

End-User Licence Agreement

This End-User Licence Agreement ("EULA") is a legal agreement between you and Wallingford HydroSolutions Limited ("WHS") of Maclean Building, Crowmarsh Gifford, Wallingford, Oxfordshire, OX10 8BB. Please read it carefully before starting the LowFlows 2 installation process and using the software. It provides a licence to use the software and contains warranty information and liability disclaimers. By installing and using LowFlows 2, you are confirming your acceptance of those contents and agreeing to become bound by the terms of this Agreement. If you do not agree to be bound by those terms, do not install the software or use the data and return the software in its entirety to WHS.

1 In this Agreement:

"you/yours" means the company or other organisation which employs the user of the Program, or the user his or herself if the user is not using the Program in the course of his or her employment;

"we/us/ours" means WHS;

"Program" to the LowFlows package which comprises the executable program files, data, electronic and or hard copy documentation, licence protection dongle and installation files provided on the installation disc;

"Disc" The optical media used to provide the Program;

"Data" refers to the environmental data within the Program;

"Results" means the outputs from the Program including, without limitation all single and tabulated numeric values and images in either electronic or hard copy form, and further data generated from those outputs, for example through the use of additional modelling software; and

"Product" a product or materials of any nature in any form that is or is intended to be made available in similar or substantially similar form to two or more persons which contains, incorporates or consists of Results or data generated using Results.

2 The Program is our proprietary product and is protected by copyright. All rights of ownership and copyright in the Program are reserved by us or our licensors and thus protected by Copyright Law. Copyright and legal title in the data and legal rights thereto vest in Wallingford HydroSolutions Limited or its licensors.

3 Portions of the Program are owned by ESRI; Map Objects is a trademark of ESRI. Copyright ©2006 Environmental systems Research Institute, Inc. All Rights Reserved.

4 In consideration of the licence fee paid (if any) and of the mutual covenants contained in this Agreement we grant you a personal, non-exclusive, non-transferable licence to use the Program and Data on and subject to the terms of this Agreement.

5 You may:

5.1 install and use the Program on one computer but may not allow the Program to be accessed through any network, whether internal or external;

5.2 make full or partial copies of the installed part of the Program for back-up purposes only, provided you label such copies clearly

with our name, the name of the Program and the date of your licence;

5.3 where your licence is for Standard Use:

- i) generate Results for your internal use; and
- ii) generate Results for inclusion in reports provided to third parties in the course of the provision by you of consultancy services;

5.4 where your licence is for Educational Use or Standard Use:

- i) generate Results for non-commercially-funded academic research or for teaching or training purposes;
- ii) communicate Results to recipients of teaching or training; and
- iii) publish Results generated in the course of non-commercially-funded academic research.

5.5 All additional uses are subject to agreement of a separate licence, which may include the payment of royalties.

6 You may not:

- 6.1 systematically or by automated means copy, extract or reutilise any of the Results or make copies of any of the Results available to the public;
- 6.2 use data mining software or any software other than the Program to extract Results from the Program;
- 6.3 create or permit any other person who receives Results to create any Product, and you must impose a contractual prohibition on the making of any Product by any person who directly or indirectly receives Results generated or supplied by you;
- 6.4 repeatedly make any Results available to the public, in any form and by any means, by way of a retrieval or bureau service, whether or not for financial gain.
- 6.5 make copies of the Disc;
- 6.6 transfer, assign, rent, lease, sub-license, sell, give or otherwise dispose of the Program except as permitted in this Agreement;
- 6.7 reverse compile, disassemble, or otherwise reverse engineer the whole or part of the Program;
- 6.8 modify, adapt or translate the Program in any way;
- 6.9 reproduce, distribute or alter the Program documentation;
- 6.10 export or re-export the Disc, Program or Data without the appropriate United Kingdom or foreign government licences; or
- 6.11 reveal the source code of the Program (if supplied) to a third party.
- 6.12 If you do any of the foregoing without our express permission, this Agreement will be breached and your licence automatically terminated. Such termination shall be in addition to and not in lieu of any other legal remedies available to us.

7 Your responsibilities

- 7.1 You are responsible for installing and commissioning the Program onto your computer system unless we have agreed in writing to do so.
- 7.2 You must ensure that proper security precautions are followed to secure the Disc, dongle and the licence certificate; these are valuable and proof of your right to use the Program.
- 7.3 In the event of damage to or malfunction of the dongle we will replace the dongle subject to the original dongle being returned, at your cost, to us prior to dispatch of a replacement dongle. For avoidance of doubt, we will not supply a replacement licence protection dongle if the original dongle cannot be returned to us. In the event of accidental damage we reserve the right to charge you an administration fee for the supply of a replacement dongle.
- 7.4 Unless otherwise agreed in writing, you must train the staff that use the Program to understand its purpose, operations, and limitations. You are responsible for how you use the Program and any Results obtained.
- 7.5 You are responsible for the interpretation of any Results.
- 7.6 Use of the Program must be acknowledged within publications and reports as follows: 'WHS 2011. The LowFlows 2 software. Wallingford HydroSolutions Limited, Wallingford, Oxon, UK.'
- 7.7 You must treat the Program and its documentation as confidential. You must not disclose any part of it to another party without our permission, even after the licence has been terminated.

8 Term

- 8.1 You are licensed to use the Program until the date of expiry stated on the licence certificate.
- 8.2 You may terminate your licence and this Agreement at any time by returning it to us together with the original media, licence dongle and licence certificate.
- 8.3 This Agreement will terminate immediately if you fail to comply with any term or condition of this Agreement.
- 8.4 This licence will terminate immediately if you fail to make payments in accordance with the payment schedule specified on the Licence Certificate.
- 8.5 In the event of termination you must permanently delete all full or partial copies of the Program resident on your computer system(s) in any form and you agree to provide us on request with a written certificate of such deletion.

9 Warranty

Subject to clause 7.2, we warrant that for the duration of your licence for use of the Program:

- 9.1 The medium on which the Program is recorded will be free from defects in materials and workmanship.
- 9.2 The copy of the Program in this package will materially conform to the documentation that accompanies the Program. If the Program fails to operate in accordance with this warranty, you may, as your sole and exclusive remedy, return the Program to us during the licensed period, along with dated proof of purchase, specifying the problem, and we will provide you either

with a new version of the Program or a full refund (at our option).

- 9.3 We shall not be liable under the warranties given in clause 8.1 above if the Program fails to operate in accordance with the said warranty as a result of any modification, variation, or addition to the Program not performed by us or caused by any abuse, corruption or incorrect use of the Program, including use of the Program with equipment or other software which is incompatible.

10 Disclaimer

We do not warrant that the Program will meet your requirements or that operation of the Program will be uninterrupted or error free. We exclude and hereby expressly disclaim all expressed and implied warranties or conditions not stated herein (including without limitation), loss of profits, loss or corruption of data, business interruption or loss of contracts, so far as such exclusion or disclaimer is permitted under the applicable law. If you are a consumer this Agreement does not affect your statutory rights.

11 Liability

- 11.1 Our liability to you for any losses shall not exceed the amount you originally paid for the Program and this licence except in relation to losses, claims and expenses you suffer arising out of our breach of third party intellectual property rights in connection with the Program where our liability to you shall be £50,000 in the aggregate.
- 11.2 In no event will we be liable to you for any indirect or consequential damage even if we have been advised of the possibility of such damage. In particular, we accept no liability for any programs or data made or stored with the Program nor for the costs of recovering or replacing such programs or data.
- 11.3 You hereby acknowledge and agree that the limitations contained in this clause are reasonable in light of all the circumstances.

12 General

Should any of the provisions in this Agreement be ruled invalid under any law or Act of Parliament, they shall be deemed modified or omitted only to the extent necessary to render them valid and the remainder of the Agreement shall be upheld.

13 Governing Law and Jurisdiction

This Agreement is governed by English law and the parties submit to the jurisdiction of the English Courts.

Last modified 21st January 2011.