

OPSIM Licence Agreement



BY INSTALLING OPSIM®, YOU AGREE TO THE FOLLOWING TERMS OF THIS AGREEMENT BETWEEN YOU (LICENSEE) AND WATER SOLUTIONS PTY LTD ACN 070 875 553 (WS)

Parties

Water Solutions Pty Ltd ACN 070 875 553 (**WS**)

You (the individual and (if applicable) the entity entering into the agreement) (**Licensee**)

Background

- A. WS has the rights required to grant a licence to OPSIM.
- B. WS wishes to grant a licence to OPSIM to the Licensee under terms of this Agreement.

Reference Schedule

Item 1	WS details for Notices	Name:	Water Solutions Pty Ltd
		ACN:	070 875 553
		Address:	PO Box 1031, Kenmore QLD 4069, Australia
		Contact:	John Macintosh
		Telephone:	+61 (0) 7 3378 7955
		Facsimile:	+61 (0) 7 3378 7966
		Email:	sales@opsim.com
Item 2	Licensee and details for Notices	As notified by the Licensee in writing to WS.	
Item 3	Commencement Date	The date the Licensee provides notice to WS of its agreement to the terms of this agreement by clicking 'I agree' on the executable file installer from which OPSIM Software may be installed, or the date of first use of OPSIM Software.	
Item 4	OPSIM Software	The OPSIM software licensed to the Licensee is comprised of all products and licence types mutually agreed in writing between WS and Licensee, in binary form only.	
Item 5	Trial Period	Length of trial period:	As mutually agreed in writing between WS and Licensee.
Item 6	Licence Fee and Software Upgrades and Support Fee	As per the latest OPSIM Price List available at http://opsim.com/products/pricing.php .	



1. Definitions and interpretation

1.1 Definitions

In this agreement:

Agreement means this licence agreement and any schedules or annexures to this agreement, including the OPSIM price list available at <http://opsim.com/products/pricing.php>.

Authorised Officer of a party which is a corporation means:

- (a) an employee of the party whose title contains either of the words Director or Manager;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this agreement and notified to the others.

Authorised User is the Licensee, or an employee or sub-contractor or sub-licensee of the Licensee, using OPSIM for the sole purpose of undertaking the Licensee's internal business activities within the Licensee Network.

Business Day means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.

Cloud Subscription Licence means a Licence which grants the Licensee subscription access to log onto one cloud-based OPSIM Windows desktop via Windows remote desktop connection (or equivalent) to run one OPSIM simulation, as further described in clause 2.2(c).

Consequential Loss means any of the following:

- (a) loss of revenue;
- (b) loss of profits;
- (c) loss of opportunity to make profits;
- (d) loss of business;
- (e) loss of business opportunity;
- (f) loss of use or amenity, or loss of anticipated savings;
- (g) special, exemplary or punitive damages; and
- (h) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement,

including any of the above types of loss arising from an interruption to a business or activity.

Corporations Act means the *Corporations Act 2001* (Cth).

Government Body means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

Hardware Lock means a USB dongle containing Licence codes and parameters.

Improvements means any and all Intellectual Property Rights related to, or in connection with, OPSIM created in the course of, or in connection with, the use of OPSIM.

Insolvency Event means an event of bankruptcy or insolvency, an assignment for the benefit of creditors, the appointment of a receiver, receiver and manager, provisional liquidator, liquidator and official manager or any similar person to any assets of a person, a failure to comply with a statutory demand, or anything else which occurs which is analogous or has a substantially similar effect, under the laws of any jurisdiction, or the person is otherwise insolvent or unable to pay its debts as and when they fall due.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Law means any statute, rule, regulation, proclamation, order in council, ordinance, local law or by-law, whether:

- (a) present or future; or
- (b) State, federal or otherwise.

Liability means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

Licence means the licence granted to the Licensee under clause 2.1.

Licence Fee means the fee described at **Item 6** of the Reference Schedule.

Licence Lock means a digital licence file provided by WS which records Licensee details, Licence type, maintenance status and OPSIM Software functionality available to the Licensee.

Licensee Data means all data owned or supplied by the Licensee which is stored on or used in connection with OPSIM by the Licensee and includes reports, maps, models, pdf, templates, graphics and documentation generated by or derived from OPSIM as a result of the



Licensee Data or as a result of the Licensee's use of OPSIM.

Licensee Network means the Licensee's private internal physical or virtual network (as agreed to, or determined, by WS), created to share services within the Licensee's organisation without public access.

Licensee Technology means the Intellectual Property Rights of the Licensee which are demonstrated to be created independently of the Agreement.

Local Lock means a Hardware Lock and Licence Lock which allows the Licensee to provide access to simulations on any computer which:

- (a) has access to the Licensee Network; and
- (b) has the Hardware Lock attached

but is not a virtual machine.

Logon means the username and password provided by WS to the Licensee to allow access to OPSIM via a Windows remote desktop connection (or equivalent) under a Cloud Subscription Licence.

Loss means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

Material means property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Monthly Rental Licence means a Licence granted on a month by month basis, as further described in clause 2.2(d).

Network Lock means a Hardware Lock and Licence Lock which allows the Licensee to provide access to multiple Authorised Users to simulations within the Licensee Network.

OPSIM or **OPSIM Software** has the meaning described in Item 4 of the Reference Schedule.

Perpetual Licence means a Licence granted on a perpetual basis, as further described in clause 2.2(a).

Personnel means in relation to a party, any Related Body Corporate, Related Entity, employee, officer, agent, contractor, professional adviser of that party.

Reference Schedule means the schedule at the beginning of this agreement.

Related Body Corporate includes any corporation that is deemed to be related to a person by virtue of the provisions of the *Corporations Act*.

Related Entity means a person which is a related entity within the meaning of that term in section 9 of the *Corporations Act*.

Software Bug means an error, flaw, failure or fault in OPSIM as determined by WS.

Software Upgrades and Support Services means those services described in clause 5.1(a)(3) - (6).

Tax means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

Term means the duration of the agreement, until it is terminated or expires in accordance with the terms of the agreement.

WS Technology means all Intellectual Property Rights created, owned or licensed by WS, including OPSIM and algorithms and software used by (or comprised in) OPSIM, including Improvements but excluding the Licensee Technology.

Yearly Subscription Licence means a Licence which has a one year expiry and entitles the Licensee to one year of Software Upgrade and Support Services, as further described in clause 2.2(b).

Where a term used in this agreement appears in bold type in the Reference Schedule, that term has the meaning shown opposite it in the Reference Schedule.

1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
 - (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
 - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and
 - (9) a time is a reference to Brisbane time unless otherwise specified.



- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

1.3 Business Days

- (a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

1.4 Parties

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

2. Licence

2.1 Grant

- (a) On and from the Commencement Date, subject to clauses 2.1(b), and 2.2 - 2.5, WS grants the Licensee a worldwide, perpetual or term-limited (in accordance with and subject to clauses 2.2, 2.3(b), and 11), non-exclusive, revocable, non-transferable licence to use OPSIM in conjunction with software necessary to develop, view and (subject to clause 2.4) modify the Licensee Data for its internal business purposes in accordance with the terms of this Agreement.
- (b) The Licence is restricted to the use of OPSIM by Authorised Users:
 - (1) in accordance with this Agreement; and
 - (2) strictly for the sole purpose of developing, modifying and viewing the Licensee Data for the Licensee's internal business activities within the Licensee Network.

2.2 Licence types

(a) Perpetual Licence

Where the Licensee has purchased a Perpetual Licence:

- (1) the Licensee will be granted perpetual Licence to OPSIM as per clause 2.1;
- (2) the Licence granted to the Licensee will include a right to install OPSIM; and
- (3) the Licence will be limited to the conditions of either a Local Lock or a Network Lock, as agreed between the parties in writing.

(b) Yearly Subscription Licence

Where the Licensee has purchased a Yearly Subscription Licence:

- (1) the Licence granted to the Licensee includes a right to install OPSIM;
- (2) the Licence will be limited to the conditions of either a Local Lock or a Network Lock as agreed between the parties in writing;
- (3) the term of the Licence shall be limited to one (1) year;
- (4) the Licence shall roll over for successive terms of one (1) year until a written notice of expiry is provided by the Licensee to WS, at which point the Licence will expire at the end of the then-current term; and
- (5) Software Upgrade and Support Services shall be mandatory inclusion for the term of the Licence (as shall payment of the Software Upgrade and Support Services Fee by the Licensee) and will not be able to be cancelled under clause 5.2(b).

(c) Cloud Subscription Licence

Where the Licensee has purchased a Cloud Subscription Licence:

- (1) the Licensee will be able to use a Logon to access OPSIM via a Windows remote desktop connection (or equivalent);
- (2) the term of the Licence shall be limited to thirty (30) days;
- (3) the Licence shall roll over for successive terms of 30 days until a written notice of expiry is provided by the Licensee to WS, at which point the Licence will expire at the end of the then-current term;
- (4) no Software Upgrade and Support Fee will be payable; and
- (5) Software Upgrade and Support Services will be provided by WS for the term of the Licence as noted in 2.2(c)(2) and 2.2(c)(3).

(d) Monthly Rental Licence

- (1) Monthly Rental Licences are only available for purchase to pre-existing Licensees who



have purchased a Perpetual Licence or Yearly Subscription Licence.

- (2) Where the Licensee has purchased a Monthly Rental Licence:
- (A) the Licence granted to the Licensee includes a right to install OPSIM;
 - (B) the Licence will be limited to the conditions of either a Local Lock or a Network Lock;
 - (C) the term of the Licence shall be limited to a minimum term of one calendar month, or any such longer term agreed between the Parties in writing;
 - (D) no Software Upgrade and Support Fee will be payable; and
 - (E) Software Upgrade and Support Services will be provided by WS for the term of the Licence as noted in 2.2(d)(2)(C).

2.3 Trial Period

- (a) Where a Trial Period has been included in **Item 5** of the Reference Schedule, OPSIM is not to be used for commercial purposes during the Trial Period (including, but not limited to, use of reports, maps, models, pdf, templates, graphics, documentation generated by or derived from OPSIM as a result of the Licensee Data or as a result of the Licensee's use of OPSIM in any reports or other documentation), unless:
- (1) an OPSIM Licence is purchased prior to the expiration of the Trial Period as per clause 4.1 and paid for prior to the Licensee's commercial use of OPSIM; or
 - (2) it is agreed to in writing by WS.
- (b) If a Trial Period has been included in **Item 5** of the Reference Schedule, within seven (7) days of the conclusion of the Trial Period, the Licensee must either:
- (1) elect to purchase an OPSIM Licence by providing notice to WS. WS will then provide an invoice to the Licensee for payment of the relevant Licence Fee; or
 - (2) notify WS that it elects not to purchase an OPSIM Licence, in which event the Licence provided under clause 2.1(a) in relation to OPSIM is terminated and the Licensee must return all Hardware Locks, security tokens, storage devices, documentation and other Materials provided by WS within 14 days of the conclusion of the Trial Period.
- (c) If the Licensee fails to notify WS in accordance with clause 2.3(b), then the Licensee will be taken to have elected not to purchase an OPSIM Licence

and the Licence provided under clause 2.1(a) in relation to OPSIM is terminated and the Licensee must return all Hardware Locks, storage devices, security tokens, documentation and other Materials provided by WS within 14 days of the conclusion of the Trial Period.

2.4 Authorised Use

The Licensee must ensure that:

- (a) any Authorised Users of OPSIM licensed under this Agreement only access, install, and use the OPSIM strictly in accordance with this Agreement;
- (b) OPSIM and supporting files are only downloaded from www.opsim.com/Downloads.aspx, and are only installed on the Licensee Network by Authorised Users in accordance with this Agreement;
- (c) the computer files provided for download from www.opsim.com/Downloads.aspx are not edited, modified, replaced, overwritten, or separated from each other, and at all times remain together wherever installed within the Licensee Network;
- (d) where the Licensee has purchased a Local Lock, OPSIM is only used by Authorised Users on a single computer which has access to a Local Lock;
- (e) where the Licensee has purchased a Network Lock:
 - (1) OPSIM is only accessed by Authorised Users within the Licensee Network; and
 - (2) usage of OPSIM on a virtual machine is permitted provided access is entirely confined to Authorised Users within the Licensee Network;
- (f) where the Licensee has purchased a Cloud Subscription Licence, OPSIM is only accessed by authorised users and the login details must be kept confidential.
- (g) Where the Licensee has purchased a Cloud Subscription Licence, access to the Windows remote desktop connection (or equivalent) shall only be used for the purpose of processing Licensee Data in the OPSIM Software and no other purpose (including, but not limited to, the mining of cryptocurrency).

2.5 Restrictions

As a fundamental condition of this Agreement, the Licensee agrees that:

- (a) Improvements do not form part of the Licence;
- (b) the prior written consent of WS is required for the Licensee to sub-licence any right under this Agreement; and
- (c) WS will not be liable in any way for any Loss, including any Loss incurred by a user, or any Loss arising from any error, inaccuracy, incompleteness or other similar defect in OPSIM and Licensee Data.



2.6 Sub-licensing

- (a) The Licensee may sub-licence the Licence, but strictly in circumstances where:
- (1) the Licensee ensures that each sub- licensee is bound, in writing, by terms no less onerous than those set out in this Agreement;
 - (2) any sub-licence granted by the Licensee automatically terminates on the termination or expiry of this Agreement.;
 - (3) the Licensee shall be liable for all acts and omissions of any sub- licensee and shall indemnify WS against all costs, expenses, claims, loss or damage incurred or suffered by WS, or for which WS may become liable (whether direct, indirect or consequential and including any economic loss or other loss of profits, business or goodwill) arising out of any act or omission of any sub- licensee; and
 - (4) if the Licensee has received the required prior written consent of WS under clause 8.4(e) to merge or interface any third-party software (including source code or open source software) with OPSIM, the Licensee shall not sub-licence, pass on or provide any sub- licensee or any other third party with or access to any WS Technology which have been merged or interfaced with any such third party software.
- (b) The Licensee shall not grant any sub-licence under this Agreement or otherwise in relation to OPSIM except as permitted under clause 2.6(a).

3. Recommended Supplements

- (a) The Licensee acknowledges that OPSIM requires additional third party software and hardware, not included in this Agreement, to develop, modify and view the Licensee Data.
- (b) The additional third party software required includes WibuKey runtime and any other software as advised from time to time by WS.
- (c) Where the Licensee has purchased a Cloud Subscription Licence, internet access will be required to access and run OPSIM.
- (d) The Licensee acknowledges that any third party software may be subject to separate licence terms and conditions, and the Licensee must satisfy itself that it can comply with the applicable licence terms and conditions.
- (e) Additionally, for larger OPSIM models, WS recommends (but does not require) a workstation grade computer (being one designed for numerically intensive technical or scientific applications).

4. Licence Fee

4.1 Fee

- (a) The Licensee will pay the Licence Fee to WS described at **Item 6** of the Reference Schedule.
- (b) WS reserves the right to vary the prices for the Licence Fee set out in **Item 6** from time to time without notice to the Licensee.

4.2 Credit terms

- (a) WS will issue the Licensee with a Tax Invoice for the Licence Fee owing under clause 4.1 and specified in **Item 6** of the Reference Schedule.
- (b) The Licensee must pay WS the Licence Fee owing under clause 4.1 within 30 days of the date of the invoice, unless stated otherwise on the invoice. Where an invoice is not paid within this timeframe, WS can charge interest on the amount owing on the invoice at a compounding monthly rate of 2%.

4.3 Delivery and utilisation

- (a) Where the Licensee has purchased a Perpetual Licence, Yearly Subscription Licence or Monthly Rental Licence, upon receipt of payment of the first Licence Fee by WS, the Hardware Lock shall be dispatched by post to the Licensee's delivery address as shown in **Item 2** of the Reference Schedule. A Licence Lock will also be dispatched by email to the address provided to WS in writing by the Licensee. Licensee acknowledges that it is solely responsible for:
- (1) downloading and installing the drivers for the Hardware Lock as advised by WS in writing;
 - (2) activating the Licence Lock through email exchange of coded licence data with OPSIM by an Authorised User via support@opsim.com;
 - (3) downloading OPSIM executable files from the web address as advised by WS in writing;
 - (4) otherwise installing and configuring OPSIM (except where provided by WS as part of the Software Upgrades and Support Services); and
 - (5) where permitted by the Licence, integrating OPSIM with any other software.
- (b) The Licensee acknowledges that once a Licence Lock is activated in accordance with 4.3(a)(2), the Licence Lock cannot be transferred to another machine, computer or Authorised User.
- (c) Where a Trial Period has been included at **Item 5** of the Reference Schedule, clause 4.3(a) shall apply, however the Hardware Lock shall be dispatched at a time as advised by WS in writing.
- (d) The Licensee acknowledges that replacement of:



- (1) damaged Hardware Locks or security tokens will be granted only at WS' sole discretion, and where the Hardware Lock or security lock has become faulty other than through normal use, a fee will apply as per the OPSIM Price List at **Item 6**;
 - (2) lost Hardware Locks or security tokens or will incur a fee limited to the Licence Fee of OPSIM payable at the time of the replacement of the lost Hardware Lock.
- (e) Where the Licensee has purchased a Cloud Subscription Licence, clauses 4.3(a) - 4.3(d) shall not apply. Instead, upon receipt of payment of the first Licence Fee by WS, the Licensee will be emailed a Logon to access OPSIM via a Windows remote desktop connection (or equivalent). Upon expiry or termination of the Licence, the Logon shall expire, and the contents of the Logon area (including any Licensee Data left on the Logon area) will be deleted.

5. Software Upgrades and Support

5.1 Software Upgrades and Support Services

- (a) Where:
- (1) the Licensee has purchased a Perpetual Licence or a Yearly Subscription Licence and has paid the Software Upgrades and Support Fee described at Item 6 on the terms given in clause 5.2; or
 - (2) the Licensee has purchased a Monthly Rental Licence or Cloud Subscription Licence
- WS will provide the Software Upgrades and Support Services, being:
- (3) access to new versions of OPSIM as and when they are made available by WS;
 - (4) OPSIM installation and set-up support for OPSIM (provided that the Licensee has undergone training in the use of OPSIM);
 - (5) where necessary, WS will provide Software Bug fixes to OPSIM; and
 - (6) where the Licensee has undertaken training in the use of OPSIM under clause 6, responses to minor queries in relation to the functionality, models, modelling techniques and associated data of OPSIM.
- (b) Where the Licensee has purchased a Perpetual Licence or a Yearly Subscription Licence and has paid the requisite Licence Fee, but has not paid the Software Upgrades and Support Fee described at **Item 6** on the terms given in clause 5.2, WS is not obligated to provide the Licensee with any Software Bug fixes to OPSIM.

5.2 Credit terms

- (a) The Software Upgrades and Support Fee is to be paid upfront in advance, within the period of time

specified on the Tax Invoice provided by WS to the Licensee.

- (b) Where the Licensee elects to cancel the Software Upgrades and Support services, the Licensee must provide notice in writing to WS within the time period specified on the Tax Invoice provided by WS to the Licensee which requests payment of the Software Upgrades and Support Fee. Within a reasonable time of receipt of the notice of cancellation described in clause 5.2(a), WS will issue a credit note to cancel the invoice for the Software Upgrades and Support Fee.
- (c) The Licensee acknowledges and agrees that, unless the Licensee terminates this agreement for breach by WS under clause 11.3, the Software Upgrades and Licence Fee is non-refundable once paid.
- (d) The Licensee acknowledges and agrees that Software Upgrades and Support services reinstated after cancellation as per clause 5.2(b) will be subject to a 25% surcharge in addition to the Software Upgrades and Support Fees for the period from cancellation to reinstatement.
- (e) The Licensee acknowledges and agrees that if the Licensee elects to cancel the Software Upgrades and Support services for a period of five (5) consecutive years, the Software Upgrades and Support Services cannot be reinstated and a new Licence will need to be purchased.

6. Renewals

6.1 Timing of renewals

For:

- (a) Licence Fees for Perpetual Licence, Yearly Subscription Licence or Cloud Subscription Licence Licensees; and
- (b) Software Upgrade and Support Service Fees payable beyond those payable for the initial term of the Licence, a Tax Invoice will be issued to the Licensee on either:
 - (c) 30 June of the then-current year; or
 - (d) if specified, such other time as specified in the latest OPSIM Price List available at <http://opsim.com/products/pricing.php>.

7. Training

The Licensee acknowledges and agrees that:

- (a) training on the use of OPSIM is not included in the Licence Fee or Software Upgrades and Support Fee payable under this Agreement and is charged separately at an hourly rate determined by WS or as otherwise agreed in writing with WS;
- (b) bookings requests for training must be received by WS within six months of the commencement of the Licence, and in any event in advance of the date proposed for training



- (c) booking requests for will be accepted at WS' discretion, and may be unavailable to Licensees whose Licences have commenced more than six months prior to the request for training being received by WS; and
- (d) where WS staff are unable to provide training, WS may recommend other external trainers experienced in the use of OPSIM.

8. Intellectual Property

8.1 Ownership - WS Technology

- (a) Ownership of the WS Technology is not modified by this Agreement.
- (b) The Intellectual Property Rights in the WS Technology remain vested in WS (or its licensor).

8.2 Ownership – Licensee Technology

- (a) Ownership of the Licensee Technology is not modified by this Agreement.
- (b) The Intellectual Property Rights in the Licensee Technology remain vested in the Licensee.
- (c) The Licensee grants WS a non-exclusive, non-transferable, worldwide, royalty free licence to use the Licensee Technology, Licensee Data and Materials provided to WS solely for the purposes of the Licence and performing its obligations under this Agreement, including obligations in relation to upgrades and support as stated in clause 5.
- (d) The Licensee acknowledges that if the licence described in clause (c) is not granted, WS will be unable to perform all of its obligations under this Agreement, particularly in relation to support under clause 5. If the licence described in clause (c) is not granted or it is revoked, WS will not be in breach of the terms of this Agreement if it does not perform its support obligations under clause 5.

8.3 Provision and ownership of Improvements

- (a) The Licensee will promptly disclose Improvements to WS.
- (b) Upon its creation, all Improvements will be owned by and assigned to WS.

8.4 Prohibited activities

The Licensee will not (and must not permit or procure its Personnel to):

- (a) reverse engineer or decompile or otherwise attempt to discover the source code of OPSIM;
- (b) reproduce, alter or otherwise modify or adapt OPSIM to create any derivative works based on OPSIM;
- (c) use, or permit, OPSIM to be accessed or used in any way other than in a manner expressly permitted by this Agreement;
- (d) challenge the validity of any Intellectual Property Rights of WS;

- (e) merge or interface any third party software (including source code or open source software) with OPSIM without the prior written consent of WS;
- (f) permit OPSIM to be accessed in any unauthorised way, including via interfaces (including exposing or "passing through" a software API or otherwise making OPSIM accessible as an Application Program Interface (API)),
- (g) do or permit any other act which infringes WS' Intellectual Property Rights;
- (h) do or permit an act that uses OPSIM in a way that could infringe a third party's Intellectual Property Rights; or
- (i) use OPSIM in any way that could damage the reputation of WS.

8.5 Notification of infringement claim

The Licensee must notify WS promptly from the date it becomes aware of:

- (a) any actual or suspected infringement by a third party of the other party's Intellectual Property Rights; or
- (b) any actual or threatened claim by a third party that its Intellectual Property Rights have or will be infringed by any act, omission or permission by a party in connection with this Agreement.

8.6 Survival

This clause 8 survives the termination or expiration of this Agreement.

9. Liability

9.1 Exclusion of liability

- (a) To the extent permitted by Law, in no event will WS be liable to the Licensee for Consequential Loss even if WS has been made aware of the possibility of such Consequential Loss prior to entering into this Agreement.
- (b) The Licensee agrees WS is not liable to third parties for any acts or omissions regarding, arising out of, or in connection with, this Agreement.

9.2 Implied terms

- (a) To the full extent permitted by Law, any term which would otherwise be implied into this Agreement is excluded.
- (b) To the full extent permitted by Law, the Licensee acknowledges that OPSIM (and anything else provided under the Licence) is licensed by WS on an 'as is, where is' basis and WS makes no warranties or representations as to the Licensee Data and OPSIM (and anything else provided under the Licence), including any representation that:
 - (1) OPSIM will work with any particular software or hardware, including the software or hardware recommended by this agreement; and



- (2) the Licence, Software Upgrades and Support Services and OPSIM training will be available for any period beyond that expressly stated in this Agreement.
- (c) In the event any Law implies or imposes terms into this deed which cannot be lawfully excluded, such terms will apply, save that the liability of WS for breach of any such term will be limited in accordance with clause 9.3(a) or as otherwise required by Law.

9.3 Limitation of liability

(a) Re-performance

To the extent WS is found Liable in connection with this Agreement, its Liability shall be limited (at the option of WS) to any one or more of the following:

- (1) refunding the price of the goods to which the Liability relates or the supply of equivalent services; or
- (2) reimbursing the Licensee (subject to clause 9.3(b)) for paying someone else to supply the goods which the Liability relates.

(b) Liability cap

To the extent that WS is Liable in connection with this Agreement, then WS' cumulative Liability (however incurred, whether under contract, tort, statute or a right of indemnity) in the aggregate (to the fullest extent permitted by law) shall in no event exceed the sum of the Licence Fee received by WS under this Agreement.

9.4 Survival

This clause 9 survives the termination or expiration of this Agreement.

10. Warranty and indemnity

10.1 Warranty

Each party warrants to the other party that it has the full right and title to enter into this Agreement and to grant the rights it sets out to the other party.

10.2 Indemnity

The Licensee must, subject to clauses 9.1 and 9.3 above, release and indemnify WS from and against all liabilities, claims, damages, suits, expenses, causes of action, injuries or losses (howsoever caused, including as a result, directly or indirectly, of any negligent act or omission or breach of duty by WS or any other person) brought by any person (including the Licensee and any third parties) arising in any way from the exercise by the Licensee of its rights under this Agreement or use by any person of copies of OPSIM licensed under this Agreement.

11. Termination

11.1 Suspension of Licence

- (a) If the Licensee has failed to pay the Licence Fee within five business days of WS' notice of such non-

payment as per **Item 6** of the Reference Schedule, then WS may either (at WS' absolute discretion) terminate or suspend the Licence by giving notice to the Licensee, and the termination or suspension (as the case may be) will be immediately effective on the date of that notice.

- (b) If WS suspends the Licence pursuant to clause 11.1(a), then WS can revoke the suspension by notice to the Licensee, and the revocation of the suspension will be immediately effective on the date of that notice.

11.2 Suspension of Software Upgrades and Support Services

- (a) If the Licensee has failed to pay the Software Upgrades and Support Services Fee as per the terms of the relevant invoice and the Licensee has also failed to notify WS of cancellation of the Software Upgrades and Support Services as per clause 5.2(a), within five business days of WS' notice of such non-payment as per **Item 6** of the Reference Schedule WS may either (at WS' absolute discretion) terminate or suspend the Software Upgrades and Support Services by giving notice to the Licensee, and the termination or suspension (as the case may be) will be immediately effective on the date of that notice.
- (b) If WS suspends the Software Upgrades and Support Services pursuant to clause 11.2(a), then WS can revoke the suspension by notice to the Licensee, and the revocation of the suspension will be immediately effective on the date of that notice.

11.3 Termination for cause

Either party (**First Party**) may terminate this Agreement immediately by written notice upon the occurrence of one of the following events:

- (a) if the other party is in breach of this Agreement and that other party has failed to remedy the breach within thirty (30) days of a written notice to it from the First Party, specifying the breach and requiring it to be remedied;
- (b) if the other party is in breach of this Agreement and that breach is not capable of remedy, as reasonably determined by the First Party; or
- (c) an Insolvency Event occurs in respect of the other party.

11.4 No prejudice of rights

Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.

12. Consequences or termination or expiration

Upon termination or expiration of this Agreement:

- (a) the Licence terminates;
- (b) all monies owing under the Agreement become immediately payable and due;

- (c) the Licensee must immediately cease using OPSIM and permanently uninstall and delete OPSIM and return any Hardware Locks and security tokens to WS; and
- (d) after complying with 12(c), the Licensee must provide written confirmation to WS of its compliance with 12(c).

13. Notices

13.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in clause 13.4 or to any other address as the recipient may have notified the sender; and
- (c) be signed by the party or by an Authorised Officer of the sender.

13.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;
- (c) sent to the party's current address for service by prepaid ordinary mail or if the address is outside Australia by prepaid airmail;
- (d) sent by facsimile to the party's current numbers for service; or
- (e) sent by electronic mail to the party's electronic mail address.

13.3 Time

If a notice is sent or delivered in the manner provided in clause 13.2 it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
 - (1) in Australia to an Australian address, the second Business Day after posting; or
 - (2) in any other case, on the tenth Business Day after posting;
- (c) facsimile, when a transmission report being printed by the sender's facsimile machine stating that the document has been sent to the recipient's facsimile number; or
- (d) electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

13.4 Initial details

The addresses and numbers for service are initially:

- (a) for WS, the address details described at **Item 1**; and
- (b) for the Licensee, the Licensee's Invoicing Address Details described at **Item 2**.

13.5 Changes

A party may from time to time change its address or numbers for service by notice to each other party.

14. Governing law and jurisdiction

14.1 Governing law

This agreement is governed by and construed in accordance with the laws of Queensland.

14.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph 14.2(a).

15. Miscellaneous

15.1 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

15.2 Merger

If the liability of a party to pay money under this agreement becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this agreement and that fixed by or payable under that deed, judgment, order or other thing.

15.3 Moratorium legislation

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this agreement is excluded to the extent permitted by law.

15.4 Assignment

WS may assign, transfer or novate all or any part of its rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, provided that it notifies the Licensee in writing.



15.5 Remedies cumulative

The rights and remedies under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

15.6 Severability

If a provision of this agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

15.7 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

15.8 Costs

Each party is responsible for all its own costs incurred in the negotiation and performance of this agreement including legal costs.

15.9 Taxes

The Licensee must:

- (a) pay all Taxes which may be payable or determinable in connection with the execution, delivery, performance or enforcement of this agreement or any payment or receipt or of any transaction contemplated by this agreement; and
- (b) indemnify WS against any liabilities resulting from any delay or omission by the Licensee to pay any Taxes.

15.10 Time

- (a) Time is of the essence of this agreement in respect of an obligation to pay money.
- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this agreement.
- (c) An agreement to vary a time requirement must be in writing.

15.11 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

15.12 Waiver

- (a) A party's waiver of a right under or relating to this agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

15.13 Counterparts

This agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A

party who has executed a counterpart of this agreement may deliver it to, or exchange it with, another party by:

- (a) faxing; or
- (b) emailing a pdf (portable document format) copy of, the executed counterpart to that other party.

15.14 Whole agreement

This agreement is the entire agreement and understanding between the parties relating to the subject matter of this agreement; and supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.