

# Software Licence

## Aquatic Ecosystem Model 3D and HydroHub Lite

### 1. Software licence

1.1 Subject to the terms and conditions of this Agreement, Hydronumerics grants to the User a non-exclusive, non-transferable licence (without any right to sub-licence) for the Term to:

- (a) install, access and use one (1) or more instances of the Software on one or more Supported Operating Environments on the User's own production systems; and
- (b) make one (1) copy of the Software only as reasonably required for backup, disaster recovery and security purposes.

1.2 The User acknowledges and agrees that the Software may only be used pursuant to this agreement under a Supported Operating Environment in accordance with the normal operating procedures as notified by Hydronumerics from time to time.

1.3 Except to the extent permitted by this agreement, the User must not:

- (a) transfer, distribute, hire, rent or lease the whole or any part of the Software;
- (b) permit any other persons to install the Software on a production system other than the User's production system; and
- (c) permit access and/or use the Software (including provision of use or access to the Software through any service bureau, timesharing, application service provider or other similar managed or distributed provision of software services via a network).

1.4 Except to the extent permitted by law, authorised, expressly or implicitly, by this agreement or otherwise as reasonably contemplated by this agreement, the User must not:

- (a) copy, modify or reproduce the Software except to the extent permitted or authorised by this agreement or at law generally;
- (b) disassemble, decompile, reverse assemble, reverse compile or otherwise reverse engineer the whole or any part of the Software;
- (c) attempt to do any of the above acts in paragraphs (a) and (b); or
- (d) cause, permit or assist any other person directly or indirectly to do any of the above acts in paragraphs (a), (b) and (c).

1.5 The User acknowledges and agrees that:

- (a) the User is solely responsible for the installation, access and use of the Software (including any New Releases or Updates); and

- (b) Hydronumerics has no responsibility to provide any support services in respect of the Software (other than, at Hydronumerics' sole discretion, providing an online discussion forum for Software users).

1.6 The User must:

- (a) ensure that the Software is protected at all times from misuse, damage, destruction or any form of unauthorised use; and
- (b) promptly notify Hydronumerics of any misuse, damage, destruction, copying or any form of unauthorised use of the whole or any part of the Software by any person.

### 2. Fees

The User must pay to Hydronumerics the Licence Fees applicable to the Software upon execution of this Agreement.

### 3. New Releases and Updates

3.1 For a period of twelve (12) months from the Commencement Date, Hydronumerics shall offer to the User, at no charge, all New Releases or Updates that Hydronumerics generally provides, without charge, to licensees of the Software.

3.2 The User must take delivery of, and install, any New Release or Update which Hydronumerics directs the User to take delivery of, and install, and, notwithstanding any other provision of this agreement, if the User fails to comply with the foregoing Hydronumerics shall have no liability to the User in respect of any Loss suffered or incurred by the User directly or indirectly arising from or in connection with such failure.

3.3 Where any New Release or Update is provided by Hydronumerics under paragraph 3.1, this agreement will continue to apply in all respects to the New Release or Update which shall be deemed to be the Software for the purpose of this agreement.

### 4. Warranties and liabilities

4.1 The User acknowledges and agrees that:

- (a) Hydronumerics does not represent and warrant that there are no errors in the Software or that any such errors, if present, will be corrected;
- (b) to the maximum extent permitted by law, Hydronumerics is not liable for any Loss (including Consequential Loss) arising directly or indirectly from and in connection with the User's use of (or inability to use) the Software, including, without limitation, failures of the Software in

circumstances of power or telecommunications interruptions or failures or any other circumstance beyond the control of Hydronumerics; and

- (c) to the maximum extent permitted by law, the Software is provided to the User on an “as is” basis and Hydronumerics makes no representation nor gives any guarantee or warranty (including, without limitation, of merchantability, acceptable quality, fitness for any particular purpose or fitness for disclosed result) nor, subject to clause 4.2, has any other liability under any warranty, condition, guarantee or other liability imposed by statute in connection with the Software (**Statutory Warranties**).

4.2 To the extent that Hydronumerics is liable in connection with any Statutory Warranties, and excluding or modifying the application of, or exercise of, or liability under, such Statutory Warranties would contravene any applicable law or cause this clause to be void, Hydronumerics’ liability for any breach of such Statutory Warranties or liability under such Statutory Warranties will be limited, at Hydronumerics’ option, to one or more of the following:

- (a) if the liability relates to goods:
- (1) the replacement of the goods or the supply of equivalent goods;
  - (2) the repair of such goods;
  - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (4) the payment of the cost of having the goods repaired; and
- (b) if the liability relates to services:
- (1) the supplying of the services again; or
  - (2) the payment of the cost of having the services supplied again;

and the User agrees that this limitation of liability is reasonable in the circumstances.

4.3 Without limitation to the foregoing and to the maximum extent permitted by law, Hydronumerics’ total aggregate liability (whether in contract, tort or otherwise) to the User under or in connection with this agreement is limited to the amount of \$100.

## 5. Intellectual Property Rights

5.1 The User acknowledges that:

- (a) Hydronumerics (and its licensors) remain the sole owner of all Intellectual Property Rights in the Software (including any New Releases or Updates); and
- (b) there is no transfer of title or ownership to the User of any Intellectual Property Rights in the Software (including any New Releases or Updates).

5.2 The User agrees that it will not at any time:

- (a) assert any right to or over any Intellectual Property Rights in the Software, New Releases or Updates of the Software in any manner inconsistent with its rights under this agreement;
- (b) take, appropriate or represent any and all such Intellectual Property Rights as its own;
- (c) take any action which would or might invalidate, challenge, oppose or otherwise put in dispute Hydronumerics’ title to such Intellectual Property Rights; or
- (d) cause, permit or assist any other person directly or indirectly to do any of the above acts.

5.3 The User shall not alter, obscure, remove or otherwise interfere with any of the trade marks (whether registered or unregistered), trade names, markings or notices affixed to or contained in the Software and shall ensure that all such trade marks, trade names, markings and notices are reproduced in full on any permitted copies of the Software made by the User.

5.4 If the Software is modified by the User, on the User’s behalf or with any third party and whether or not authorised pursuant to this agreement:

- (a) all Intellectual Property Rights in the Software so modified shall vest in or remain with Hydronumerics on and from the date of its creation;
- (b) to the extent that the User has any right or interest in the Software so modified, the User assigns to Hydronumerics all Intellectual Property Rights arising out of any modifications to the Software; and
- (c) the User agrees to execute all such documents and perform such other acts as are necessary or desirable to give effect to this clause 5.4.

## 6. Confidentiality

6.1 The User agrees to ensure that the Confidential Information of Hydronumerics is kept confidential.

6.2 The User must not:

- (a) directly or indirectly divulge or communicate or otherwise disclose the Confidential Information of

Hydronumerics, in whole or part, to any third party; or

- (b) use any of the Confidential Information of the Hydronumerics for any purpose other than exercising its rights or fulfilling its obligations under this agreement,

without the express prior written consent of Hydronumerics.

6.3 The User will not be in breach of its obligations with respect to disclosure of Confidential Information if it discloses information that:

- (a) is, or subsequently enters, the public domain, other than through a breach by the User of obligations under this clause 6;
- (b) is required to disclose by statute, court order or a person acting under the authority of statute or such order;
- (c) was developed independently by the User, without the use of any of the Confidential Information; or
- (d) was provided to the User by a third party who was not subject to any obligation or duty of confidentiality at the time it was provided to the User.

## 7. GST

- 7.1 To the extent that a party makes a taxable supply in connection with this agreement, the consideration payable by a party under this agreement represents the value of the taxable supply for which payment is to be made.
- 7.2 Subject to paragraph 7.3, if a party makes a taxable supply in connection with this agreement for a consideration which, under clause 7.1, represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- 7.3 A party's right to payment under clause 7.2 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- 7.4 In this clause 7, expressions have the same meaning as they have in the GST Law.

## 8. Termination

- 8.1 Either party may terminate this agreement immediately by written notice if:
- (a) **(mutual agreement)** the other party agrees in writing to the termination;
- (b) **(Insolvency)** the other party is or becomes Insolvent;

- (c) **(irremediable breach)** the other party breaches a material term of this agreement and the breach is not capable of being remedied; or

- (d) **(unremedied breach)** the other party breaches a material term of this agreement and does not remedy the breach within thirty (30) days of being notified of it.

8.2 Any termination or expiration of this agreement will be without prejudice to the rights of each party against any other in respect of anything done or omitted under this agreement prior to such termination or expiration (as the case may be).

8.3 Upon termination or expiration of this agreement, within ten (10) days of termination or expiration of this agreement, the User must return (or otherwise destroy at Hydronumerics' direction) all Confidential Information of Hydronumerics (including all copies of the Software) in its possession, custody or control.

8.4 Clauses 4, 5, 6, 8.2, 8.3, 8.4, 9, 10 and 11 shall survive termination or expiration of this agreement.

## 9. Interpretation

In this agreement, unless the context otherwise requires:

- (a) the Schedules (if any) form part of this agreement;
- (b) headings do not affect interpretation;
- (c) singular includes plural and plural includes singular;
- (d) words of one gender include any gender;
- (e) another grammatical form of a defined expression has a corresponding meaning;
- (f) use of the word **including** and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (g) reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (h) reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;
- (i) reference to a party includes that party's personal representatives, successors and permitted assigns;
- (j) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (k) reference to a thing (including a right) includes a part of that thing;

- (l) a provision must not be construed against a party only because that party prepared it;
- (m) a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed; and
- (n) a reference to Australian dollars, dollars, \$, A\$, \$A or AUD is a reference to the lawful currency of the Commonwealth of Australia.

## 10. General Conditions

- 10.1 The relationship between Hydronumerics and the User is that of independent contractors and this agreement does not constitute, and shall not be interpreted as, an agency, partnership or joint venture between the User and Hydronumerics.
- 10.2 A party must not represent that it has the authority to act on behalf of the other party either in the capacity as a partner or agent, or that either party is a joint venturer, employer or fiduciary of the other.
- 10.3 The User must not assign, novate, encumber or otherwise deal in any way with any or all of its rights and obligations under this agreement without the prior written consent of Hydronumerics.
- 10.4 This agreement may only be amended by a document in writing signed by the parties.
- 10.5 A party may only waive a breach of this agreement in writing signed by that party or its authorised representative. A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).
- 10.6 Each party must do all things necessary to carry out this agreement, including:
- (a) executing documents; and
  - (b) ensuring its employees and agents perform their obligations.
- 10.7 This document records the entire agreement between the parties about its subject matter and succeeds and cancels all other agreements and understandings concerning such subject matter. The parties exclude all terms implied by law, where possible. Neither party has given any warranty or made any representation to the other party about the subject matter of this agreement, other than those warranties and representations appearing in this document.
- 10.8 This agreement is governed by the law of Victoria. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria and the division of the Federal Court of Australia in that jurisdiction, and the courts of appeal from them. No party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

## 11. Definitions

In this agreement, unless the context otherwise requires:

**Commencement Date** means the date on which this agreement is signed by the last party to the agreement to sign.

**Confidential Information** means information relating to the design, specification and content of the Software and training manuals.

**Consequential Loss** means any Loss recoverable at law which is:

- (a) indirect or consequential loss or damage;
- (b) a loss of opportunity or goodwill;
- (c) a loss of revenues;
- (d) a loss of profits;
- (e) a loss of anticipated savings or business; or
- (f) any costs or expenses incurred in connection with the foregoing,
- (g) but does not include:
- (h) fines, payments, penalties or administrative assessments imposed by a governmental authority or regulatory body.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any other act imposing a goods and services tax in Australia.

**Hydronumerics** means Hydronumerics Pty Ltd ABN 87 142 999 246 of Level 1/272 Lygon St, Carlton, Victoria 3053.

**Insolvent** means, in relation to a person, when the person:

- (a) is the subject of an event described in Sections 459C(2) (a) to (f) or Section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this Agreement may reasonably deduce it is so subject); or
- (b) is an insolvent under administration or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in Section 9 of the *Corporations Act 2001* (Cth); or
- (c) is dissolved; or
- (d) is otherwise unable to pay its debts as and when they become due and payable; or
- (e) being a natural person, commits or suffers an act of bankruptcy; or
- (f) takes or suffers a similar consequence in debt to those in paragraphs (a) to (e) under the law of any jurisdiction.

Notwithstanding the foregoing, paragraphs (a) – (c) do not apply when a party is carrying out an amalgamation or reconstruction whilst solvent.

**Intellectual Property Rights** means any and all:

- (a) current and future registered and unregistered rights in respect of copyright, designs, semiconductor or circuit layouts, trade marks, trade names, business names, trade secrets, know-how, confidential information, patents, inventions and discoveries;
- (b) applications for grant of any of the above;
- (c) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and
- (d) other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

**Licence Fees** means the fees so specified in the Contract Details.

**Loss** means loss or damage of any kind (including liability to a third party).

**New Release** means a new release of the Software produced to extend, alter or improve the Software by incorporating functionality or performance enhancements.

**Software** means the software so specified in the Contract Details.

**Supported Operating Environment** means the computer hardware and software operating environment as notified by Hydronumerics from time to time.

**Term** means from the Commencement Date until the date of termination of this agreement.

**Update** means any maintenance releases, service releases, bug fixes, patches and other software produced to correct any defects in, or to improve existing functionality of, the Software.

**User** means the party so specified in the Contract Details.

## **Contract Details**

### **Licence Fee**

**Aquatic Ecosystem Model 3D:** AUD\$100 (one hundred dollars) for the duration of the Term

**HydroHub Lite:** no fee payable for the duration of the Term

### **Software**

Aquatic Ecosystem Model 3D and HydroHub Lite