End user license agreement

Please read this EULA carefully, as it sets out the basis upon which we license the Software for use.

By obtaining the Software, you agree to be bound by this EULA. If you do not agree to be bound by this EULA, you must promptly return the Software to your supplier and remove any instance within your control. There is no monetary recompense for return of the software as it is supplied free of charge and in good faith.

By agreeing to be bound by this EULA, you further agree that you, your employees or anyone you allow access to this software to will comply with the provision of this EULA.

Before you use the software: This software and the source code within is strictly the IP of Swarm Water Management Ltd. It is prohibited for any company or person in direct competition with Swarm Water Management Ltd to use this software in any way.

1.   Definitions

1.1   In this EULA:

"**Documentation**" means [the documentation for the Software produced by Swarm Water Management Ltd and delivered or made available to the User];

"**Effective Date**" means [the date upon which the Software is obtained by the Licensee];

"**EULA**" means [this end user licence agreement, including any amendments to this end user licence agreement from time to time];

"**Intellectual Property Rights**" means [all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)];

"**Licensor**" means any person or company outside of Swarm Water Management in possession of the Software;

"**Licensor Indemnity Event**" has the meaning given to it in Clause 13.1;

"**Services**" means [any services that the Licensor provides to the User, or has an obligation to provide to the User, under this EULA];

"**Software**" means *AquaCalc™ Drainage Calculator Software – Produced by Swarm Water Management Ltd*;

"**Software Defect**" means a defect, error or bug in the Software having [an adverse effect] OR [a material adverse effect] on [the appearance, operation,

functionality or performance of the Software][, but excluding any defect, error or bug caused by or arising as a result of:

(a) [any act or omission of the User or any person authorised by the User to use the Software];

(b) [any use of the Software contrary to the Documentation by the User or any person authorised by the User to use the Software];

(c) [a failure of the User to perform or observe any of its obligations in this EULA]; and/or

(d) [an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification];]

"**Software Specification**" means [the specification for the Software set out in the Documentation];

"**Source Code**" means [the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software or decompiled from the Software, but excluding interpreted code comprised in the Software];

"**Support Services**" means [support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software or otherwise];

"**Term**" means [the term of this EULA, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2];

"**Update**" means [a hotfix, patch or minor version update to the Software];

"**Upgrade**" means [a major version upgrade of the Software];

"**User**" means [the person to whom the Licensor grants a right to use the Software under this EULA]; and

2. Credit

2.1 This document was created using a template from SEQ Legal (https://seqlegal.com).

You must retain the above credit. Use of this document without the credit is an infringement of copyright. However, you can purchase from us an equivalent document that does not include the credit.

3. Term

3.1 This EULA shall come into force upon the Effective Date.

3.2 This EULA shall continue in force indefinitely

4. Licence

4.1   The Licensor hereby grants to the User from [the date of supply of the Software to the User for a period of 24 months license to:

(a)   [install[[a single instance] of] the Software];

(b)   [use[[a single instance] of] the Software[in accordance with the Documentation]]; and

(c)   [create, store and maintain up to [5] back-up copies of the Software],

subject to the limitations and prohibitions set out and referred to in this Clause 4.

4.2   The User may not sub-license and must not purport to sub-license any rights granted under Clause 4.1[without the prior written consent of the Licensor].

4.3   Save to the extent expressly permitted by this EULA or required by applicable law on a non-excludable basis, any licence granted under this Clause 4 shall be subject to the following prohibitions:

(a)   [the User must not [sell, resell, rent, lease, loan, supply, publish, distribute or redistribute] the Software];

(b)   [the User must not alter, edit or adapt the Software]; and

(c)   [the User must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software].

4.4   The User shall be responsible for the security of copies of the Software supplied to the User under this EULA[(or created from such copies)] and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this EULA.

5.   Source Code

5.1   Nothing in this EULA shall give to the User or any other person any right to access or use the Source Code or constitute any licence of the Source Code.

6.   Section Removed

7.   Support Services

7.1   The Licensor shall provide the Support Services to the User [during the Term] by way of remote technical support in usage of the software only.

7.2   The Licensor shall provide the Support Services [with reasonable skill and care].

8.   No assignment of Intellectual Property Rights

8.1   Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the User, or from the User to the Licensor.

11. Warranties

11.1 The Licensor warrants to the User that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

11.2 The Licensor warrants to the User that:

(a) [the Software as provided will conform in all [material] respects with the Software Specification];

(b) [the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs]; and

11.3 The Licensor warrants to the User that the Software[, when used by the User in accordance with this EULA,] will not breach [any laws, statutes or regulations applicable under English law].

11.4 The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not infringe the Intellectual Property Rights of any person [in any jurisdiction and under any applicable law].

11.5 The User warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

12. Acknowledgements and warranty limitations

12.1 The User acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

12.2 The User acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be entirely secure.

12.3 The User acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software.

12.4 The User acknowledges that the Licensor will not provide any [legal, financial, accountancy or taxation advice] under this EULA or in relation to the Software; and, except to the extent expressly provided otherwise in this EULA, the Licensor does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

13. Indemnities

13.3 The User shall indemnify and shall keep indemnified the Licensor against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered

or incurred by the Licensor and arising directly or indirectly as a result of any breach by the User of [this EULA].

13.4 The Licensor accepts no responsibility for the resultant usage of the Software. Any and all calculations carried out on the Software are to be checked by a competent engineer.

14. Limitations and exclusions of liability

14.1 Nothing in this EULA will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law,

and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this EULA, except to the extent permitted by law.

14.3 The Licensor will not be liable to the User in any respect of any losses as a result of usage of the Software.

14.4 The Licensor will not be liable to the User in respect of any loss of profits or anticipated savings.

14.5 The Licensor will not be liable to the User in respect of any loss of revenue or income.

14.6 The Licensor will not be liable to the User in respect of any loss of business, contracts or opportunities.

14.7 The Licensor will not be liable to the User in respect of any loss or corruption of any data, database or software.

14.8 The Licensor will not be liable to the User in respect of any special, indirect or consequential loss or damage.

14.9 The liability of the Licensor to the User under this EULA in respect of any event or series of related events shall not exceed the sum of:

(a) *£1.00*;

14.10 The aggregate liability of the Licensor to the User under this EULA shall not exceed the greater of:

(a) *£1.00*;

15. Termination

15.1 The Licensor may terminate this EULA by giving to the User [not less than 30 days'] written notice of termination[, expiring [at the end of any [calendar month]] OR [after the end of the Minimum Term]].

15.2 The User may terminate this EULA by giving to the Licensor [not less than 30 days'] written notice of termination[, expiring [at the end of any [calendar month]] OR [after the end of the Minimum Term]].

15.4 Either party may terminate this EULA immediately by giving written notice of termination to the other party if:

   (a)   the other party:

      (i)   is dissolved;

      (ii)   ceases to conduct all (or substantially all) of its business;

      (iii) is or becomes unable to pay its debts as they fall due;

      (iv)   is or becomes insolvent or is declared insolvent; or

      (v)   convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

   (b)   an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

   (c)   an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[(other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this EULA)]; or

16. Effects of termination

16.2 Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party.

16.4 For the avoidance of doubt, the licences of the Software in this EULA shall terminate upon the termination of this EULA; and, accordingly, the User must immediately cease to use the Software upon the termination of this EULA.

16.5 Within [10 Business Days] following the termination of this EULA, the User must:

   (a)   return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and

   (b)   irrevocably delete from all computer systems in its possession or control all copies of the Software.

17. General

17.1 No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.

17.2 If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

17.3 This EULA may not be varied except by a written document signed by or on behalf of each of the parties.

17.5 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

17.7 This EULA shall be governed by and construed in accordance with [English law].

17.8 The courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

18. Interpretation

18.1 In this EULA, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

18.2 The Clause headings do not affect the interpretation of this EULA.

18.3 References in this EULA to "calendar months" are to [the 12 named periods (January, February and so on) into which a year is divided].

18.4 In this EULA, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.