

## Schedule 4: End User Licence Agreement

### Terms and Conditions for Access to Data

**Commonwealth of Australia** as represented by the Department of Industry

The Commonwealth of Australia as represented by the Department of Industry (**the Commonwealth**) has developed Nationwide House Energy Rating Scheme (**NatHERS**) climate files 2012 compiled from Bureau of Meteorology raw climate data and then used to complete a typical year for every climate zone in Australia. The climate files are used by the Commonwealth for regulatory purposes for most new residential building approvals in Australia. These latest files will be included in future versions of NatHERS accredited software as determined by the NatHERS Administrator. The files may not be suitable for other uses other than residential building ratings and users need to make their own decision on whether they are suitable for the intended purpose and not.

The files are provided in a number of formats that may be used in different software. The data that the files are compiled from is not available and will not be provided even if requested. Only the representative meteorological year information is available and no support on how to use this information will be provided.

**Please note:** The data files are publicly-funded data provided by the Commonwealth and no person or entity may charge for its supply or use. While the Commonwealth has exercised reasonable care and skill in the preparation and collation of the data files, the data is supplied on an 'as is' basis, without warranty of any kind. The Commonwealth accepts no liability for any direct, indirect, special or consequential damages, loss, damage or cost arising from and relating to, any use of the data and/or the information associated with it. Full terms and conditions governing the use of the data can be found at: internet link.

Click internet click and it says:

The End-User Licence Agreement ("EULA") is a legal agreement between you (the "Recipient") and the Commonwealth of Australia as represented by the Department of Industry (the Commonwealth) for any data, information, or other intellectual property you obtain from the Commonwealth, whether directly or indirectly (the "Data"). Data is licensed by the Commonwealth to you for use only on the terms set out below. Please read this EULA carefully. By downloading or using the Data or making or using any copy of the Data, you agree, and are deemed, to be bound by the terms of the EULA.

**Grant of Licence:**

1. The Commonwealth grants to the Recipient a two (2) year non-exclusive, non-transferable licence to the Data, upon the terms of this Agreement.

**Terms of the Licence:**

2. The Recipient acknowledges and agrees that:

2.1 the Data shall only be used for lawful purposes, and shall not be used for any purpose(s) that the Commonwealth may from time-to-time exclude;

2.2 all proprietary rights (including all intellectual property rights) in, or associated with the Data are, and shall remain, vested solely in the Commonwealth (or any other relevant third party who has contributed data for which the Commonwealth acts as custodian). The licence to use the Data contained within this EULA does not give the Recipient any right to, or interest in, the Data other than the limited licence contained within this EULA;

2.3 it will ensure that any party to whom it discloses the Data is aware of the Recipient's obligations, and agrees to be bound by terms equivalent to those in this Agreement; and

2.4 it shall not use the Data to host all, or part(s), of any database via a non-Commonwealth website unless the Recipient receives the Commonwealth's express written permission (through 'The Manager, Residential Buildings Team, Building Energy Efficiency Branch, Department of Industry').

3. The Commonwealth does not make, and the Recipient acknowledges that the Commonwealth has not made, any representation or warranty (express or implied) as to:

(i) the accuracy or completeness of the Data;

(ii) the use to which Data may be put; or

(iii) the results or outcomes which may be obtained from using the Data.

The Recipient agrees and acknowledges that it is solely responsible for its own assessment and evaluation of the Data.

4. The Commonwealth accepts no liability for any loss or damage (whether direct or indirect) incurred by any person through the use of or reliance on the Data. The Recipient agrees it shall indemnify, and

hold the Commonwealth harmless, from and against all damage, loss, claims, cost or expense (including legal fees on a solicitor client basis) in connection with, or resulting from, the Recipient's access to, or use of, the Data.

5. The relevant Commonwealth database or archive is to be appropriately acknowledged in publications (relating to the Data) produced by the Recipient, or any third party to whom the Recipient discloses the Data.

6. The Commonwealth reserves the right to recover any costs for staff time associated with the extraction of Data, where the request requires the use of non-automated means of provision.

7. The Commonwealth may terminate this EULA:

(i) at any time upon 30 days' written notice; or

(ii) immediately if the Recipient breaches any of the terms of this EULA.

The Recipient shall deliver up to the Commonwealth or destroy on oath, within seven (7) days of termination or expiration of this EULA any copies of the Data (in any form) within the Recipient's power, possession or control.

8. The Commonwealth reserves the right to remove access to the Data at any time.

9. This Agreement inures to the benefit of, and binds, any successor in title of a party, including a third party to whom a party's rights and obligations are assigned and any third party engaged by the Commonwealth to host data.

10. This Agreement shall be governed by and construed in accordance with the law of Australia and the parties submit to the exclusive jurisdiction of the Courts of Australia.

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#### **Costs**

Climate files may be accessed free of charge via the Internet.

#### **Questions?**

If you have any questions about these terms and conditions please contact us via the [www.nathers.gov.au](http://www.nathers.gov.au) website.