

E-CO₂ 'What If?' End User Licence Agreement (EULA)

EULA

Please read this EULA carefully, as it sets out the terms and conditions upon which we license our Software for use.

By registering for this service you agree to be bound by the terms and conditions of this EULA. You further agree that your employees / any person you authorise to use the Software will also be bound by the terms and conditions of this EULA. If you do not agree to this EULA, you must not register or if already registered request your account is removed by contacting WhatIf@Eco2Project.com.

BACKGROUND:

- (A) The Licensor owns the Intellectual Property Rights in the Optimali Sheep What If Tool software, and the parties have agreed that the Licensor will license that software to the Licensee on the terms of this Agreement.

1. Definitions and interpretation

1.1 In this EULA:

"Computer" means a desktop, notebook, netbook or similar computer owned by and in the control of the Licensee;

"Documentation" means the documentation concerning the Software supplied by the Licensor or by the Software supplier to the Licensee with the Software;

"Effective Date" means the date when the Licensee agrees to the terms and conditions of this EULA, as detailed in the preamble to this EULA;

"EULA" means this end user licence agreement (including the preamble), and any amendments to it from time to time;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Licensee" means the licensee of the Software under this EULA;

"Licensor" means The E-CO2 Project Limited, a limited company incorporated in England and Wales (registration number 06910273) having its registered office at Spring Farm Business Centre, Moss Lane, Minshull Vernon, Crewe, Cheshire, CW1 4RJ

"Software" means The Optimali Sheep What If Tool

1.2 In this EULA, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this EULA.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of this EULA.

2. License

2.1 The Licensee may only use the Software and Documentation for the Licensee's business purposes and in accordance with the provisions of this Clause 2.

2.2 Subject to the payment by the Licensee of the relevant charges and fees in respect of the Software licence, and the Licensee's compliance with Clause 2.3 and the other provisions of this EULA, the Licensor grants to the Licensee a non-exclusive non-transferable licence to:

(a) Access the Software from via the internet

2.3 The Licensee must not:

(a) copy or reproduce the Software or Documentation or any part of the Software or Documentation other than in accordance with the licence granted in this Clause 2;

(b) sell, resell, rent, lease, loan, supply, redistribute, publish or re-publish the Software or Documentation or any part of the Software or Documentation;

(c) modify, alter, adapt, translate or edit, or create derivative works of, the Software or Documentation or any part of the Software or Documentation;

(d) reverse engineer, decompile, disassemble the Software or Documentation or any part of the Software or Documentation;

(e) use the Software other than in accordance with the Documentation; or

(f) circumvent or remove or attempt to circumvent or remove the technological measures applied to the Software and Documentation for the purposes of preventing unauthorised use,

providing that nothing in this Clause 2.3 will prohibit or restrict the Licensee or

any other person from doing any act expressly permitted by applicable law (including any act expressly permitted by Section 296A of the Copyright, Designs and Patents Act 1988).

2.4 All Intellectual Property Rights in the Software and Documentation are and will remain, as between the parties, the property of the Licensor.

3. Other Users

3.1 The Licensee may permit any supplier of the Licensee to exercise the rights granted by the Licensor to the Licensee subject always to the restrictions set out in Clause 3.

3.2 The Licensee must ensure that any person using the Software and Documentation in accordance with Clause 3.1 is made aware of, and agrees to, the terms of this EULA.

4. Support

4.1 Software is provided 'as is' and no formal support is given.

5. Limited warranties

5.1 The Licensee warrants to the Licensor that it has the legal right and authority to enter into and perform its obligations under this EULA.

5.2 The Licensor warrants to the Licensee:

(a) that the use of the Software by the Licensee in accordance with the terms of this EULA will not infringe the Intellectual Property Rights of any third party;

(b) that the Licensor has tested the Software for computer virus and other malicious third party software infections in accordance with standard industry practice from time to time.

5.3 The Licensee acknowledges that:

(a) the Software may not be error-free

[(b) the Software has not been developed to meet the specific requirements of the Licensee, and accordingly the Licensee will be responsible for ensuring that the Software is suitable to meet the Licensee's requirements.

5.4 All of the parties' liabilities and obligations in respect of the subject matter of this EULA are expressly set out herein. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this EULA will be implied into this EULA or any related contract.

6. Limitations and exclusions of liability

6.1 Nothing in the EULA will:

- (a) *limit or exclude the liability of a party for death or personal injury resulting from negligence;*
- (b) *limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;*
- (c) *limit any liability of a party in any way that is not permitted under applicable law;*
or
- (d) *exclude any liability of a party that may not be excluded under applicable law,*
and, if you are a consumer, any statutory rights which you have, which cannot be excluded or limited, will not be affected by the EULA.

6.2 *The limitations and exclusions of liability set out in this Clause 6 and elsewhere in the EULA:*

- (a) *are subject to Clause 6.1; and*
- (b) *govern all liabilities arising under the EULA or in relation to the subject matter of the EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.*

6.3 *The Licensor will not be liable to the Licensee for any losses arising out of a Force Majeure Event.*

6.4 *The Licensor will not be liable to the Licensee in respect of any business losses, such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.*

6.5 *Where the Licensee is a business customer, the Licensor will not be liable to the Licensee in respect of any loss or corruption of any data, database or software.*

6.6 *Where the Licensee is a business customer, the Licensor will not be liable to the Licensee in respect of any special, indirect or consequential loss or damage.*

7 General

7.1 *No breach of any provision of this EULA will be waived except with the express written consent of the party not in breach.*

7.2 *If a Clause of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this EULA will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).*

7.3 *The Licensor may freely assign this EULA and/or its rights and/or obligations under this EULA without the Licensee's consent. Save as expressly provided in this EULA, the Licensee must not assign, transfer, charge, license or otherwise dispose of or deal in this EULA and/or any its rights and/or obligations under this EULA.*

7.4 *This EULA is made for the benefit of the parties, and is not intended to benefit*

any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

7.5 This EULA constitutes the entire agreement and understanding of the parties in relation to the subject matter of this EULA, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of this EULA. Subject to Clause 6.1, each party acknowledges that no representations or promises not expressly contained in this EULA have been made by or on behalf of the other party.

7.6 This EULA will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.