

SOFTWARE LICENCE

CAREFULLY READ THE TERMS AND CONDITIONS OF THIS LICENCE BEFORE YOU INSTALL, EXECUTE OR USE THE CLUES SOFTWARE. BY INSTALLING, EXECUTING OR USING CLUES YOU BECOME THE LICENSEE TO THIS LICENCE AND CONSENT TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT WISH TO ACCEPT THE TERMS PROMPTLY RETURN THE UNINSTALLED/UNEXECUTED CLUES SOFTWARE TO NIWA.

1. LICENCE

- 1.1 National Institute of Water & Atmospheric Research Limited, a duly incorporated company having its registered office in New Zealand ("NIWA"), is the owner, and/or licensee, of copyright and other intellectual property in software to, amongst other things, predict the impacts of land-use changes on water quality and socio-economic indicators and the cumulative effects of multiple nutrient and sediment inputs at a larger catchment scale and any associated user documentation (collectively "CLUES"). Upon installation, execution and/or use of CLUES you accept a non-exclusive, non-transferable licence to use CLUES upon the terms and conditions contained herein. You do not receive title to, or any interest or other proprietary rights in, CLUES whatsoever.
- 1.2 This licence does not include any support services in relation to CLUES ("Software Support Services"). Any Software Support Services that you may require must first be agreed with NIWA and shall be provided pursuant to a separate agreement with NIWA.

2. PERMISSIBLE USES

- 2.1 You may:
 - a. Use CLUES, on your internal systems, solely as an end user and only for your Internal Purposes. For the purposes of this licence "Internal Purpose" means your usual internal operational and planning functions, which where you have a public safety or interest function, includes use for public good purposes such as issuing public safety warnings, or carrying out your prescribed regulatory functions. However, for the avoidance of doubt expressly excludes undertaking or providing catchment modeling or other environmental research or consultancy services to third parties, on a contract or revenue generating basis;
 - b. Copy CLUES into any machine-readable or printed form for the purposes of transferring CLUES between internal systems and for archive or back-up purposes.

3. YOUR UNDERTAKINGS

- 3.1 You undertake not to perform any of the acts referred to in this clause and sub-clauses, except to the extent expressly permitted in this licence or with NIWA's prior written consent. You may not:
 - a. Distribute, supply or sub-licence CLUES (or any component thereof) to any third party;
 - b. Translate, adapt, modify, develop or alter CLUES or any part of it;
 - c. Disassemble, decompile or reverse engineer CLUES or directly or indirectly allow a third party to disassemble, decompile, or reverse engineer the whole or any part of CLUES.
 - d. Merge all or any part of CLUES with any other software;
 - e. Remove or obliterate from CLUES any copyright notice applied by NIWA;
 - f. Disclose to, provide or otherwise make CLUES available, in whole or in part, to any person other than your employees;
 - g. Use CLUES except in accordance with the provisions of this licence; and/or
 - h. Sell, assign, licence or otherwise transfer your rights under this licence.
- 3.2 You shall ensure your employees, and any permitted agents, contractors, assignees or licensees agree to be bound by the terms of this licence.
- 3.3 If you want to use CLUES for a commercial purpose, or any purpose other than your Internal Purpose, you shall seek NIWA's consent and enter into an appropriate agreement with NIWA prior to any such use.

4. TERM

- 4.1 Unless you receive NIWA's express written permission, the licence is effective for a two (2) year term, commencing on the date of first installation, execution or use of CLUES, unless terminated earlier in

accordance with the terms of this licence. The licence may be renewed as of right, but upon written request, for a further two (2) year concurrent term.

- 4.2 This licence shall automatically terminate if you breach any of the terms or conditions of the licence. NIWA may terminate the licence, in its sole discretion, upon two (2) weeks written notice.
- 4.3 NIWA may, in its sole discretion, terminate this licence at any time upon six (6) months notice.
- 4.4 CLUES contains integral third party components. If a third party terminates, or otherwise withdraws or suspends, NIWA's access to any such component, then NIWA may suspend a your access to CLUES and/or terminate this licence immediately.
- 4.5 Upon termination or expiration of this licence, you agree to immediately cease use of and delete/destroy CLUES and any copies thereof (in whatever form). If you are bound by the Public Records Act 2005 to retain a copy of CLUES, then you may do so, solely for record keeping purposes, but only to the extent necessary for you to meet your obligations under that Act.

5. EXCLUSION OF WARRANTIES

- 5.1 CLUES is provided "as is" without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability and/or fitness for a particular purpose.
- 5.2 NIWA does not warrant that the functions contained in CLUES will meet your requirements or that the operation of CLUES will be uninterrupted or error free, or that CLUES will not infringe a third party's intellectual property rights. If you, or a third party through your use of CLUES, suffered damage, or incurs liability or cost as a result of your use of CLUES, you (and not NIWA) agree to assume the entire cost of all necessary services, repair or correction.
- 5.3 You agree that you are using CLUES for the purpose of a business and therefore any warranties expressed or implied by the Consumer Guarantees Act 1993 shall not apply to this licence or your use of CLUES.

6. LIMITATION OF LIABILITY / INDEMNITY

- 6.1 NIWA shall not be liable to you or to any other party for any loss, cost or damage, whatsoever or howsoever caused, arising directly or indirectly in connection with CLUES or your use thereof.
- 6.2 Notwithstanding the generality of clause 6.1, NIWA expressly excludes liability for indirect, special, incidental or consequential loss or damage, which may arise in respect of this licence, CLUES, its use or otherwise, or for loss of profit, business, production, revenue, goodwill or anticipated savings.
- 6.3 In the event that NIWA incurs any liability whatsoever, such liability will under no circumstances exceed in aggregate, the lesser of the licence fee paid by you for the use of CLUES or \$500.
- 6.4 You agree to fully indemnify, and keep indemnified, NIWA against any claim, proceeding, loss, cost (including legal costs on a solicitor/own client basis), damage, liability or expense incurred or suffered by it, whether arising in contract, tort (including negligence) or otherwise and arising out of, or in connection with:
 - a. your use of CLUES;
 - b. use of CLUES by any third party who has receive CLUE from, or through you; or
 - c. a breach of this agreement by you.

7. INTELLECTUAL PROPERTY

- 7.1 You acknowledge that any and all copyright, trade marks, patents, design registrations, trade-secrets, know-how and other intellectual property, subsisting in or used in connection with, CLUES (including but not limited to all code, images, photographs, animations, video, audio, music, text, data incorporated in CLUES) are and remain the sole property of NIWA (or any other third party owner NIWA licences intellectual property from).
- 7.2 Any modifications or alterations of CLUES shall remain the property of NIWA in all respects, whether modified or altered by you, NIWA or a third party, and whether or not such modifications or alterations are authorised by NIWA.

8. CONFIDENTIAL INFORMATION

- 9.1 You agree that all software, information, data, drawing, specifications, documentation, software listings, source or object code, which NIWA may have imparted, or may from time to time impart, to

you or you gain access to, relating to CLUES or associated procedures (the "Confidential Information"), is proprietary and confidential.

- 9.2 You agree that you shall use the Confidential Information solely in accordance with the provisions of this licence and shall not at any time during the licence or after its termination disclose the Confidential Information, either directly or indirectly, to any third party without NIWA's prior written consent.
- 9.3 You may only disclose such Confidential Information to those employees who require the information to use CLUES. Prior to disclosing such Confidential Information, you will advise those employees of the confidential nature of that information, and ensure they agree to be bound by the obligations under this licence.
- 9.4 Upon the expiry or termination of this licence you will immediately deliver up to NIWA all copies of CLUES and all associated documentation and all other Confidential Information within your power, possession or control. You may retain one copy, for solely record keeping purposes, if required to do so by the Public Records Act 2005.

9. GENERAL

- 9.1 You must not assign, licence, transfer or otherwise deal with, either in whole or in part, the benefit or burden of this Agreement without the prior written consent of NIWA, who's consent may be withheld in its absolute discretion.
- 9.2 NIWA may from time to time, in its discretion and without notice to you, vary the terms of this licence and your access to CLUES.
- 9.3 Failure or delay by NIWA in enforcing any right or provision of this licence is not to be construed or deemed a waiver of such provision or right, and shall not in any way prejudice NIWA's right to take subsequent action.
- 9.4 If any provision of this licence is void or unenforceable for any reason that provision shall, to that extent, be severed from the remaining provisions, which will remain in full force and effect.
- 9.5 This licence will be governed by and construed in all respects in accordance with the laws of New Zealand and you agree to submit to the jurisdiction of the New Zealand Courts.