

## WINFAP 4 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 WINFAP 4 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 WINFAP 4, 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" refers to the WINFAP 4 package which comprises the executable program files, data, electronic and or hard copy documentation, Serial Number and installation files provided to you;
- "Lease Period" means the period of 370 days from the date of issue of the licence Serial Number by us to you at the point of your purchase;
- "Serial Number" mean the unique alpha-numeric activation code;
- "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 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 and for the Lease Period.

4 The Program is licensed for the purposes of one installation on a single computer during the Lease Period; for avoidance of doubt the sequential installation of the Program on multiple computers during the Lease Period is not permitted. The de-installation of the Program and re-installation on the same or a different PC will require the issue of a replacement Serial Number. The decision to issue a replacement Serial Number will be at our discretion, not to be unreasonably withheld.

### 5 You may:

5.1 install and use the Program on one computer for the duration of the Licence Period 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 your 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 transfer, assign, rent, lease, sub-license, sell, give or otherwise dispose of the Program except as permitted in this Agreement;
- 6.5 reverse compile, disassemble, or otherwise reverse engineer the whole or part of the Program;
- 6.6 modify, adapt or translate the Program in any way;
- 6.7 reproduce, distribute or alter the Program documentation;
- 6.8 export or re-export the Program; or
- 6.9 reveal the source code of the Program (if supplied) to a third party.
- 6.10 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.
- 7.2 You must ensure that proper security precautions are followed to secure the software Serial Number; this is the proof of your right to use the Program.
- 7.3 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.
- 7.4 You are responsible for the interpretation of any Results.
- 7.5 You must include the following copyright statement on Results produced by the Software, including but not limited to images: "© Wallingford HydroSolutions Limited [year]".

## **8 Term**

- 8.1 You are licensed to use the Program for the duration of your Lease Period.
- 8.2 This Agreement will terminate immediately if you fail to comply with any term or condition of this Agreement.
- 8.3 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.

## **9 Warranty**

Subject to clause 7.2, we warrant that for the duration of the Lease Period for use of the Program:

- 9.1 The copy of the Program will materially conform to the documentation that accompanies the Program. If the Program fails to operate in accordance with this warranty we will provide you either with a new version of the Program or a full refund (at our option).
- 9.2 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 31<sup>st</sup> October 2016.