

KELTON Software Licence Agreement

1. Definitions

Expression	Definition
KELTON™	Kelton Engineering Ltd, incorporated under Companies Act 1985, Registered in Scotland Number 129648 and having its Registered Office at The Mackenzie Building, 168 Skene Street, Aberdeen AB10 1PE
SOFTWARE	a computer software programme or application purchased from KELTON;
FLOCALC™	The KELTON Desktop Calculation Software Application
UNCERTAINTYPLUS™	The KELTON Desktop Uncertainty Software Application
KELTON MeterManager (KMM)	The KELTON fully integrated software suite to manage flow measurement activity
LICENSEE	The purchaser
USER	The Licensee or as appointed by the Licensee

2. Grant of Licence

In consideration of the payment of the fee (the 'License Fee'), FLOCALC or UNCERTAINTYPLUS - the License entitles and permits the Licensee to use one copy of the Software on any single computer for each licenced user.

The Software is 'in use' when it is either loaded into RAM or installed into the hard disk or other permanent memory. This License does not allow the Software to be installed on a network server for access by multiple simultaneous users and/or distribution to other computers.

In all other KMM packages; KELTON grants you, the user, the non-exclusive licence to use multiple KMM clients connected to a single KMM server for the site(s) and on the system(s) for which the applications are supplied. This licence confers no title or ownership in the purchased software and no rights in the source code and all intellectual rights are reserved.

3. Restrictions

As a Licensee you may not:

- Copy, except for one copy for 'back-up' purposes only, the Software. Any such copy will be in all respects subject to the terms and conditions of this Licence agreement.
- Assign, novate, sub-license, loan, rent, charge, lease, transfer or otherwise deal in or encumber the Software.
- Reverse engineer, de-compile or disassemble the whole or any part of the Software from object code into source code except and only to the extent that such an activity is expressly permitted by applicable law.
- Use the Software on other than equipment suitable for its operation.
- Seek to repair, adjust alter, merge, combine or modify Software in any way.
- Use Software for a purpose other than for the purpose for which it is designed.
- Remove or alter any copyright or other proprietary notice on the Software.

Breach of the foregoing will entitle KELTON to immediately terminate this Licence, the Licensee will indemnify KELTON in respect of all claims, losses, expenses and damages thereby incurred and the Licensee shall return the Software and all copies made (authorised or unauthorised) without refund.

As part of the standard licensing control mechanism for desktop-based software, the licensing component will block access if the system clock is changed against the licenced computer. Changing the system clock will cause future-dated files to be generated and therefore the software will not work until the user reaches the future-date or the affected computer is re-formatted.

4. Warranty

KELTON warrants that:

- The Software will perform substantially in accordance with the system specification.
- That the materials within the package are not defective.

Provided always that the Software has been used and maintained strictly in accordance with KELTON's instructions, and the Licensee has fully complied with the terms of this License.

The warranty period is twelve (12) months from the date of the download of the Software by the Licensee (the '**Warranty Period**').

All and any complaints and/or claims under the Warranty must be received by KELTON in writing within the Warranty Period. Any claim brought outside of Warranty Period will not be addressed by KELTON under the terms of this License.

If the software does not conform to the Warranty then KELTON shall have the option, but shall not be obliged, to provide replacement software. Any such replacement software shall be subject to the Warranty and the provisions of this License.

5. Support

Where a Licence has been purchased or support has been purchased for a pre-existing perpetual licence, KELTON will attempt to answer specific customer support requests during the period in which the Licence is in force. This service is offered on a 'reasonable endeavours' basis and you, the Licensee acknowledge and agree that KELTON may not be able to resolve every problem or fully resolve every support request. KELTON shall not be responsible and or liability for their failure to respond or for any error or negligence in responding.

6. Maintenance Releases

KELTON may from time to time issue maintenance releases in respect of the Software which, if applicable, shall be available to you the Licensee under the terms of this License. KELTON warrants that no Maintenance Release will adversely affect the then existing facilities or function of the Software. The Licensee shall install all Maintenance Releases as soon as reasonably practicable after receipt.

7. Intellectual Property Rights

The Licensee acknowledges that all intellectual property rights in the Software and any Maintenance Releases belong and shall belong to KELTON or the relevant third-party owners (as the case may be), and the Licensee shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Licence.

8. Limitation of Liability

KELTON shall not in any circumstances have any liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

Special damage even if KELTON was aware of the circumstances in which such special damage could arise;

- Loss of profits
- Loss of anticipated savings
- Loss of business opportunity
- Loss of goodwill
- Loss of corruption of data

The total liability of KELTON, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee.

KELTON shall defend or settle any action brought against Licensee from any party and shall save, indemnify, defend and hold Licensee harmless from all losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any actual or alleged infringement of any patent or proprietary right and any action brought against Licensee from any party arising out of or in connection with the Software. KELTON will pay all costs, damages and reasonable attorneys' fees that are awarded against Licensee to the extent those amounts are based upon a claim that the Software infringes any intellectual property right of any party or misappropriates any trade secret or infringes any patent. In the event of any claim of infringement, Licensee shall (a) notify KELTON promptly in writing of the action; (b) provide KELTON all reasonable information and assistance to settle or defend the action; and (c) grant KELTON sole authority and control of the defence or settlement of the action.

9. Force Majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

10. Governing Law and Jurisdiction

This agreement, and any dispute or claim arising under it, shall be construed in accordance with, and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

11. The Contracts (Rights of Third Parties) Act 1999

No provision of this agreement is intended by the Parties to be construed as creating any right(s) enforceable by a third party and all third-party rights implied by law are, to the extent permissible by law, excluded from this agreement.

Date:

Signed:



Iain Pirie

Managing Director