



## **END USER LICENSE AGREEMENT**

This End User License Agreement (this “**EULA**”) is a legal agreement between you (the “**Licensee**”) and Counsilman-Hunsaker and Associates, Inc., a Missouri corporation (the “**Owner**”), the licensor of the Application, and including all HTML files, XML files, Java files, graphics files, animation files, data files, technology, development tools, scripts and programs, both in object code and source code (the “**Application**”), and the deliverables provided pursuant to this EULA, which may include associated media, printed materials, and “online”, or electronic documentation.

IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE FOLLOWING TERMS. BY SUBMITTING YOUR PAYMENT OR USING THIS APPLICATION, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT SUBMIT PAYMENT OR USE THIS APPLICATION.

IF YOU HAVE RECENTLY PURCHASED THE APPLICATION AND DO NOT AGREE TO THE TERMS OF THIS EULA, PLEASE CONTACT THE OWNER AS OUTLINED IN SECTION 8.

### **1. Grant of Sublicense.**

**A) Scope of Sub-License.** Subject to and conditioned on Licensee’s compliance with all terms and conditions of this EULA, Owner hereby grants to Licensee a non-exclusive, non-transferrable, non-assignable sublicense to possess and to use a copy of the Application, along with any accompanying user, technical and other manuals provided by Owner to Licensee (the “**Documentation**”), solely in accordance with the terms of this EULA.

**B) Access and Use.** Licensee may access and use the Application with those identified users authorized by Licensee to have access to the Application solely for Licensee’s business use in connection with its operation of aquatic facilities.

**2. Exclusion of All Other Rights.** Except as expressly provided herein, Licensee is granted no other rights or licenses whatsoever in or to the Application or Documentation or any of Owner’s other products, services or other intellectual, proprietary, or personal rights. Owner reserves all rights and licenses not expressly granted in this EULA. In particular, nothing in this EULA conveys to Licensee the legal title to any Application or Documentation.

### **3. Description of Rights and Limitations.**

**A) Limitations.** The Application is sub-licensed as a single product. Licensee and third parties may not reverse engineer, decompile, or disassemble the Application. Licensee may not transfer, rent, lease, assign, resell, sub-license, create derivative works of, copy or export the Application or Documentation or any component thereof to any other person or entity, whether by

operation of law or otherwise, without the prior written consent of Owner, which may be withheld in Owner's sole discretion.

**B) Update and Maintenance.** Owner shall provide updates and maintenance on the Application on an as needed, reasonable basis.

**4. Title to Application.** Owner represents and warrants that it has the legal right to enter into and perform its obligations under this EULA.

**5. Intellectual Property.** All now known or hereafter known tangible and intangible rights, title, interest, copyrights and moral rights in and to the Application, including but not limited to all images, photographs, animations, video, audio, text, data, computer code, algorithms, and information, shall be retained by Owner (as between Owner and Licensee). As between Owner and Licensee, Owner retains all ownership rights in the Application and Documentation, including any derivative, updates, modification or adaptation to the Application and Documentation. All right to patents, copyrights, trade secrets and other proprietary rights associated with the Application and Documentation, and any derivative, enhancement, adaptation or modification thereto, shall be the exclusive property of Owner (as between Owner and Licensee).

**6. Payment.** Unless otherwise agreed in writing or otherwise set forth herein, Licensee will be invoiced promptly following acceptance of this Agreement, and Licensee will make payment in U.S. dollars for the fees specified by Owner within thirty (30) calendar days after the date of Owner's invoice for same.

**7. Non-Transferable.** This EULA is not assignable or transferable by Licensee, and any attempt to do so is void and a breach of this EULA by Licensee.

**8. Notices.** Any notice, approval or consent required or permitted hereunder shall be in writing and will be deemed to have been duly given if delivered personally or mailed by first-class, registered or certified mail, postage prepaid to the address set forth below such party's signature to this EULA, or such other address as either party may designate.

**9. Warranty Disclaimer.** OWNER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY RELATED TO THE APPLICATION AND DOCUMENTATION. THE APPLICATION AND THE DOCUMENTATION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. LICENSEE ACCEPTS ANY AND ALL RISK ARISING OUT OF USE OR PERFORMANCE OF THE APPLICATION.

**10. Limitation of Liability.** OWNER SHALL NOT BE LIABLE TO LICENSEE, OR ANY OTHER PERSON OR ENTITY CLAIMING THROUGH LICENSEE, FOR ANY LOSS OF PROFITS, INCOME, SAVINGS, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, DIRECT OR INDIRECT DAMAGE, WHETHER ARISING IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. THESE LIMITATIONS SHALL APPLY REGARDLESS OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. UNDER NO CIRCUMSTANCES SHALL OWNER'S AGGREGATE LIABILITY TO LICENSEE, OR ANY OTHER PERSON OR ENTITY CLAIMING THROUGH LICENSEE, EXCEED THE FINANCIAL AMOUNT ACTUALLY PAID BY LICENSEE TO OWNER FOR THE APPLICATION.

**11. Confidentiality, Nondisclosure and Nonuse Covenants.** For purposes of this EULA, the party disclosing Confidential Information is the "**discloser**," and the party receiving the information is the "**recipient**." "**Confidential Information**" means all information concerning either party's business including, including but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) personal identity information; (b) trade secrets; (c) financial information, including pricing; (d) technical information, including research, development, procedures, algorithms, data designs, and know-how; (e) business information, including operations, planning, marketing interests, and products and services; and (f) the terms of this EULA. The recipient does not have an obligation to protect Confidential Information that is: (a) in the public domain through no action of the recipient; (b) within the legitimate possession of the recipient, with no confidentiality obligations to a third party; (c) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure; (d) independently developed by the recipient without breaching this EULA or by the parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information; or (e) disclosed with the prior written consent of the discloser. If Confidential Information is required to be produced by law, court order or government authority, the recipient must immediately notify the discloser of that obligation. The recipient will not produce or disclose Confidential Information in response to that obligation until discloser has requested protection from the court or other legal or governmental authority issuing the process and the request has been denied, or consented in writing to the production or disclosure of the Confidential Information in response to the process, or taken no action to protect its interests in the Confidential Information within fourteen (14) business days after the receipt of notice from the recipient of the obligation to produce or disclose. Recipient will use the Confidential Information only to further the relationship between the parties. Confidential Information may not be disclosed to any third party without the written consent of the discloser or used by the recipient in any manner which may be competitive to the discloser.

**12. Term and Termination.**

**A) Term.** This EULA shall become effective for one (1) year from the date that payment is received.

**B) Termination for Cause.** Owner may terminate this EULA immediately upon Licensee's breach of any term of this EULA and failure to cure within ten (10) days after receiving written notice of same from Owner or immediately upon the bankruptcy, insolvency or assignment for the benefit of creditors by Licensee or upon an attempted assignment of this EULA by Licensee. Owner shall, following termination of this EULA, be entitled to recover its damages and its costs, including its attorneys' fees, resulting from the breach of this EULA by Licensee.

**13. Indemnity.** Licensee agrees, at its sole cost and expense, to defend, indemnify and save harmless Owner, its officers, directors, members, managers, agents, employees, subcontractors, parents, subsidiaries, successors, assigns, and affiliates (the "**CH Parties**") from and against all liabilities, obligations, claims, damages, penalties, causes of action, and other costs and expenses (including, without limitation, reasonable attorneys' and paralegals' fees, consultants' fees, investigation, expert fees, court costs and litigation expenses), imposed upon or incurred by or asserted or assessed against the CH Parties, arising out of or related in any way to Licensee's ownership or operation of its aquatic facility or a breach of this EULA by Licensee, notwithstanding anything contained herein to the contrary.

**14. Miscellaneous.**

**A) Entire EULA.** This EULA constitutes the entire EULA between Owner and Licensee with respect to the Application and Documentation. No amendment to this EULA shall be valid unless made by supplemental written EULA executed and approved by Owner and Licensee. Except as otherwise provided herein, any and all amendments, additions, or deletions to this EULA shall be null and void unless approved by Owner and Licensee in writing. Each party to this EULA hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or EULAs, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this EULA, has relied upon no warranties, representations, covenants, or EULAs, express or implied, to such party, other than those expressly set forth herein.

**B) No Third Party Beneficiary.** The terms of this EULA are enforceable by the parties but are not enforceable by any third party. Nothing contained herein shall, or shall be construed, to create any rights in any third party.

**C) Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to either of the parties to this EULA is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this EULA or now or hereafter legally existing upon the occurrence of an event of default under this EULA. The failure of either party to this EULA to insist at any time upon the strict observance or performance of any of the provisions of this EULA, or to exercise any right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this EULA to the parties may be exercised from "time to time" and as often as may be deemed expedient by those parties.

**D) Applicable Law.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Missouri. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of St. Louis County, Missouri. Each party consents to the sole and proper jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

**E) Survival.** All provisions of this EULA that, judging by their terms and context, are intended to survive, shall survive the termination or expiration of this EULA.