

Access Agreement

BETWEEN

COMMONWEALTH OF AUSTRALIA,
acting through the Bureau of Meteorology (the Bureau);

and

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SCHEDULE 1

1. Interpretation

1.1 In this Agreement, the terms contained in Schedule 1 have the meanings set out in that Schedule.

2. Grant and Scope of Licence

2.1 The Bureau grants the User a non-transferable, non-exclusive licence to use the Information and the Licensed Intellectual Property on the terms and conditions set out in this Agreement.

2.2 The User is licensed to:

- (a) access, by electronic means, the Network during the Access Times; and
- (b) copy and use the Information and the Licensed Intellectual Property for the Approved Purposes.

2.3 The Information made available to the User will be as determined by the Director and may be varied from time to time by the Director without prior notice to the User. The Director will provide written reasons for any such variation if so requested by the User.

2.4 The User must treat the Information as private and confidential to the Bureau and must take all reasonable measures to protect the Information from unauthorised use, reproduction, distribution or publication. The User must not disclose the Information to any person, or use the Information for any purpose, except in accordance with this Agreement.

2.5 Any rights not specifically granted in this Agreement are reserved to the Bureau. The User does not acquire, by implication or otherwise, any right in or title to any Licensed Intellectual Property.

2.6 Nothing contained in this Agreement is to be construed as overriding, or as granting approval, consent or authorisation under, any laws or legal requirements.

2.7 This Agreement does not cover access to and use of information or Intellectual Property owned by third parties which is stored in the Network.

3. Conditions of Licence

3.1 The grant of the licence in clause 2.1 is subject to the following conditions of use:

- (a) Where the Information is reproduced, the User must ensure that it is:
 - (i) reproduced accurately;
 - (ii) not presented in a way which is, or may be, misleading; and
 - (iii) the Bureau is acknowledged as its source in a manner approved by the Bureau;
- (b) Subject to sub-clause 3.1(a)(iii), the User must not, without the prior written consent of the Bureau, use or permit to be used the name of the Commonwealth of Australia or any Commonwealth establishment (including the Bureau) or any words, marks or devices which may imply a connection with the Commonwealth or any Commonwealth establishment;
- (c) The User must not use the Information or Licensed Intellectual Property in a manner which in the opinion of the Bureau would adversely affect the national meteorological service of another country;
- (d) The User must, in exercising its rights and engaging in any activities in relation this Agreement, comply with all applicable laws and legal requirements; and
- (e) The User must not sub-license or sub-contract any of its rights or obligations under this Agreement without the prior written approval of the Bureau, which approval will not be unreasonably withheld but may be subject to such terms and conditions as the Bureau considers appropriate. Without limiting the foregoing, the User must ensure that the obligations placed on any sub-licensee or sub-contractor are no less onerous than those placed on the User under this Agreement.

4. Licence Fee and Other Charges

4.1 The User must pay to the Bureau:

- (a) an amount calculated by the Bureau to recover its costs of service and maintenance of provision of continuing access in accordance with the Charging Policy of the Bureau. The User shall be invoiced on an annual basis for these costs and the User shall pay the amount stated in the invoice within 30 days. The charges appearing in the Bureau's Charging Policy may be varied by the Bureau and the Bureau will give the User reasonable notice of any variation relevant to this Agreement ;
- (b) a "once only" establishment charge as set out in Schedule 1 hereto, payable in advance.

5. Duration and Termination of Licence

5.1 This Agreement commences on the Commencement Date and continues until it is:

- (a) terminated by the Bureau under clause 5.2; or
 - (b) terminated by either party giving the other party 10 working days notice in writing.
- Neither party will be entitled to claim for any loss or damage suffered as a result of or arising in connection with the other party exercising its rights under clause 5.1(b).

5.2 If the User:

- (a) breaches clause 3; or
 - (b) breaches any of the other obligations on its part (including any obligation to pay any money) and fails to remedy this breach within 10 working days of receiving written notice from the Bureau to remedy the breach;
- the Bureau may terminate this Agreement immediately by written notice to the User.

5.3 Termination of this Agreement in accordance with clause 5.2 does not affect the rights of the Bureau to sue for and recover any fees or other amounts then due or to pursue any right of action or remedy which the Bureau may have or be entitled to pursue. Clauses 7 and 8 survive termination of this Agreement.

6. Access

6.1 The User must, at its own expense, establish and maintain appropriate technical and administrative procedures to protect the Network and the Information against any unauthorised access, alteration, or disclosure.

7. Indemnity

7.1 The User indemnifies the Bureau against all liability, loss, damage or injury (including consequential loss and damage and any legal costs) suffered by any person in connection with this Agreement or the use of the information, including but not limited to any liability, loss, damage or injury arising as a result of:

- (a) any loss of or damage to the Network or any of the Bureau's equipment;
- (b) any breach of this Agreement, including any:
 - (i) unauthorised alteration or adaptation of the Network or the Information; or
 - (ii) unauthorised transmission or dissemination of the Information to a third party and any Infringement by that third party;
- (c) any interruption to the continuing operation of the Network;
- (d) the use of, reliance on, or possession of the Information by any person or the existence of errors in the Information; or
- (e) any breach by a sub-licensee or sub-contractor of a sub-licence or sub-contract entered in accordance with clause 3.1(e).

8. Limitation

8.1 The Bureau does not give any representation or warranty that:

- (a) the Information contains no errors, is complete or up to date or will not infringe any third party Intellectual Property rights; or
- (b) the flow or provision of the Information from the Network will not be interrupted for whatever reason and for whatever time.

8.2 The User assumes the sole risk of interpreting and applying the Information and the Bureau is not in any way liable for any loss, damage or injury suffered by the User, or any other person, due to the use or possession of the Information or the existence of errors in the Information.

8.3 Subject to conditions or warranties implied by law which are incapable of exclusion, restriction or modification or where to do so is illegal or would render any provision of this Agreement void:

- (a) no warranty is given and no representation is made by the Bureau in relation to the quality, fitness, suitability for any purpose or otherwise;
- (b) the Bureau's liability to the User for a breach of any condition or warranty is limited to, at the Bureau's discretion, the replacement of the Information or the payment of the cost of replacing the Information.

9. General

9.1 This Agreement represents the entire understanding and agreement between the Parties and supersedes any prior proposal, representation or agreement, written or oral. This Agreement may be modified only by agreement in writing signed by both parties.

9.2 Failure or delay by the Commonwealth in enforcing any provision of the Agreement does not mean that the Commonwealth no longer regards that provision as binding. A waiver by the Commonwealth of a breach of a provision of this Agreement does not constitute a waiver of any other breach of the Agreement.

9.3 The User must not assign, charge, offer for security or otherwise deal with, either in whole or in part, the benefit or burden of this Agreement without the prior written consent of the Commonwealth, which consent may be withheld by the Commonwealth at its absolute discretion.

9.4 Any provision of this Agreement 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 the Agreement.

9.5 This Agreement is governed by, and construed in accordance with, the laws of the State of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the courts of the State.

10. Notices

10.1 Any notice, request or other communication to be given or served pursuant to this Agreement must be in writing and delivered by hand or sent by prepaid post or facsimile transmission to the Address for Notices specified in the Schedule.

10.2 A notice, request or other communication is deemed to have been given or duly served if:

- (a) delivered by hand, upon delivery;
- (b) sent by prepaid post, upon the expiration of three (3) days after the date on which it was sent;
- (c) by facsimile transmission, upon the sender's facsimile machine recording that the facsimile has been properly transmitted to the recipient's facsimile number.

EXECUTED as an Agreement on the _____ day of _____,

Signed on behalf of _____)
the Commonwealth of Australia)
by _____)
Signature)

In the presence of:

.....
Name of Witness

.....
Signature of Witness

Signed on behalf of (*User*) _____)
by _____)
Signature)

In the presence of:

.....
Name of Witness

.....
Signature of Witness

**Schedule 1
Item 1**

Access Times	As required
Address for Notices	For the User: For the Bureau: SRDS, National Climate Centre Bureau of Meteorology PO Box 1289, Melbourne, Vic. 3001 Fax: +61 (3) 9669 4515
Approved Purposes	Use of thunderstorm information for insurance claim or general damage assessment purposes.
Commencement Date	
End Date	Ongoing
Data Type Accessed	Web-based standard storm confirmation reports
Director	the person who is, or for the time being performs the duties of the Director of Meteorology or any person authorised to act on behalf of the Director
Information	information belonging to the Commonwealth available on the Network described in Schedule 1 that is disclosed or made available to the User directly or indirectly by the Commonwealth pursuant to this Agreement
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, circuit layouts, 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 Information belonging to the Commonwealth
Network	Bureau systems for communication, data transfer, data storage or archival.
Service and Maintenance Fee	the service and maintenance fee calculated in accordance with the Charging Policy of the Bureau Establishment Fees: \$60.00 Annual Fees: \$757.00