

Flood Modeller support and maintenance agreement

Effective 04/12/2019

1 Definitions

"Authorised Users" means those of Your employees who are authorised to access and use the Software Product in accordance with the terms of the End User Licence Agreement.

"End User Licence Agreement" means the end user licence agreement provided separately by the Supplier for the Software Product.

"Documentation" means any user documentation, manuals, training material or any technical material that may be provided to You under this agreement or under the End User Licence Agreement in relation to the Software Product or the Services;

"Intellectual Property Rights" means all industrial and intellectual property rights including patents, petty patents, utility models, copyright, database rights, design rights, registered and unregistered designs, design patents, trade marks, trading names, internet domain names, rights in the get-up of products (including the screens and user interfaces of software products) and other signs and indications of origin, and rights in technical know-how, data and confidential information, in each case whether registered or not and including pending applications and the right to apply for any of the foregoing and other rights of the same or similar effect anywhere in the world.

"New Release" means any new release of the Software Product which is generally made available by the Supplier during the term of this agreement to customers that purchase support and maintenance services for the Software Product, including any such version made available as a "minor release" or "major release".

"Order" means Your formal acceptance of a Quotation by an authorised signatory.

"Quotation" means the quotation for the supply of support and maintenance services provided by the Supplier and accepted by You.

"Services" means the services set out in this Support and Maintenance Agreement.

"Software Products" means the supported software products for which You have End User Licence Agreements as listed in the accepted Quotation.

"Supplier's IP" means any Intellectual Property Rights in or relating to the Software Products, the Updates and New Releases and Documentation released or sold by the Supplier and including the CH2M, CH2M HILL, FLOOD MODELLER, FLOOD MODELLER PRO, FLOOD MODELLER FREE, FLOOD MODELLER PROFESSIONAL, FLOOD MODELLER STANDARD, FLOOD MODELLER SUITE, FLOOD ALERT, FLOOD PORTAL, HALCROW, ISIS and Jacobs brands.

"The Supplier" means HALCROW GROUP LIMITED (a Jacobs Engineering Group Inc. company), a company incorporated under the laws of England & Wales with registered No. 03415971, at Cottons Centre, Cottons Lane, London, SE1 2QG, United Kingdom.

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“Update” means any improved modified or corrected versions of the Software Product or the Documentation (other than a New Release), which is generally made available by the Supplier during the term of this agreement to customers that purchase support and maintenance services for the Software Product.

"You" means the person, firm or company that has placed an order for support and maintenance.

2 Provision of services

The Supplier in consideration of the payment made by You in accordance with this agreement hereby agrees to provide support and maintenance for the Software Products on the terms set out in this agreement.

3 Term

Supply of the Services shall commence on the date of Your Order and, subject to termination in accordance with the provisions of this agreement, shall continue for a fixed term of one year or as otherwise stated in the Quotation.

4 Payment

- 4.1 The fee for the Services is the sum stated in the Quotation and is payable in advance. The due date for payment is 28 days after the Order date and the Supplier reserves the right to charge You interest in respect of late payment at the rate of 2% per annum above the Bank of England base rate from the due date.
- 4.2 Staff charge rates and travel and subsistence expenses for services in addition to the Services, will be charged at the Supplier's current rates.

5 The services

- 5.1 The Services provided by the Supplier will consist of technical support for the Software Products comprising advice by telephone, e-mail or web-based enquiry facilities. When support queries are raised with our technical team, they may be logged into our online support ticket system including relevant contact details. The Supplier may record, store, and process all such data collected in connection with support queries and may use that data for the purpose of investigating malfunctions and other queries, providing the support Services, improving the Software Product and developing Updates and New Releases.
- 5.2 The Services will include advice on software installation, model running and software functionality (current version only). The advice will be limited to that which is reasonably necessary to assist a competent user.
- 5.3 Contact details for accessing the support facilities are available at www.floodmodeller.com.
- 5.4 All Services will be performed within the Supplier's normal UK working hours of 9am to 5pm Monday to Friday excluding English public holidays and the period between 25 December and 1 January.
- 5.5 The Supplier will use all reasonable endeavours to respond to requests for technical support within one working day.

6 Software maintenance

- 6.1 You will be entitled to receive all major and minor upgrades to the Software Products released during the term of this agreement at no further charge. Failure to maintain this agreement could result in You having to repurchase the Software Products at list price in order to obtain the latest version of the Software Products. The revised versions will be subject to the terms of the End User Licence Agreement current at the time of the release. The Supplier will use all reasonable endeavours to release at least one major release per 12-month period.
- 6.2 If You discover a fault in the Software Products and report it to the Supplier, together with any further information such as error messages, circumstances and data being processed, which the Supplier may reasonably request, the Supplier will promptly investigate and either advise You of a means of successfully undertaking the required operation, or will supply You with a revised version of the Software Product. The Supplier will use its reasonable endeavours to correct errors but does not warrant that all errors can be corrected or will be corrected within a specified period of time.

7 Software licence

Your acceptance of this Maintenance and Support Agreement shall also constitute Your acceptance of the current version of the Supplier's End User Licence Agreement, a copy of which is available from the Supplier and such current version shall replace and supersede any previous version of the End User Licence Agreement in respect of the Software Products (and shall apply to all Updates and New Releases and the Documentation provided under this agreement).

8 Warranty

- 8.1 The Supplier warrants that it will perform the Services with reasonable skill and care.
- 8.2 You shall give written notice to the Supplier within 7 days of becoming aware of a breach of this warranty, providing all information reasonably necessary to enable the Supplier to remedy the breach. The Supplier shall then use reasonable efforts to remedy that breach within a reasonable period following receipt of such notice. In the event that the Supplier refuses without due cause or is unable, for a period exceeding 14 consecutive days, to perform the Services (except due to Force Majeure as set out below), You shall be entitled to terminate this agreement on written notice to the Supplier and to claim a refund of all sums which You have paid to the Supplier under this agreement, less a charge for the Services performed up to the date of termination. This clause sets out Your sole remedies and the Supplier's entire liability for breach of clause 8.1.
- 8.3 Other than the warranties, covenants and representations expressly set out in this agreement and in the End User Licence Agreement, the Supplier gives no warranty nor makes any representation in relation to the Services, its operation, the technical systems used to operate it and the services provided to You under this agreement or in relation to the Software Products (including Updates and New Releases) or the Documentation and the parties hereby expressly disclaim to the fullest extent permitted by law any representation, warranty, conditions or other terms relating to the foregoing that may be implied by this agreement, by custom of trade or by law or otherwise and which is not expressly set out herein, including any implied warranties of quality, merchantability, title or entitlement, fitness for a particular purpose, or use, compliance with or performance in accordance with the Documentation, the ability to achieve a particular result or functionality, that the operation of the Software Product will be uninterrupted or error free, absence of computer viruses, Trojans, worms and other disabling or harmful devices or malicious code, or non-infringement of third party intellectual property rights, and all such implied terms or warranties are excluded from this agreement.

9 Limitations on liability

- 9.1 Subject to the clause 9.4 below, the Supplier's total liability under or in connection with this agreement, however arising shall be limited to the value of the fee due under this agreement.
- 9.2 If the performance of the Supplier's obligations hereunder is prevented or delayed by any act or omission by You, or Your employees, Authorised Users, officers, agents, sub-contractors or any person connected to You, the Supplier shall not be liable and You hereby waive any claim against the Supplier, its group members, employees, agents, representatives, resellers or subcontractors for any costs, charges, expenses or any loss arising from such prevention or delay.
- 9.3 Subject to the clause 9.4 below, in no event shall a party be liable to the other under this agreement or in connection with its performance or breach, or in connection with any express or implied warranties or covenants, including as a result of misrepresentation or negligence: (i) for any indirect, incidental, consequential or special damages, including any loss of profits or savings or anticipated profits or savings, loss of data, loss of opportunity, loss or reputation, goodwill or business; or (ii) for damages of any kind (other than a refund of the fees) in connection with any claim arising out of the performance or failure to perform the party's obligations under this agreement, or its inability to perform, or as a result of the termination or expiry of this agreement; in each case, even if the other party has been advised of the possibility of such damages in advance.
- 9.4 Notwithstanding anything to the contrary in this agreement, nothing in this agreement shall operate to exclude or restrict a party's liability for (i) death or personal injury resulting from such party's negligence, or (ii) fraud or fraudulent misrepresentation, or (iii) any liability that cannot be limited or excluded by law.

10 Intellectual property

- 10.1 Nothing in this Agreement shall serve to transfer any right, title or interest in any Supplier's IP to You. All Intellectual Property Rights in any Updates, New Releases, Documentation and any other work product created or delivered to You as part of the Services remains the absolute property of and will vest wholly in the Supplier.
- 10.2 Except for the licence expressly granted to You to use the Updates, New Releases and Documentation under the terms of the End User Licence Agreement, this agreement does not grant You and You agree and acknowledge that You shall not acquire any right, title, interest or licence in or under any of the Supplier's IP and no such rights or licence shall be inferred.

11 Customer responsibilities

During the term of this agreement, and as a condition for the provision of the Services by the Supplier, You agree that You shall:

- Discharge Your responsibilities and comply with Your obligations under the End User Licence Agreement;
- on request, allow the Supplier to remotely access Authorised Users' screens running the Software Product in providing helpdesk services as part of the Services
- promptly notify the Supplier and provide full details of any technical failures, system breakdowns, undesired operations, data losses, unauthorised access, suspected viruses or other serious problems affecting the Software Product; and

- appoint a representative to act as a technical liaison with the Supplier in relation to the installation, configuration and use of the Software Product and to have primary responsibility for reporting to the Supplier any serious technical malfunctions, system breakdowns, security breaches or the presence of any virus or other malicious code and for communicating with the Supplier in relation to any proposed action plan or software fix.

12 Force majeure

- 12.1 No party shall be liable to the other for any delay or non-performance of its obligations under this agreement arising from any cause beyond its reasonable control (“Force Majeure”) including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion, accident, embargo, riots, imposition of sanctions or export controls, breaking off of diplomatic relations, terrorist attack, legal action, court order, telecommunication or system failure, power failure, third party software breakdown, transportation delays, or labour disputes of whatsoever nature (including but not limited to working to rule, protests, strikes and lockouts), howsoever arising and including such disputes between either of the parties and their employees or any other employee or any third party and its employees.
- 12.2 For the avoidance of doubt, nothing in this clause shall excuse You from any payment obligations under this agreement.
- 12.3 If as a result of a Force Majeure the Supplier is prevented from providing the Service for a continuous period in excess of 60 days, You shall be entitled to give notice in writing to the Supplier terminating this agreement and shall be entitled to a refund of the relevant proportion of the fees paid by You in respect of the remaining period after termination.

13 Waiver

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach. No modification, alteration or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed on behalf of each of the parties.

14 Termination

- 14.1 Each party shall have the right, without prejudice to its other rights or remedies, to terminate this agreement immediately by notice to the other if the other is in material or persistent breach of any of its obligations under this agreement and either that breach is incapable of remedy, or that other party has failed to remedy that breach within 30 days after receiving written notice requiring it to do so.
- 14.2 Each party may terminate this agreement at any time with immediate effect by serving written notice to the other party if the other party is unable to pay its debts when they become due, or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

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- 14.3 This Agreement shall terminate automatically with respect to any particular item of Software Product upon the expiry or termination for any reason of the End User Licence Agreement in respect of that Software Product.
- 14.4 The Supplier shall have the right to terminate this agreement immediately by giving You notice in writing, if You or any person or entity connected with You:
- commits a material breach of the End User Licence Agreement;
 - challenges, opposes or seeks to invalidate or revoke any of the Supplier's IP or makes or threatens any claims relating to, or denies the Supplier's title or entitlement or licensed rights to the Supplier's IP, or assists another person to do any of the foregoing;
 - infringes or assists or knowingly enables another person to infringe the Supplier's IP (including by any use of the Software Product not in accordance with the End User Licence Agreement), provided that, where such infringement is innocent, the agreement shall not terminate if You causes all infringing use of the Supplier's IP to be discontinued within seven (7) days of written notification.
- 14.5 On the expiry or termination of this agreement, You shall return to the Supplier all confidential information that belongs to the Supplier and shall not retain any copies or records in Your possession or control, except to the extent reasonably required for compliance with legal and regulatory requirements regarding keeping records and except as You may reasonably require in order to exploit Your rights under the End User Licence Agreement, if and for as long as the End User Licence Agreement continues to have effect after the termination or expiry of this agreement.
- 14.6 The termination or expiry of this agreement shall not affect any accrued rights or liabilities of any party.

15 Severability

If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

16 Entire agreement

This Support and Maintenance Agreement together with the End User Licence Agreement contain the entire agreement between us relating to the subject matter and supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between us relating to that subject matter.

17 Assignment, delegation and third parties

- 17.1 This agreement and the rights and obligations hereunder are personal to the parties. Except as provided in this clause 15, neither party may assign or transfer any of its rights or obligations under this agreement whether in whole or in part without the prior written consent of the other party.
- 17.2 The Supplier may, without requiring Your consent, transfer its rights and delegate its obligations under this agreement to its Affiliate or assign its rights and obligations under this agreement as part of a sale of all or substantially all its relevant business, provided that the person acquiring such business (in this clause, the "Buyer") is willing to assume the Supplier's obligations under this agreement. Upon the request of the Supplier, You shall enter into a novation agreement with the Supplier and the Buyer in a form reasonably acceptable to the Supplier to give effect to such transfer of rights and obligations.

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- 17.3 The Supplier shall be free to delegate its obligations under this agreement to its affiliates, subcontractors, agents, resellers or any other person without having to notify You.
- 17.4 A person who is not a party to this Agreement shall have no rights to enforce the provisions of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

18 Governing law and jurisdiction

This agreement including any non-contractual claims relating to its subject-matter shall be governed by and construed in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England in relation to any dispute between them arising out of the subject matter of this Agreement including as to its formation, interpretation and effect.

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