

END USER LICENCE AND SUPPORT AGREEMENT

IMPORTANT USER NOTICE – READ THIS CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE.

This End User License Agreement (**EULA**) is a legal agreement between e-Water Innovation Pty Limited (ACN 133 551 283) of Room B12, Building 22, The University of Canberra, Canberra, Australian Capital Territory 2601, Australia (**Licensor**) and the person or entity (**End User**) who acquired e-Water's Source Catchments software (the **Software**). Each person who uses the Software under the authority or control of the End User and who accepts or is deemed to accept the terms and conditions of this EULA is referred to as a **User**.

The Software includes: (a) the executable version of Source Catchments ; any patches and minor modifications, enhancements, improvements and revisions of the Software, not being new versions of the Software which alter its functional characteristics, made available by the Licensor at its discretion from time to time (**Upgrades**); (b) if applicable, the unique code provided by the Licensor to the End User using its Online Licence Management System (**OLMS**) which enables activation of the Software on a particular computer (**Soft Lock Key**); (c) if applicable, the security device provided by the Licensor which must be connected by the End User to the End User's computer equipment in order to operate the Software, where the Software is not supplied with a Soft Lock Key (**Hard Lock Key**); and (d) any technical, operating and user manuals (including the User Guide and QuickStart Guide) (**Documentation**).

1. **ACCEPTANCE OF THIS EULA BY THE END USER:** The End User acknowledges and agrees that the End User has acquired the Software on the condition that the installation and use of the Software by the End User is subject to the terms and conditions of this EULA. The End User further acknowledges and agrees that it will procure each User's compliance with the terms and conditions of this EULA. If the Software is installed or downloaded by an administrator, by clicking on the "I ACCEPT" button displayed on the relevant server, the administrator is deemed to accept the terms and conditions of this EULA for and on behalf of the End User and each User in respect of whom the administrator installs the Software or permits access to the Software. If you do not agree to all of the terms and conditions of this EULA, you must click the "I DO NOT ACCEPT" button and cancel the installation or downloading and must not thereafter install, use or access, or allow any User to install, use or access, the Software. The End User acknowledges and agrees that acceptance of any modifications to the terms of this EULA made by the Licensor from time to time will be a pre-condition for installation and use of any Upgrades.
2. **FEES:** All fees paid by the End User to the Licensor under this EULA are non-refundable. Any payments made under this EULA are exclusive of goods and services, value added or similar taxes. Where the End User is required by law to pay such taxes, the total amount payable to the Licensor will be increased by the additional amount of any applicable taxes.
3. **DELIVERY AND RISK:** The Software will be made available to the End User for download from the Licensor's nominated website or delivered on CD/DVD-ROM, as selected by the End User. Where the Software is delivered on CD/DVD-ROM, the Licensor may supply a Hard Lock Key to the End User. Risk of loss or damage to the Software, Soft Lock Key or Hard Lock Key passes to the End User on delivery.
4. **ACTIVATION:** The End User must activate the Software, and may only access the Software using either a Soft Lock Key or Hard Lock Key. The Licensor will replace a lost or damaged Hard Lock Key upon request of the End User, receipt of payment of a replacement fee and reasonable evidence to support the fact that the claim of loss or damage is genuine. The End User acknowledges that any Hard Lock Key(s) remain the property of the Licensor's supplier at all times.
5. **PROTECTION AND SECURITY:** The End User agrees to use reasonable endeavours to safeguard the Software, Soft Lock Key(s) and Hard Lock Key(s) to ensure that no unauthorised person has access to them and that there is no unauthorised copying or distribution of the Software or distribution of the Soft Lock Key(s) or Hard Lock Key(s).
6. **SYSTEM REQUIREMENTS:** The End User acknowledges and agrees that the Software may only be installed and used on PC computer equipment, including a server or individual computer, which meets or exceeds the following minimum system requirements:
 - (a) Windows XP service pack 3 (Note, the **Software** will not run on Windows 7 or Vista operating systems)
 - (b) .NET framework version 3.5

- (c) an Intel Pentium III, 1 GHz processor or
- (d) a minimum screen resolution of 800 x 600 pixels at 8-bit (256) colours (and preferably 1024 X 768 at 16-bit);
- (e) a minimum 5 gigabytes (Gb) of free hard drive space (preferably 10Gb) for a single PC and 20Gb of free space on "C" drive for database server (for a network of multiple End Users with Hard Lock Keys);
- (f) a minimum of 1 Gb of RAM; and
- (g) access to the internet.

Local administrator rights may be required for installation and use of the Software.

7. **END USER RESPONSIBILITIES:** The End User acknowledges and agrees that it is solely responsible for obtaining, installing, operating and maintaining all hardware, other equipment and third party software required for use of the Software. All computer functionality, operating system, network services, hardware maintenance and daily data backup are the responsibility of the End User. **THE LICENSOR IS NOT RESPONSIBLE FOR DATA LOSS ARISING AS A RESULT OF USE OF THE SOFTWARE OR INTERACTION OF THE SOFTWARE WITH ANY THIRD PARTY SOFTWARE.**
8. **SCOPE OF LICENCE:** On receipt of the applicable licence fee (if any) from the End User and acceptance by the End User of this EULA and subject to paragraph 16, the Licensor grants to the End User during the Initial Term (if applicable) and any Additional Term (as defined in paragraph 16) a personal, non-exclusive, non-transferable licence (without the right to sublicense) to use the Software subject to the terms and conditions of this EULA. This licence is limited to the number of concurrent Users set out in the End User's order or, if no number is specified in the order, to one User. Except as required by law, the End User does not have any rights to the source code of the Software.
9. **RESTRICTIONS ON USE:** The End User agrees irrevocably and unconditionally:
 - (a) not to use the Software or any part thereof to provide outsourcing or computer bureau services;
 - (b) not to modify, translate, adapt or distribute the Software or communicate the Software to the public;
 - (c) not to rent, lease, resell, sublicense or lend the Software;
 - (d) not to reverse engineer, reverse assemble, disassemble, reverse compile or imitate the Software or otherwise attempt to access, copy, display or extract the source code of the Software (except to the extent expressly permitted by law) or create derivative works based on the Software;
 - (e) not to remove any copyright or other proprietary protection legends or notices from the Software and to protect the confidential and proprietary information contained therein from being disclosed to any unauthorised person;
 - (f) not to combine the Software with other software (except to the extent expressly permitted by law);
 - (g) not to claim ownership of the Software either verbally or in writing; and
 - (h) not to use or copy the Software except as expressly provided in this EULA.
10. **MONITORING:** The End User consents to the Licensor monitoring and keeping records of the End User's valid use of the Software through its **OLMS**.
11. **COPIES:** Except as expressly permitted by law or this paragraph, the End User may only copy the Software with the Licensor's prior written consent. The End User may make one copy of the Software solely for backup purposes. Any copy of the Software must clearly show all titles, trade marks, copyright notices, legends, and other proprietary markings without modification.
12. **SUPPORT:** Subject to paragraph 13, the Licensor will:
 - (a) provide Upgrades for the Software via the OLMS, or require the End User to download such Upgrades from a nominated website. The End User must install all Upgrades within a reasonable time of them being made available by the Licensor;
 - (b) provide technical support services to the End User relating to installation of the Software and, subject to the End User having installed all available Upgrades, use of the Software; and
 - (c) provide general assistance by email (or where applicable) telephone at its discretion with queries relating to forum issues or technical data used in the Software (including hydrological data and parameterisation).

Subject to paragraph 13, the technical support services will be provided via a "Help Desk" with a contact point to be reached by e-mail or telephone (as applicable) at an email address or

telephone number nominated by the Licensor from 9.00 am to 5.00 pm EST excluding Saturdays, Sundays and any public holidays in the Australian Capital Territory, Australia. Support outside of these hours is not available unless agreed in writing and may be subject to the payment of additional fees. The End User agrees, on request of the Licensor, to promptly provide any information available to assist the Licensor in identifying a technical error (such as any error diagnostic messages).

13. **NATURE OF SUPPORT AND FEES DURING INITIAL AND ADDITIONAL TERMS:** Support:
- (a) during the Initial Term (if applicable) will be provided free of charge by the Licensor at its reasonable discretion in the form of Upgrades and technical support services by way of an online forum, online information and optional (licensor) email support only. The End User may also obtain telephone support by payment in advance of a telephone support service fee (as notified by the Licensor from time to time) for each concurrent User; and
 - (b) during an Additional Term will be provided in the form of Upgrades and technical support (email and telephone support) subject to the End User having paid the applicable annual licence fees in advance for each concurrent User as notified by the Licensor prior to the expiry of the previous term.
14. **EXCLUSIONS:** The Licensor's technical support services do not include the rectification of errors, defects or problems caused or contributed to by:
- (a) default or negligence of the End User;
 - (b) improper or unauthorised use of the Software;
 - (c) any modifications or alterations of the Software other than as approved by the Licensor;
 - (d) causes external to the Software such as, but not limited to, power failure, electric power surges or a force majeure event;
 - (e) any failure by the End User to download and install Upgrades supplied by the Licensor, including by being made available on the Licensor's nominated website;
 - (f) any failure by the End User to comply with the Documentation;
 - (g) any failure by the End User to comply with any reasonable guidelines or instructions provided by the Licensor;
 - (h) any fault, defect, omission or error in any data, software or equipment not supplied by the Licensor;
 - (i) any failure arising out of any network (including the internet) or communications; or
 - (j) use of the Software with any software or equipment not approved or recommended by the Licensor, or in a manner or for a purpose in breach of this EULA or not reasonably contemplated by this EULA.

The Licensor reserves the right to charge the End User additional fees (at its then current rates) for the rectification of any errors, defects or problems caused or contributed to by any of the reasons listed above.

15. **OWNERSHIP:**
- (a) The End User acknowledges and agrees that all intellectual property in and to the Software (including copyright in all drawings, designs and specifications relating to the Software, algorithms, scientific or technical data and models forming the part of the Software) and any confidential information relating to the Software remains the property of the Licensor or its licensors, and that the End User acquires no right, title or interest in or to that intellectual property by virtue of this EULA other than as expressly stated in this EULA.
 - (b) The End User must not take any action, and must not assist any person to take any action, that may jeopardise, limit, challenge or interfere with the Licensor's or its licensors' ownership of or rights in the Software.
 - (c) The parties acknowledge that all intellectual property rights in relation to any development, modification, adaptation or improvement of the Software made or acquired by the End User during the Term (**Improvements**) will, to the extent permitted by law, vest in and are hereby assigned to the Licensor with effect from their creation. The Licensor grants to the End User a licence to use any Improvements on the terms of this EULA. Where title to Improvements is not permitted by law to vest in the Licensor, the End User grants to the Licensor a perpetual, irrevocable, transferable, royalty-free, worldwide licence (including the right to sublicense) to use the Improvements for any purpose.
 - (d) If any person alleges, or if the Licensor believes, that the use of the Software may infringe the intellectual property rights of any person, the Licensor may suspend the End User's licence to use the Software until the Licensor has made any alterations required to make the Software non-infringing. If the Licensor determines, in its absolute discretion, that such alterations cannot be made, the Licensor reserves the right to terminate this EULA.

16. **CONFIDENTIALITY:** The End User must treat all information concerning the Software and Documentation as confidential and proprietary information of the Licensor (other than information

that is lawfully in the public domain or lawfully in the possession of the End User at the time of disclosure). The End User may not reproduce, use or disclose that information to any person without the Licensor's prior written consent, other than to those of the End User's employees who must have access to such information for the performance of their duties.

17. **TERM:** Unless this EULA is terminated earlier by the Licensor or the End User in accordance with its terms, this EULA will remain in force for an initial period of 12 months (**Initial Term**). This EULA will continue in force for additional 12 month periods (each such additional period being an **Additional Term**) subject to payment by the End User in advance (or other provided payment options) of the applicable licence fees (as notified by the Licensor from time to time) for each concurrent User..
18. **TERMINATION BY END USER:** The End User may terminate this EULA at any time by giving written notice to the Licensor and complying with the conditions of paragraph 19.
19. **TERMINATION BY LICENSOR:** The Licensor may terminate this EULA by giving at least 60 days' written notice to the End User prior to the expiry of the Initial Term (if any) or any Additional Term, or immediately by giving written notice to the End User if at any time the right of the Licensor to provide this licence under its arrangements with its licensors of the Software is terminated or if the End User:
 - (a) fails to pay any fees which are due and payable under this EULA within 30 days;
 - (b) fails to comply with any term or condition of this EULA; or
 - (c) becomes insolvent.
20. **CONSEQUENCES OF TERMINATION:** Upon termination or expiry of this EULA for any reason the End User must:
 - (a) immediately pay any outstanding amounts owed to the Licensor under this EULA;
 - (b) cease all use or exploitation of any intellectual property or confidential information of the Licensor or its licensors relating to the Software;
 - (c) deliver up or destroy (at the Licensor's option) all copies of the Software and Documentation that are in the possession of the End User; and
 - (d) return all Hard Lock Keys to the Licensor.

Termination of this EULA for any reason does not affect the rights and obligations of either party arising prior to termination. The provisions of paragraphs 15, 16, 20, 21, 22, 23 and 24 (inclusive) survive the termination or expiry of this EULA for any reason.

21. **TECHNICAL LIMITATIONS AND DISCLAIMER:** The Software is a conceptual design tool and should be used by the End User only as an aid to decision-making. The Software does not incorporate all aspects of catchment management that decision-makers must consider. Factors such as land and soil characteristics, ecological requirements, amenity, passive recreation, and land use also influence catchment modelling. Hydraulic analysis,, indicators of ecosystem health, and the integration of urban water management considerations are omitted from the model.

THE SOFTWARE IS NOT A DETAILED DESIGN TOOL AND SHOULD BE USED ONLY AS ONE OF SEVERAL TOOLS USED CATCHMENT MANAGEMENT. THE SOFTWARE MUST NOT BE RELIED ON AS THE SOLE BASIS ON WHICH TO IMPLEMENT EFFECTIVE CATCHMENT MANAGEMENT SOLUTIONS, PARTICULARLY WHERE AN INCORRECT SOLUTION COULD RESULT IN INJURY OR LOSS TO PERSON OR PROPERTY. IF THE END USER USES THE SOFTWARE IN SUCH A MANNER IT IS AT THE END USER'S OWN RISK AND, TO THE EXTENT PERMITTED BY LAW, THE LICENSOR EXPLICITLY DISCLAIMS ALL LIABILITY FOR SUCH USE .

22. **LIMITED WARRANTY AND LIABILITY:** The Licensor warrants that:
 - (a) it has the right to license the Software to the End User;
 - (b) as at the date of this EULA, it is not aware (without having conducted any specific enquiries) of any claims that the Software infringes the intellectual property rights of third parties; and
 - (c) the Software will substantially operate in accordance with the specifications set out in the Documentation (**Operating Specifications**).

Except for the limited warranties described above terms, conditions and warranties which by law may not be excluded, to the extent permitted by law the Software is provided "as is", and the End User assumes the entire risk as to its use, quality and performance. Without limiting the foregoing, the Licensor disclaims liability to the fullest extent permitted by law as to:

- (a) merchantability of the Software;
- (b) fitness of the Software for a particular purpose;

- (c) error-free operation of the Software; and
- (d) any other warranties, express or implied.

It is the End User's responsibility to verify the results obtained from the use of the Software.

If the End User believes that the Software does not operate in accordance with the Operating Specifications, the Licensor will replace the Software at no charge to the End User, provided that the End User notifies the Licensor in writing with a description of the reasons why the End User believes that the Software does not operate in accordance with the Operating Specifications. TO THE EXTENT PERMITTED BY LAW THIS IS THE END USER'S SOLE REMEDY AND THE LICENSOR EXCLUDES ALL OTHER LIABILITY TO THE END USER AND ANY PERSON FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES, LOSS OF DATA, GOODWILL, BUSINESS OPPORTUNITY, PROFITS OR REVENUE, HOWEVER OCCURRING AND UNDER ANY CAUSE OF ACTION EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In the event that any of the above limitations or exclusions are held to be unenforceable, the Licensor's total liability is not to exceed the amount of the licence fees paid by the End User for the Software.

- 23. **INDEMNITY:** The End User releases and indemnifies the Licensor and its associated entities and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the End User and whether at common law, in equity, in tort (including negligence), under contract pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of:
 - (a) a breach of the End User's warranties or obligations contained in this EULA; or
 - (b) the negligence of the End User or its officers, employees, agents or contractors, and from and against all damages, costs and expenses incurred in defending, satisfying or settling any such claim, proceeding or demand.
- 24. **SPECIAL CONDITIONS FOR BETA AND TRIAL VERSIONS:** Any Beta or Trial versions of the Software are subject to the following special terms and conditions, which prevail over any conflicting terms and conditions in the remainder of this EULA:
 - (a) The Licensor may, at its sole discretion, terminate the End User's licence to use a Beta or Trial version at any time by notice in writing to End User.
 - (b) No licence fee or support fee is payable by End User for a Beta or Trial version of the Software.
 - (c) No technical support services or Upgrades are available to End User for a Beta or Trial versions of the Software.
 - (d) The functionality of any Beta or Trial versions of the Software is at the sole discretion of the Licensor. Without limiting the generality of the foregoing, Beta versions of the Software have limited functionality in relation to copying and printing of graphs, exporting summary files and flux file reporting as well as reduced amount of rainfall data. The Trial version of the Software includes a permanent background watermark saying "Trial Version" on the model palette and a permanent background watermarking for all graphs.
 - (e) The Beta and Trial versions of the Software may only be used by the End User for non-commercial evaluation purposes. The End User may only conduct research using Beta or Trial versions of the Software with the prior written approval of the Licensor;
 - (f) The End User may not make any publication or public comment in relation to a Beta or Trial version without the prior written approval of the Licensor.
- 25. **GENERAL:**
 - (a) **Entire Agreement:** This EULA constitutes the entire agreement between the Licensor and the End User in relation to its subject matter and any prior representations, statement or undertaking howsoever made are expressly excluded.
 - (b) **Amendments:** The Licensor reserves the right to modify the terms of this EULA from time to time and any such modifications will take effect once notified to the End User. Subject thereto, no amendment or modification to this EULA is valid unless it is in writing and signed by an authorised representative of the Licensor.
 - (c) **Further Assurances:** The End User agrees, at its own expense, on request of the Licensor, to do everything reasonably necessary to give effect to this EULA and the transactions contemplated by it, including the execution of documents.
 - (d) **Severance:** If any provision of this EULA is declared illegal or unenforceable, such provision is to be severed from this EULA and all other provisions of this EULA will remain in full force and effect.
 - (e) **Waiver:** Any delay or failure by the Licensor in enforcing its rights under this EULA is not to be construed as a waiver of those rights.

- (f) **Assignment:** The End User may not assign, sub-contract or otherwise transfer any of the End User's rights or obligations under this EULA unless the Licensor has given its prior written consent. The Licensor will not unreasonably withhold its consent for a transfer to an associated entity of the End User, or to a purchaser of all or a substantial part of the End User's business.
- (g) **Novation:** The Licensor may by written notice to the End User transfer its rights and obligations under this EULA pursuant to a novation agreement in favour of a transferee who accepts all obligations of the Licensor under this EULA. The End User must do all things necessary to give effect to such novation, including the execution of relevant documents.
- (h) **Taxes:** Any applicable licence or other fees payable by End User under this EULA are (unless otherwise expressly stated by Licensor) exclusive of any applicable goods or services or value added taxes or other taxes (**Taxes**). Upon Licensor's request, End User must pay or reimburse to Licensor any amounts payable on account of Taxes levied upon or arising out of the supply of the Software or any services by Licensor to End User.
- (i) **No application:** The United Nations Convention on Contracts for the International Sale of Goods will not apply in any way to the Software or this EULA.
- (j) **Governing law and jurisdiction:** This EULA is governed by the laws of the Australian Capital Territory, Australia and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory, Australia.