

End User License Agreement (EULA)

FLWSOLV® V5.3

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Warranty We warrant that for a period of 12 months from the date of purchase: -a) the medium on which the Software is recorded will be free from defects in materials and workmanship under use. b) If the diskette fails to conform to this warranty, you may, as your sole and exclusive remedy, obtain a download replacement free of charge if you return the defective medium to us during the Warranty period with a dated proof of purchase; and the copy of the Software in this package will materially conform to the documentation that accompanies the Software. c) If the Software fails to operate in accordance with this warranty, you may, as your sole and exclusive remedy, return all of the Software and the documentation to us during the Warranty period, along with dated proof of purchase, specifying the problem, and we will provide you with a new version of the Software. **Disclaimer** We do not warrant that this Software will meet your requirements or that its operation will be uninterrupted or error free. We exclude and hereby expressly disclaim all express and implied warranties or conditions not stated herein, so far as such exclusion is or disclaimer is permitted under the applicable law. **THIS AGREEMENT DOES NOT AFFECT YOUR STATUTORY RIGHTS.** **Liability** Our liability to you for any losses shall not exceed the amount you originally paid for the Software. In no event will we be liable for any indirect or consequential damages even if we have been advised of the possibility of such damages. In particular, we accept no liability for any programs or data made or stored with the Software nor for the costs of recovering or replacing such programs or data. Nothing in this clause limits our liability to you in the event of death or personal injury resulting from our negligence.

Termination The agreement and the license hereby granted to use the Software automatically terminates if you: -a) fail to comply with any provisions of this agreement; b) destroy the copies of the Software in your possession; or c) voluntarily return the Software to us.; d) In the event of termination you must destroy or delete all copies of the Software from all storage media in your presence. **Severability** In the event that any provision of this agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either you or us from any relevant competent authority we shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, or at our discretion such provision may be severed from this agreement and the remaining provisions of this agreement shall remain in full force and effect.

Entire Agreement You may read and understand this agreement and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof and supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between us relating thereto. **Assignment** This agreement is personal to you and you may not assign, transfer, sub-contract or otherwise part of this agreement or any right or obligation under it without our prior written consent. **Law and Disputes** This agreement and all matters arising from it are governed by and construed in accordance with the laws of Scotland whose courts have exclusive jurisdiction over all disputes arising in connection with this agreement. If you have any questions about this agreement, write to SOLV Limited at the address above.

Software License Agreement

1. Introduction

1.1. The Licensor (SOLV Limited) has developed and owns all rights in the non-exclusive right to market in the United Kingdom and the rest of the world a computer software system called "FLWSOLV® V5.3".

1.2 The Licensee (The Purchaser) wishes to Use the Software on the Equipment in the Territory (as those terms are defined in this Agreement), and the Licensor is willing to grant the Licensee a license to do so, on the terms and conditions of this Agreement.

2. Interpretation

2.1 In this Agreement: 'the Acceptance Date' means the date on which the Software is deemed to have been accepted by the Licensee 'the Documentation' means the user guides, instruction manuals and other documents, whether in written or machine-readable form, issued by the Licensor from time to time for the Use of the Software; 'the Software' means the computer software system and includes [all programs, algorithms, techniques, processes, methods, know-how and other information comprised in the system and] all corrections, updates or improvements to the system which are issued by the Licensor from time to time; 'the Software Material' means any media containing or recording the Software or any part of it; 'the Term' means the period during which the Agreement continues in force pursuant to cl 1 1.1 [or 11.2]; 'the Territory' means (Location defined on user registration or detailed as above). 'Use' (as a noun) means, in relation to the Software or

(where it is in machine-readable form) the Documentation, its loading, displaying, running, transmission or storage for the purpose of processing the instructions contained in the Software or (as the case may be) the Documentation, and 'Use' (as a verb) has a corresponding meaning; 'Working Day' means a day (other than Saturday or Sunday or any bank or public holiday) consisting of not more than 7.5 hours' work, including meal breaks, rest periods and traveling time.

2.2 Any reference in this Agreement to 'writing' or any cognate expression includes a reference to any communication effected by telex, facsimile transmission or similar means.

2.3 The headings in this Agreement are for convenience only and shall not affect its interpretation.

3 Grant of license

3.1 The Licensor hereby grants to the Licensee, subject to the provisions of this Agreement, a non-exclusive license to Use the Software in the Territory.

3.2 The Software may only be Used by the Licensee on the Equipment and for the internal purposes of the Licensee's business. 3.3 The Licensee shall not make any Use of the Software outside the Territory.

4 Supply installation and acceptance of the software

4.1 The Licensor shall supply the Licensee with one copy of the Software in object-code form and one copy of the Documentation current at the date of this Agreement in written form.

4.2 The Licensee shall carry out all necessary preparations (including, without limitation, taking such steps as the Licensor may notify to the Licensee) and give the Licensor's representatives all assistance which they may reasonably require to facilitate the installation and testing of the Software.

4.3 The Software shall be deemed to have been accepted by the Licensee as having been supplied in accordance with this Agreement except with respect to any defects or errors which would not be readily apparent once the Licensor's standard tests for acceptance of the Software have been successfully carried out.

4.4 The Software Material and the Documentation supplied to the Licensee shall be at the Licensee's risk as from the time of delivery but shall remain the property of the Licensor.

4.5 The Software and (where appropriate) the Documentation shall be supplied in object code form only, and the Licensee shall not be entitled to have access to or to be supplied with the source code for the Software.

5 Use of the software

5.1 The Licensee shall ensure that the Software is at all times correctly Used on the Equipment in accordance with the Documentation and that all persons who are authorized by the Licensee to Use the Software are suitably qualified and properly trained. 5.2 The Licensee shall not permit any person (except its properly qualified, trained and authorized employees who need to Use or have access to the Software for the purposes specified in this Agreement) to Use or have access to any part of the Software or the Documentation, and shall take all practicable steps to prevent any access to the Software or the Documentation by any other person.

5.3 The Licensee shall comply with all applicable laws and regulations concerning the Software, the Software Material and the Documentation or their Use.

5.4 The Licensee shall be entitled to make from time to time and retain for back-up purposes one copy of the Software, which shall be deemed to form part of the Software Material.

5.5 The Licensee shall not: a) Except as provided by cl 5.4, or to the extent incidental to the Use of the Software as permitted by this Agreement, b) copy the whole or any part of the Software or the Documentation; adapt, c) modify or alter in any way the whole or any part of the Software or the Documentation; d) convert the whole or any part of the Software from object code into source code, except to the extent permitted by law; e) merge or combine the whole or any part of the Software or the Documentation with any other computer software or documentation; f) part with possession of, lend or transfer of any part of the Software Material or the Documentation to any other person; g) use any of the confidential information of the Licensor contained in or derived from the Software to develop or market any software which is substantially similar in its function or expression to any part of the Software.

6 Maintenance of the software

6.1 The Licensor shall, during the period of twelve months from the execution of this Agreement and any further period of months in respect of which the Licensee has paid to the Licensor a maintenance fee, provide maintenance and technical support for the Software in accordance with the following provisions of this cl 6.

6.2 Pursuant to cl 6.1 the Licensor shall during UK working hours (9.00 am to 4.00 pm, Monday to Friday, excluding Public Holidays) or, in the case of emergency, at any other reasonably practicable time, provide the Licensee with advice by telephone or any other means agreed between the parties as to the Use of the Software and the Documentation, but if it is not reasonably practicable to provide such advice by telephone, the Licensor shall respond promptly to the request and shall provide on-site assistance as soon as practicable within normal office hours to resolve the problem.

6.3 The Licensee shall promptly notify the Licensor of any defect or error in the Software or the Documentation, and the Licensor shall, subject to the following provisions, use its reasonable endeavours to correct the defect or error, and to send a corrected version of the portion of the Software Material or the Documentation in question to the Licensee, as soon as practicable after being so notified.

6.4 The Licensor shall not be obliged to correct any defect or error in the Software or the Documentation which arises from: a) any improper or unauthorized Use or operation of the Software or the equipment on which it is Used; b) the adaptation, modification or alteration in any way of any part of the Software or the Documentation [without the Licensor's prior consent], or the merger or combination of any part of the Software or the Documentation with any other computer software or documentation; c) the Use of any part of the Software or the Documentation otherwise than on the Equipment; d) any failure by the Licensee to comply with any advice or instructions given by the Licensor with regard to the Use of the Software or the Documentation; e) any failure by the Licensee to install any corrected version or any update or improvement of the Software or the Documentation supplied by the Licensor.

6.5 The Licensor shall, as soon as practicable after its availability for release:

provide the Licensee with one copy of any update or improvement to the Software or the Documentation which the Licensor makes generally available to its licensees;

supply the Licensee with one copy of such up to date information concerning the Software and its Use as the Licensor may think necessary to enable the Licensee to exercise its rights under this Agreement.

6.6 The Licensee shall ensure that any corrected version or any update or improvement of the Software or the Documentation supplied by the Licensor is (when in machine readable form) installed on the Equipment forthwith upon its delivery to the Licensee and shall, upon request by the Licensor, return the replaced version of the Software or the Documentation to the Licensor.

7 Rights in the software

7.1 The Licensee acknowledges that the copyright and all other intellectual property rights in the Software, any Software Material and the Documentation belong exclusively to the Licensor, and the Licensee shall not do anything which might bring into question the Licensor's ownership of those rights or their validity.

7.2 The Licensee shall ensure that any copy of the Software or the Documentation which it makes pursuant to cl 5.4 shall bear the same copyright and other proprietary notices as those on the original copies supplied by the Licensor to the Licensee, and shall not alter or obliterate any such notice.

7.3 The Software and the Documentation contain confidential information of the Licensor, and the Licensee shall not at any time (either during the Term or after the termination of this Agreement): a) disclose to any person, except the Licensee's properly qualified, trained and authorized employees who need to have access to the information; b) use for any unauthorized purpose, any information contained in or concerning the Software or the Documentation, except to the extent that the information is at the date when it is disclosed to the Licensee or at any time after that date through no fault of the Licensee has become public knowledge, and the Licensee shall accordingly c) ensure that each of its employees is instructed as to the confidential nature of such information, and shall take all practical steps to prevent its unauthorized disclosure or use.

7.4 The Licensee shall fully notify the Licensor as soon as practicable after it becomes aware of: any actual, threatened or suspected infringement of the copyright or the intellectual property rights of the Licensor in the Software, any Software Material or the Documentation, or of any breach of confidence relating to any of the foregoing;

any claim brought against the Licensee alleging that its Use of the Software, any Software Material or the Documentation infringes the copyright or any other intellectual property rights belonging to or alleged to belong to the claimant.

7.5 If any such claim as is mentioned in cl 7.4(b) is brought against the Licensee, the Licensor shall use its reasonable endeavours to replace the portion of the Software, the Software Material or the Documentation which allegedly infringes the claimant's rights with material which does not so infringe or, if that is not reasonably practicable, shall be entitled to require the Licensee to cease using the material which allegedly infringes the rights of the claimant.

7.6 The Licensor shall indemnify the Licensee against any damages, costs or expenses awarded against, or incurred or agreed to be paid in settlement by, the Licensee arising out of any claim that the Use of the Software or any Software Material or the Documentation supplied by the Licensor infringes the copyright or other intellectual property rights of any other person, provided that the Licensee shall: a) fully notify the Licensor as soon as practicable after it becomes aware of the claim; b) permit the Licensor to have exclusive control of any negotiations or proceedings in connection with the claim; c) take all reasonable steps to mitigate any loss or liability in respect of the claim; d) not compromise or settle the claim in any way without the Licensor's written consent.

8 Warranties and liability

8.1 The Licensor warrants to the Licensee that:

the Software has been originally developed by or for the Licensor and the Licensor is entitled to grant the rights granted under this Agreement; the Software will in all material respects comply with the Licensor's specification current at the date of supply, when properly Used on the Equipment in accordance with the Documentation.

8.2 The Licensee acknowledges that the Software has not been prepared to meet the Licensee's individual requirements.

8.3 The Licensor does not give any representation, warranty or undertaking as to the effectiveness, quality or fitness for any purpose of the Software or any Software Material or the Documentation, or that the Software or any Software Material or the Documentation supplied by the Licensor is free from any defect or error.

8.4 The Licensor shall not be liable to the Licensee by reason of any representation or the breach of any implied condition, warranty or other term or any duty at common law or under any statute, or under any express term of this Agreement, for any loss, damages, costs, expenses or other claim for compensation whatsoever, whether occasioned by the negligence of the Licensor, its servants or agents or otherwise, which arises out of or in connection with this Agreement, or which in any way relates to the Software or any Software Material or the Documentation, or their Use by the Licensee, to the extent that: a) any such claim is for loss of profits, contracts, goodwill or anticipated savings, or for wasted expenditure, or for any indirect, special or consequential loss or damages; b) or the amount of any claim for which the Licensor would otherwise be liable exceeds the total amounts paid by the Licensee.

8.5 Notwithstanding any of the provisions of cl 6, the Licensor shall have no liability for the performance, Use or consequences of any changes to the Software or any Software Material or the Documentation which are made otherwise than by the Licensor, and the Licensor shall have no obligation to correct, maintain or update any part of the Software or any Software Material or the Documentation which has been the subject of any such change. Neither party shall be deemed to be in breach of this Agreement or have any liability to the other in so far as it is prevented from performing its obligations under this Agreement by reason of any circumstances beyond its reasonable control, including (without limitation) any strike, lock-out or other industrial action.

9 Duration and termination

9.1 This Agreement, having come into force on the date of its execution, shall, unless terminated earlier for any reason, continue in force without limit of time.

9.2 The Licensee shall be entitled to terminate this Agreement at any time by giving not less than three months' written notice to the Licensor.

9.3 The Licensor may forthwith terminate this Agreement by giving written notice to the Licensee if: a) any sum payable by the Licensee under this Agreement is not paid on the due date or within the due period for payment; or the Licensee commits any other breach of this Agreement and, if the breach is capable of remedy, fails to remedy it within thirty days after being given a written notice containing full particulars of the breach and requiring it to be remedied; orb) an encumbrance takes possession' or a receiver is appointed, of any of the property or assets of the Licensee; or the Licensee becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the insolvency Act 1986); c) or the Licensee goes into liquidation (except for the purpose of amalgamation or reconstruction and so that the resulting company effectively agrees to be bound by or assume the obligations imposed on the Licensee under this Agreement) ;d) or the Licensee ceases, or threatens to cease, to carry on business;

9.4 For the purposes of cl 9, a breach shall be considered capable of remedy if the Licensee can comply with the provision in question in all respects other than as to the time of performance (provided that the time of performance is not of the essence). 9.5 The rights given by this clause to terminate this Agreement shall not prejudice any other right or remedy of the Licensor in respect of the breach concerned or any other breach.

9.6 Upon the termination of this Agreement for any reason: a) the Licensee shall forthwith cease to Use, either directly or indirectly, the Software or any Software Material or the Documentation; b) the Licensee shall forthwith destroy or return to the Licensor all copies of the Software Material or the Documentation in its possession or control; c) the provisions of cl 7.3 shall continue in full force and effect; d) subject as provided in this clause, and except in respect of any accrued rights, neither party shall be under any further obligation to the other under this Agreement.

10 Nature of agreement

10.1 The Licensor shall be entitled to assign the benefit of this Agreement to any person.

10.2 This Agreement is personal to the Licensee, which shall not be entitled to assign, mortgage, charge or otherwise transfer or sub-license any of its rights under this Agreement.

10.3 Nothing in this Agreement shall create, or be deemed to create, a partnership, or the relationship of principal and agent, between the parties.

10.4 This Agreement contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorized representatives of the parties.

10.5 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10.6 No failure or delay by the Licensor in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by the Licensor of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

10.7 If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the other provisions of this Agreement and the remainder of the affected provision shall continue to be valid.

10.8 All rights of the Licensor under this Agreement are cumulative and in addition to any other right or remedy available to it at law or in equity.

10.9 Without limiting the scope of cl 9.2, the Licensee acknowledges that any breach of this Agreement may cause irreparable damage to the Licensor, and the Licensee accordingly agrees that the Licensor shall be entitled to injunctive relief in respect of any such actual or apprehended breach and, in addition to any award by the court in favour of the Licensor, to be reimbursed in full for all costs and expenses (including legal expenses) incurred in enforcing the terms of this Agreement.

11 Arbitration and applicable law

11.1 Any dispute between the parties arising out of or in connection with this Agreement shall be referred to the arbitration in Edinburgh of a single arbitrator appointed by agreement between the parties or, failing agreement between the parties within 30 days after a request for a reference is made by either party, nominated on the application of either party by the President for the time being of the British Computer Society. Scots law shall apply to the whole of this Agreement, and each party agrees to submit to the non-exclusive jurisdiction of the Scottish courts.

12 Notices and service

12.1 Any notice or other information required or authorized by this Agreement to be given by either party to the other shall be given by: a) delivering it by hand; or b) sending it by pre-paid registered, air -mail post; c) or sending it by email or similar means of communication to the other party at the address shown at the top of this EULA.

12.2 Any notice or other information sent by post in the manner provided by cl 12. 1 which is not returned to the sender as undelivered shall be deemed to have been given on the seventh day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that the notice or information has been duly given. Any notice or other information sent by telex, facsimile transmission or similar means of communication shall be deemed to have been duly given on the date of transmission, provided that a confirming copy of it is sent as provided in cl 12.1 (b) to the other party at the address shown at the top of this license agreement within 24 hours after transmission. Service of any legal proceedings concerning or arising out of this Agreement shall be effected by either party by causing the document in question to be delivered to the other party at its registered or principal office, or to such other address as may be notified in writing from time to time to the party serving the proceedings.