

DATA USE AGREEMENT

This data use agreement (the “Agreement”), effective as of the date of this data access request (the “Effective Date”), by and between all parties cooperating in the Three State Air Quality Study (3SAQS) and Three State Data Warehouse (3SDW), including the National Park Service, the University of North Carolina at Chapel Hill, Colorado State University, ENVIRON International Corporation, and the Western States Air Resources Council (“Cooperators”) and you (“Recipient”), establishes the terms and conditions under which Recipient will access, copy, and use certain data described below (the “Data”). Cooperators and Recipient are sometimes referred to in this Agreement singularly as a “Party” and collectively as the “Parties.” Tom Moore (WESTAR) serves as the project coordinator (“3SAQS Coordinator”). Direct all questions about the 3SAQS and the 3SDW data to Tom Moore (tmoore@westar.org).

1. Description of Data. The 3SDW holds and manages all original and derivative files prepared under the 3SAQS for the purposes of their cooperator/sponsor agencies, using publicly available protocols and procedures. The 3SDW will keep the original source data files secure at all times; only 3SDW project team members and cooperator/sponsor agencies can access these files for purposes related to the 3SAQS. Recipient may obtain from the 3SDW all original and derivative files prepared under the 3SAQS for the purposes of their cooperator/sponsor agencies, using publicly available protocols and procedures.

2. Recipient’s Use of Data. Except as otherwise specified herein, Cooperators grant Recipient the right to use and disclose Data solely in fulfillment of Recipient’s professional obligations for modeling studies pursuant to National Environmental Policy Act environmental impact assessments of oil and gas development projects in Colorado, Utah, and/or Wyoming. Any exceptions shall be granted in advance, in writing, by the 3SAQS Coordinator, and apply to only a specific external study with an approved modeling study protocol.

3. Restrictions on Recipient’s Use of Data.

It is understood that the Cooperators are authorized by the cooperator/sponsor agencies to provide files for external parties to conduct air quality studies. Any files released to external parties must be done using the protocols and procedures of the 3SDW and with the prior written approval of the 3SAQS Coordinator. The Recipient agrees to the following restrictions on their use of the Data:

- 3.1 The Cooperators will manage access to and use of the Data as proprietary; any distribution of the Data to the Recipient is made with no implied or express permission for the Recipient to use the Data for any purpose other than the purposes specified by the 3SAQS Coordinator in compliance with the protocols and procedures of the 3SDW. Any exceptions shall be granted in advance, in

writing, by the 3SAQS Coordinator, and apply to only a specific external study with an approved modeling study protocol.

- 3.2 A Modeling Study Protocol for the external study that will use the Data must be submitted to the 3SAQS Coordinator in final form as authorized by the group sponsoring the external study and that Protocol submitted to and procedural approval granted by the 3SDW before files are released, or if the external study group already has and/or plans to use 3SDW files, the Protocol must be submitted and procedural approval granted before the 3SDW files can be used in the external study.
- 3.3 Recipient agrees to precisely follow the methodology and time schedule specifications in the submitted Modeling Study Protocol, and if there are any changes to the Protocol needed during the external study, the Recipient must notify the 3SAQS Coordinator within 30 days of the change decision, including a revised Protocol submitted to the 3SAQS Coordinator for procedural approval.
- 3.4 The Data distributed to Recipient are not to be distributed further, and that no use or publication in any form (including papers, meeting/conference presentations, webinars, conference calls, and all other dissemination of 3SDW-based information) shall be done without prior review by the 3SAQS Coordinator, and without opportunity for the Cooperators to be co-authors. The Modeling Study Protocol for the external study shall specify these planned publications and the external study group shall provide reasonable notice for the prior review of any publication event. Any publication of results based on Data shall give a full acknowledgement of the Cooperators
- 3.5 Recipient agrees to use or disclose the Data exclusively for the purposes set forth in **Section 2** above or as required by law.
- 3.6 Without exception, all new modeling input data, all new modeling results, and all modeling evaluation data derived from the Data shall be provided to the 3SDW using the 3SDW protocols and procedures, by the date stipulated in the submitted Modeling Study Protocol. No further access to 3SDW services and Data shall be allowed if the external Protocol is not followed, and/or if all the derived input and evaluation data, and all new modeling results from the external study are not complete and delivered to the 3SDW in a timely manner, following 3SDW protocols and procedures.
- 3.7 Recipient agrees to use appropriate safeguards to protect the Data from misuse and unauthorized access or disclosure, including, without limitation, (i) maintaining adequate physical controls and password protections for any server or system on which the Data may reside; (ii) ensuring that Data is not stored on any mobile device (e.g. laptop, smartphone) or transmitted electronically unless encrypted; and (iii) taking any other measures reasonably necessary to prevent any use or disclosure of the Data other than as provided in this Agreement.
- 3.8 Recipient will report to Cooperators any use or disclosure of the Data not provided for by this Agreement of which Recipient becomes aware. Such report shall be made to the Cooperators through the 3SAQS Coordinator as soon as reasonably possible, but, in any event, no later than one (1) week from the date on which Recipient becomes aware that the Data has been used or disclosed in a manner not provided for by this Agreement. Recipient will fully cooperate with any

remediation that the Cooperators, in their sole discretion, determines is necessary to (i) address any applicable reporting requirements; and (ii) mitigate any effects of such unauthorized use or disclosure of the Data, including, without limitation, measures necessary to restore goodwill with stakeholders, including research subjects, collaborators, governmental authorities, and the public.

- 3.9 Recipient will ensure that any agents, including subcontractors, to whom it provides the Data agree to the same restrictions and conditions set forth in this Agreement.

4. License to Use Data for Specific Purposes. This Agreement and the resulting transfer of Data constitute a license to Recipient to use the Data solely for the purposes set forth in **Section 2**. Recipient agrees that nothing herein shall be deemed a grant of any intellectual property rights or other rights to use the Data for any products or processes for profit-making or commercial purposes. The Data will not be used in research that is subject to consulting or licensing obligations to another recipient, corporation or business entity unless written permission is obtained from the Cooperators. Recipient shall have no rights in the Data other than as provided for in this Agreement.

5. Term and Termination. This Agreement shall be effective as of the Effective Date and shall remain in effect as long as Recipient retains the Data. Either Party may terminate this Agreement with or without cause upon thirty (30) days' written notice to the other Party. The Cooperators may terminate this Agreement at any time if the Cooperators have any reason to believe that Recipient has violated any of the conditions set forth in this Agreement or has accessed any information not described herein or for any purpose not described herein. After termination of this Agreement, Recipient agrees to destroy and make no further use of the Data. Recipient agrees to provide assurances that destruction has been accomplished pursuant to industry standards for data destruction.

6. Indemnification. In no event shall [the Cooperators](#) be liable for any use by Recipient, its employees or agents of the Data, or for any loss, claim, damage or liability, of whatsoever kind or nature, which may arise from, or in connection with, this Agreement or for the use or dissemination by Recipient of the Data. Furthermore, Recipient agrees to indemnify the Cooperators and their employees and agents and hold them harmless from any action, claim, or liability, cost or expense arising directly or indirectly from Recipient's use or misuse of the Data.

7. WARRANTY. THE DATA ARE PROVIDED "AS IS," "AS AVAILABLE," "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, COOPERATORS DISCLAIM ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE COOPERATORS DO NOT MAKE ANY REPRESENTATIONS ABOUT THE ACCURACY, RELIABILITY, CURRENCY, QUALITY, COMPLETENESS, USEFULNESS, PERFORMANCE,

SECURITY, LEGALITY OR SUITABILITY OF THE DATA. YOU EXPRESSLY AGREE THAT YOUR USE OF THE DATA IS AT YOUR SOLE RISK.

8. Miscellaneous Provisions.

- 8.1 Entire Agreement.** This Agreement contains all of the terms and conditions agreed upon by the Parties regarding the subject matter of this Agreement and supersedes any prior agreements, oral or written, and all other communications between the Parties relating to such matters.
- 8.2 Severability.** If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity of the remaining provisions.
- 8.3 Waiver.** The waiver by any Party of any provision or breach of this Agreement shall not operate or be construed as a waiver of any other provision of subsequent breach.
- 8.4 Representation to Others.** Recipient has no rights to use the names, trademarks or other symbols of the Cooperators without prior written consent; provided, however, that Recipient may make factual statements regarding its receipt of the Data pursuant to this Agreement.
- 8.5 Amendments.** This Agreement may be amended or modified only with mutual written consent of the Parties.
- 8.6 Change in Law.** The Parties agree to negotiate in good faith to amend this Agreement to comport with changes in law that materially alter either or both Parties' obligations under this Agreement. Provided however, that if the Parties are unable to agree to mutually acceptable amendment(s) by the compliance date of the change in applicable law or regulations, either Party may terminate this Agreement as provided in **Section 5**.
- 8.7 Construction of Terms.** The terms of this Agreement shall be construed to give effect to interpretative guidance regarding applicable federal and state regulations.
- 8.8 No Third Party Beneficiaries.** Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 8.9 Assignment.** This Agreement is non-assignable and non-transferrable by Recipient without the prior written consent of the Cooperators.
- 8.10 Authority.** Each Party represents that it is authorized to enter into this Agreement and is capable of performing its obligations under this Agreement.
- 8.11 Headings.** The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing this Agreement.

