

THE STATE OF VICTORIA ACTING AS SUSTAINABLE ENERGY AUTHORITY OF VICTORIA (SEAV)
SHAREWARE LICENCE

WARNING: Permission to use this software is conditional upon you, the licensee, agreeing to the terms set out below.

Acceptance of these terms by you will be deemed if you click "I accept". Acceptance will bind you and all of your employees to the terms of the licence.

This licence applies to the enclosed program and any Derivative Work created as a result of modification of the enclosed program. A reference in this licence to "the program" includes a reference to the Source Code of the program.

1. DEFINITIONS

1.1 Terms used in this licence have the following meanings:

"**Derivative Work**" means any work that is derived, produced or created as a result of any modification made to the program by a licensee.

"**Object Code**" means computer programs expressed in a machine readable form only.

"**Source Code**" means computer programs expressed in a source language or form which can be interpreted or compiled and then executed by a computer as commands, and all documentation reasonably required to enable a person familiar with computer programming to read, understand and modify such computer programs.

2. LICENCE

2.1 Grant of Licence

Pursuant to this licence, the licensee acquires a non-exclusive right to:

- (a) use the program;
- (b) copy the program;
- (c) modify the program;
- (d) distribute the enclosed program, subject to compliance with the terms of this licence which govern distribution; and
- (e) otherwise use the program in accordance with the provisions of this licence.

2.2 Use of the Program

If the licensee, or any party to whom the licensee grants access to the program, inputs or records any information or data into the program, the licensee will be requested that this information or data, excluding any information or data that is confidential to the licensee, is provided to SEAV, for the purpose of facility benchmarking studies. SEAV will approach users on an annual basis for the transfer of data in the format required.

2.3 **Reproduction and Adaptation Rights**

The licensee may make a back-up copy of the program for security purposes. Apart from the foregoing, the licensee's right to reproduce or adapt the program is limited to the extent expressly permitted by sections 47B(3), 47C, 47D, 47E and 47F of the *Copyright Act 1968* (Cth).

2.4 **Derivative Works Must Signify Licensee's Changes**

If the licensee modifies the program, it must ensure that the Derivative Work signifies that the licensee has effected a change, including the date of the change, and the licensee must notify SEAV of the change as soon as practicable afterwards. Intellectual property rights in any modifications and in any Derivative Work are assigned to and will vest in SEAV but will in perpetuity remain available to licensees under the terms of this licence. The licensee warrants that any modifications will not infringe the intellectual property rights of a third party, and it agrees to indemnify SEAV in respect of any liability incurred by SEAV to a third party as a result of any breach or alleged breach by the licensee of this warranty. The licensee agrees to provide SEAV with a copy of any modifications and any Derivative Work and acknowledges that SEAV may provide such modifications or Derivative Work to any third parties.

2.5 **New Licensees Must Accept Identical Licence Conditions**

The licensee may distribute the program to third parties (**New Licensees**). The licensee must ensure that any such New Licensee accepts licence conditions identical to those set out in this licence (referred to as a **New Licence**). No additional or varied terms or restrictions may be imposed by the licensee on a New Licensee. For the removal of doubt, SEAV is the licensor under a New Licence and the licensee acts as agent of SEAV in effecting a New Licence. The licensee may not charge a fee to a New Licensee in respect of granting or procuring the New Licence but it may charge for support and related services. It is the licensee's responsibility to ensure that the licence terms are brought to the attention of the New Licensee in a legally effective manner.

2.6 **New Licensees Entitled to Source Code Upon Request**

If the program is distributed in Object Code form only, the licensee must agree to provide the New Licensee with a copy of the Source Code upon request, subject to the terms of this licence.

2.7 **Modification and Distribution Must Comply with Licence Conditions**

Modification or distribution of the program except in accordance with the conditions set out in this licence is not permitted and any attempt to do so will result in immediate and automatic termination of this licence.

3. **NO LICENCE FEE**

The use of this program by the licensee in accordance with the terms of this licence is not subject to a licence fee.

4. **DOCUMENTATION**

This licence extends to any enclosed or related documentation.

5. WARRANTY

5.1 Program Not Guaranteed to be Error Free

The licensee acknowledges that the program cannot be guaranteed error free and further acknowledges that the existence of any such errors will not constitute a breach of this licence.

5.2 Terms Implied by Statute

In the event any statute implies terms into this agreement which cannot be lawfully excluded, such terms will apply to this agreement, save that the liability of SEAV for breach of any such implied term will be limited, at the option of SEAV, to any one or more of the following:

- (a) the replacement of goods to which the breach relates or the supply of equivalent goods;
- (b) the repair of such goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

5.3 Programs Supplied "As Is"

The licensee acknowledges that the program is supplied "as is". SEAV accepts no responsibility for any loss sustained by the licensee as a result of its use of or reliance upon the program, including any action initiated by a third party which alleges an infringement by the licensee of that third party's intellectual property rights. In particular, SEAV will not be liable for any special, indirect or consequential damages arising out of a breach of this licence or arising out of the supply of a defective program.

5.4 No Reliance Upon Representations

The licensee acknowledges that it has exercised its independent judgment in acquiring the program and has not relied on any representation made by SEAV which has not been stated expressly in this agreement or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by SEAV.

6. TERM OF LICENCE

6.1 Term of Licence

This licence commences upon acceptance and is granted in perpetuity, but may be terminated by SEAV immediately by notice to the licensee in the following circumstances:

- (a) if the licensee is in breach of any term of this agreement;

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- (b) if the licensee, being a corporation, becomes the subject of insolvency proceedings;
- (c) if the licensee, being a firm or partnership, is dissolved; or
- (d) if the licensee destroys the program and documentation for any reason.

6.2 Licensee's Obligations Upon Termination

Upon termination, the licensee or its representative will destroy any remaining copies of the program and documentation or otherwise return or dispose of such material in the manner directed by SEAV.

6.3 Survival of Rights and Remedies

Termination pursuant to this clause will not affect any rights or remedies which SEAV may have otherwise under this licence or at law.

6.4 New Licensees Not Affected by Termination

Termination of this licence for any reason will not affect the right of a New Licensee to continue its use of the program in accordance with the terms of the New Licence to the extent that those rights can be exercised in the absence of the licensee. For the removal of doubt, the licensee will, upon termination of this licence, lose its authority to possess a copy of the Source Code, to provide a copy of the Source Code to New Licensees or to provide support services to the extent that such services require the licensee to use the program.

7. WAIVER

Failure or neglect by either party to enforce at any time any of the provisions of this agreement will not be construed or deemed to be a waiver of that party's rights under this licence.

8. GOVERNING LAW

This licence will be governed by and construed according to the laws of Victoria, Australia.

TO PROCEED, CLICK HERE "I ACCEPT"