

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 eWater Limited (ACN 115 422 903) of Room A44, Building 22, The University of Canberra, Canberra, Australian Capital Territory 2601, Australia (**eWater**) (**Licensor**) and the person or entity (**End User**) who purchased eWater's MUSIC software and, if applicable, **MUSIC-link** 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**. Where End User acquires **MUSIC-link**, the terms of this EULA incorporate the terms of the '**MUSIC-link** agreement.

The Software includes: (a) the executable version of MUSIC v6 and, if applicable, **MUSIC-link**; any patches and minor modifications, enhancements, improvements and revisions of 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**); (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 purchased 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. Where the End User installs the version of the Software covered by this EULA, and also continues to use an earlier version of the Software (**Older Software**), the End User acknowledges and agrees that use of both the Software and the Older Software will be governed by this EULA, and the end user licence agreement that was applicable to the Older Software will no longer apply.
- 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 tax.
- 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 will 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. Licensor will replace a lost or damaged Hard Lock Key upon request of the End User, receipt of payment of the 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) or 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).

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) 1 gigahertz (GHz) or faster processor;
- (b) Microsoft Windows XP, Windows 7 or Windows 8 operating systems;
- (c) a screen resolution of 1024 x 768 or greater;
- (d) 5 gigabytes (GB) of free hard drive space (preferably greater than 20Gb);
- (e) 2GB RAM or greater;
- (f) Internet access;

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

USER PRIVILEGES: A large amount of data is generated when running a MUSIC simulation. This data is stored in a temporary file on the computer and can be several gigabytes in size. If network or Windows user privileges on the computer restrict the Software from this type of activity (writing a file to the hard drive) it can prevent results being made available.

6. **END USER RESPONSIBILITIES:** 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 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.
7. **SCOPE OF LICENCE:** On receipt of the applicable licence fee(s) from the End User and subject to paragraph 15, the Licensor grants to the End User a personal, non-exclusive, non-transferable, perpetual licence (without the right to sub-license) 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 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.

8. **RESTRICTIONS ON USE:** The End User agrees irrevocably and unconditionally:
- (a) not to use the Software or any part or output thereof to provide outsourcing, terminal services, computer bureau services or training services;
 - (b) not to copy, 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;
 - (h) where the End User does not have a **MUSIC-link** Agreement in place with the Licensor, that it will not:
 - (i) request other end users of MUSIC software to configure their models or reports based on the parameters of a third party **MUSIC-link** customer; or
 - (ii) accept MUSIC models or reports from other end users of MUSIC software, where those models or reports are based on the parameters of a third party **MUSIC-link** customer;
 - (i) to not submit models or reports, based on the parameters of a third party **MUSIC-link** customer, to a MUSIC software end user who does not also have a **MUSIC-link** Agreement in place with the Licensor; and
 - (j) not to use or copy the Software except as expressly provided in this EULA.
9. **MONITORING:** End User consents to the Licensor monitoring and keeping records of End User's valid use of the Software through its OLMS.
10. **COPIES:** Except as expressly permitted by law or this paragraph, End User may only copy the Software with the Licensor's prior written consent. 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.
11. **SUPPORT:** Subject to End User having paid the annual support fees in advance for each concurrent User, the Licensor will:
- (a) provide Upgrades for the Software via the OLMS, or require End User to download such upgrades from a nominated website. End User must install all Upgrades while their support is active;

- (b) provide technical support services to End User relating to installation of the Software and, subject to End User having installed all available Upgrades, use of the Software.

The Licensor will also provide general assistance at its discretion with queries relating to forum issues or technical data used in the Software (including hydrological data and parameterisation). 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).

The technical support services will be provided via a "Help Desk" with a contact point to be reached by e-mail from 9.00 am to 5.00 pm in the ACT (Australian Capital Territory) excluding Saturdays, Sundays and any public holidays in the ACT. Support outside of these hours is not available unless agreed in writing and may be subject to the payment of additional fees.

12. **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.

13. **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 licensor, 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 licensor's 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. 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 End User's licence to use the Software until the Licensor has made any alterations required to make the Software non-infringing. If Licensor determines, in its absolute discretion, that such alterations cannot be made, Licensor reserves the right to terminate this EULA.
14. **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 such information for the performance of their duties.
15. **TERM:** The licence granted in this EULA:
- (a) for MUSIC is perpetual; and
 - (b) for **MUSIC-link** – is as set out in the **MUSIC-link** Agreement applicable to the End User, unless terminated by the Licensor or End User in accordance with the terms of this EULA.
16. **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 18.
17. **TERMINATION BY LICENSOR:** The Licensor may terminate this EULA on 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 (including eWater) is terminated, or 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.

18. **CONSEQUENCES OF TERMINATION:** Upon termination or expiry of this EULA for any reason 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 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 13, 14, 18, 19, 20, 21 and 24 (inclusive) survive termination of this EULA.

19. **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 stormwater management that decision-makers must consider. The Software does not contain the algorithms necessary for detailed sizing of structural stormwater quantity and/or quality facilities. Factors other than stormwater quality (such as land and soil characteristics, ecological requirements of receiving waters, amenity, passive recreation, and landscape design) also influence sustainable urban drainage design. Hydraulic analysis for stormwater drainage, indicators of ecosystem health, and the integration of urban stormwater management facilities into the urban landscape are omitted from the model.

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

20. **LIMITED WARRANTY AND LIABILITY:** The Licensor warrants that:

- (a) that 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) that the Software will substantially operate in accordance with the specifications set out in the Documentation (**Operating Specifications**).

Except for the limited warranties described above, to the extent permitted by law the Software is sold "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 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. THIS IS THE END USER'S SOLE REMEDY. TO THE EXTENT PERMITTED BY LAW, 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 shall not exceed the amount of the licence fee paid by the End User for the Software.

21. **INDEMNITY:** The End User releases and indemnifies the Licensor, and its associated entities and its 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.
22. **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; and
- (g) The End User may not to use the Software or any part or output thereof to provide outsourcing, terminal services, computer bureau services or training services

23. **PRODUCT LISTING:** This Software may include access to listings of certain product details (**Product Listings**). You acknowledge that all information included in the Product Listings is provided by the third party suppliers of the relevant products and their inclusion does not constitute any endorsement or accreditation by eWater [or its related bodies corporate]. eWater [and its related bodies corporate] make no representation as to the accuracy, completeness, usefulness or suitability for any purpose of the Product Listings or any product or information contained in them. To the extent permitted by law the information is provided 'as is', without express or implied warranty. You should independently investigate whether a product is appropriate for the intended purpose and validate any information in any Product Listing with the supplier of the relevant product. The Product Listings are not a complete listing of relevant products. To the extent permitted by law, eWater [and its related bodies corporate] expressly exclude all liability for any loss, damage or expense (whether direct or indirect) arising out of or in connection with any use of the Product Listings and information contained in them.

24. **GENERAL:**

- (a) **Entire Agreement:** This EULA (and, if applicable, the **MUSIC-link** Agreement applicable to the End User) 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) **Inconsistency:** To the extent of any inconsistency between this EULA and any applicable **MUSIC-link** Agreement, the terms of this EULA apply to the extent of the inconsistency.
- (d) **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.

- (e) **Severance:** If any provision of this EULA is declared illegal or unenforceable, such provision shall be severed from this EULA and all other provisions of this EULA shall remain in full force and effect.
- (f) **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.
- (g) **Assignment:** The End User may not assign, sub-contract or otherwise transfer any of the End User's rights 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 End User's business.
- (h) **Novation:** The Licensor may by written notice to 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 Licensor under this EULA. The End User must do all things necessary to give effect to such novation, including the execution of relevant documents.
- (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 Licence.
- (j) **Governing law and jurisdiction:** This EULA is governed by the laws of the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.