Conditions, if any set out in Item 10 of Schedule A.

**14. Variation**

Any amendment or variation to this Agreement must be made in writing and signed by both parties.

**15. Applicable Law**

This Agreement is governed by and is to be construed in accordance with the laws of the State of Victoria.

**16. Entire Agreement**

This Agreement constitutes the entire agreement between the parties relating to the subject matter

hereof, and supersedes any previous agreements or understandings.

**EXECUTED AS AN AGREEMENT** on …………………………………………………………..2014

**SIGNED** for and on behalf of the **ENVIRONMENT PROTECTION AUTHORITY** by its authorised representative Michael Ernest, EPA Victoria.

............................................................................

***(Where the Customer is an individual)***

**SIGNED** by Clive Stott

.............................................................................

***(Where the Customer is a Government Entity)***

**SIGNED** for and on behalf of the <<<**INSERT FULL NAME OF LEGAL ENTITY eg STATE OF VICTORIA>>>** by its authorised representative <<<Insert full name of signatory>>>, <<<Insert signatory’s position>>>

............................................................................

***(Where the Customer is a Company)***

Executed by #**FULL COMPANY** )

**NAME#** )

in accordance with section 127(1) of )

the Corporations Law by authority of ) ..........................................…………..

its directors )

....................................................... ......................................................

Signature of Authorised Representative Signature of Authorised Representative

....................................................... ......................................................

Name of Authorised Representative (print) Name of Authorised Representative (print)

**SCHEDULE A**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Item 1 | Customer  Trading as  Address  ABN  Customer’s Contact  Customer’s Representative | Clive Stott  <<<Name of business trading as or “Not applicable”>>>  <<<Address of Customer>>>  <<<ABN>>>  <<<Individual contact name>>>  <<<Individual contact’s position>>>  <<<Individual contact name of person responsible for signing>>>  <<<Individual contact’s position>>> |
| Item 2 | Purpose | Not for commercial use or sale. For use by the customer only. |
| Item 3 | Commencement Date | 03/04/2014 |
| Item 4 | Expiry Date | N/A |
| Item 5 | Fees | N/A |
| Item 6 | Payment structure | N/A |
| Item 7 | Acknowledgment | Data supplied by EPA Victoria |
| Item 8 | Service of notice to EPA | <<<Street address, e.g.200 Victoria Street, Carlton, Victoria 3053>>>  <<<Postal address, e.g.GPO Box 4395, Melbourne, VIC 3001>>>  <<<Fax number>>>  <<<Email address>>> |
| Item 9 | Service of notice to Customer | <<<Street address>>>  <<<Postal address>>>  <<<Fax number>>>  <<<Email address>>> |
| Item 10 | Special conditions | None |

**SCHEDULE B (Description of Data)**

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| --- | --- |
|  |  |
| **Data** | 24 Hour Averaged Levels of PM10 and PM2.5 Exceedences. |
| **Type of data/structure** | Tabular |
| **Data format** | Excel |
| **Filename** | 24HourPM10PM25Exceedences.xlsx |
| **Size** | < 1MB |
| **Method** | Email Exchange |
| **Frequency** | Once Only |
| **Quality** | These levels have not been validated and may be adjusted once the validation process has been completed. |
| **Data Storage** | None |
| **Security Assessment** | Public |
| **Metadata Statement** | N/A |
| **Other details** | N/A |
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|  |  |