

ZODIAC LICENSE AGREEMENT FOR THE iAquaLink™ DEVICE AND SOFTWARE

The following license agreement terms and conditions (the "Agreement") apply to the iAquaLink™ device ("Device") and the software for the Device ("Software") sold by Zodiac Pool Care Europe, its Subsidiaries, or Zodiac Pool Care South Africa ("Zodiac"). You (the "Customer") shall be deemed to have agreed to these Terms by: (1) purchasing the Device containing the Software through Zodiac or a Zodiac reseller; (2) receiving the Device containing the Software as a gift; (3) downloading the Software from the Zodiac website at www.iaqualink.com ("Website"); or (4) registering the Software or the Device with Zodiac.

Zodiac does not accept any deviations from this Agreement. Any additional or conflicting terms in any invoices or other document submitted by Customer shall be of no force or effect and are hereby expressly rejected. No additional terms or conditions shall be binding on Zodiac unless and until accepted by Zodiac.

ZODIAC RESERVES THE RIGHT TO CHANGE THE AGREEMENT AT ANY TIME WITHOUT PRIOR NOTICE. THE AGREEMENT IN EFFECT AT THE TIME OF ACCEPTANCE BY CUSTOMER SHALL CONTROL. ZODIAC MAY PROVIDE NOTICE OF ANY CHANGES TO ANY OF THESE TERMS BY REGULAR MAIL, EMAIL OR BY POSTING SUCH CHANGES ON THE WEBSITE.

BY ACCEPTING THE TERMS OF THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE OR BY PURCHASING OR USING ZODIAC'S DEVICE OR SOFTWARE, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THE AGREEMENT AND AGREES TO BE BOUND BY THESE TERMS, AND ANY OTHER EXHIBIT, SCHEDULE OR ASSOCIATED DOCUMENT, ALL OF WHICH SHALL CONSTITUTE THE AGREEMENT. IF CUSTOMER IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, CUSTOMER REPRESENTS THAT CUSTOMER HAS THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS, IF CUSTOMER DOES NOT HAVE SUCH AUTHORITY, OR IF CUSTOMER DOES NOT AGREE WITH THESE TERMS, CUSTOMER MUST NOT ACCEPT THESE TERMS AND MAY NOT USE THE DEVICE OR THE DEVICE SOFTWARE.

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. "Customer Data" means all electronic data or information submitted by Customer to the Licensed Software.
- 1.2. "Device" means the iAquaLink™ appliance sold by Zodiac that may be used to access Zodiac Software.
- 1.3. "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious codes, files, scripts, agents or programs.
- 1.4. "Licensed Software" means Software licensed by Zodiac to Customer under this Agreement.
- 1.5. "Software" means the offline software and associated components provided by Zodiac to Customer to be used with the Device, excluding Third-Party Applications.
- 1.6. "Third-Party Applications" means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Software and are identified as Third-Party Applications.
- 1.7. "Website" means the online web-based applications and platform provided by Zodiac via www.iaqualink.com and/or other designated websites made available by Zodiac to Customer for use with and support of the Device and Software.

2. LICENSED SOFTWARE

- 2.1. **Licensed Software.** Subject to the terms of this Agreement, Zodiac grants Customer a non-exclusive, non-transferable, limited license to use the Licensed Software for the purposes of operating the Software with the Device.
- 2.2. **Networks.** Customer agrees that the use of the Software and Website may involve the transmission of Customer Data over various networks and may require changes to conform to the technical requirements of connecting networks.
- 2.3. **Account Information.** By using Zodiac's Software, Device or Website, Customer agrees that Zodiac may access and preserve Customer account information and any data associated with Customer accounts if required to do so by law, if required to enforce any part of these terms, or to detect or prevent any fraud, security, or technical issues. Account names must not contain trademarks owned by Zodiac, its affiliates and/or subsidiaries that are not under license by Customer.
- 2.4. **Upgrades.** While Zodiac is not required to do so, Zodiac may provide updates to the Software on Zodiac's Website. This Agreement covers any upgrades or updates Customer obtains from Zodiac, with the exception of any upgrade, update or software that is governed by its own terms of use.
- 2.5. **Usage Limits.** Customer acknowledges and agrees that Zodiac reserves the right to set limits on the number of transactions Customer may send or receive using Zodiac Software or Website at any time, with or without notice.
- 2.6. **Software Modification / Discontinuation.** Zodiac reserves the right to modify or discontinue the Licensed Software at any time, either temporarily or permanently, without notice. Zodiac is not liable for any damages that result from the modification or discontinuation of Zodiac Software.

3. RESPONSIBILITIES

- 3.1. **Zodiac Responsibilities.** Zodiac shall: (1) provide to Customer basic support for the Licensed Software at no additional charge, and/or upgraded support if Licensed separately; (2) use commercially reasonable efforts to make the Website available 24 hours a day, except for: (a) planned downtime of which Zodiac shall use best efforts to provide 24 hours notice via the Website and which Zodiac shall schedule to the extent practicable during the week, or (b) any unavailability caused beyond its reasonable control, including without limitation to acts of terrorism, fires, floods, earthquakes or other catastrophes, riots, war, civil disorder, strikes, lockouts, interruptions of utilities, supplies, transportation or communication, work stoppages or other labor difficulties, court order or other legal prohibition, or Internet service provider failures or delays; and

(3) provide the Licensed Software only in accordance with applicable laws and government regulations. Notwithstanding the above, Zodiac shall in no way be liable for any claims or losses arising from or related to Zodiac's failure to provide 24 hours prior notice of Website downtime.

3.2. Customer Responsibilities. Customer shall: (1) be responsible for compliance with this Agreement; (2) be responsible for any and all activity that occurs on Customer's account; (3) be solely responsible for the accuracy, quality, integrity and legality of Customer Data and of the means by which Customer acquired Customer Data; (4) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, Device or Website, and notify Zodiac promptly of any such unauthorized access or use; and (5) use the Device and Software only in accordance with the Device guide and applicable laws and government regulations.

3.3. Customer Limitations. Customer shall not: (1) hold Zodiac responsible for any damages that result from failure to keep Customer account or passwords secure; (2) use the Software or Website to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (3) use the Software or Website to store or transmit Malicious Code; (4) interfere with or disrupt the integrity or performance of the Software or Website or third-party data contained therein; or (5) attempt to gain unauthorized access to the Website or its related systems or networks.

4. TERM AND TERMINATION

4.1. Term of Agreement. This Agreement commences on the date Customer accepts it and continues until the Device is no longer active.

4.2. Termination for Cause. Zodiac may terminate this Agreement for cause: (1) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (2) immediately in the event of a breach of Section 3.2 or Section 3.3 of this Agreement.

4.3. Return of Customer Data. Zodiac shall have no obligation to maintain or provide any Customer Data and shall, unless legally prohibited, delete all Customer Data in Zodiac systems, or otherwise in Zodiac's possession or under Zodiac control, within 60 days of termination of this agreement.

5. THIRD-PARTY PROVIDERS

5.1. Acquisition of Third-Party Products and Services. Zodiac may offer Third-Party Applications for sale. Any other acquisition by Customer of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between Customer and any third-party provider, is solely between Customer and the applicable third-party provider. Zodiac does not warrant or support third-party products or services, whether or not sold by Zodiac. No purchase of third-party products or services is required to use the Device or Software.

5.2. Third-Party Applications and Customer Data. If Customer installs or enables Third-Party Applications for use with Software or the Device, Customer acknowledges that Zodiac may allow providers of those Third-Party Applications to access Customer Data as required for the interoperation of such Third-Party Applications with the Device and the Software. Zodiac shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Application providers.

6. INTELLECTUAL PROPERTY

6.1. Rights. All rights and interests in Zodiac's intellectual property, including, but not limited to, technology rights, copyright, trademark(s) and/or patent(s) shall remain solely and exclusively Zodiac property. Customer agrees that Customer has no rights to or ownership of any Zodiac intellectual property, in whole or in part. Customer shall not remove, modify or reverse engineer any of Zodiac's intellectual property from any Zodiac service, product, device or software.

6.2. Restrictions. Customer shall not: (1) permit any third party to access the Software or Device except as permitted herein; (2) reverse engineer, disassemble or decompile the Software or otherwise attempt to reduce the Software to a human-readable form; or (3) access the Software or Device in order to build a competitive product or service, or in order to copy any features, functions or graphics.

6.3. Ownership of Customer Data. As between Zodiac and Customer, Zodiac exclusively owns all rights, title and interest in and to the Customer Data.

6.4. Suggestions. Zodiac shall have a royalty-free, worldwide, transferable, sub-licenseable, irrevocable, perpetual license to use, incorporate, sell or offer for sale any suggestions, enhancement requests, recommendations or other feedback provided by Customer, relating to the operation of the Software, Website or Device.

6.5. Competitors. Direct competitors of Zodiac may not use or access the Software or the Device, except with Zodiac's prior written consent. In addition, direct competitors may not use or have access to Zodiac's Software for purposes of monitoring the Software's performance, functionality or for any other benchmarking or competitive purposes.

7. WARRANTIES AND DISCLAIMERS

7.1. Zodiac Warranties. Zodiac warrants that the Software and Device shall perform materially in accordance with the warranty provided with the Device.

7.2. Mutual Warranties. Each party represents and warrants that: (1) it has the legal power to enter into this Agreement, and (2) it will not transmit to the other party any Malicious Code.

7.3. Disclaimer. EXCEPT AS EXPRESSLY STATED IN THE WARRANTY PROVIDED WITH THE DEVICE, ZODIAC MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND ZODIAC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. LIMITATION OF LIABILITY

8.1. **Exclusion for Data and Communications.** In no event shall Zodiac be responsible or liable under this Agreement for: (1) failure to record or store data or communications; (2) the loss or corruption of said data; (3) the recording or storage of incorrect data; (4) damages resulting from improper or incorrect use of the Zodiac Software, Website or Device, either alone or in conjunction with other third-party software or products; (5) damages resulting from any use not in accordance with all applicable laws, regulations, and guidelines; or (vi) damages caused by defects or failures of third-party products or services.

8.2. **Limitation of Liability.** IN NO EVENT SHALL ZODIAC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER.

8.3. **Exclusion of Consequential and Related Financial Damages.** IN NO EVENT SHALL ZODIAC HAVE ANY LIABILITY TO CUSTOMER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, INCLUDING WITHOUT LIMITATION TO LOSS OF REVENUE OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS SUFFERED BY THIRD PARTIES, LOSS OF OPPORTUNITY, LOSS OF GOODWILL OR INJURY TO REPUTATION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT ZODIAC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

9. INDEMNIFICATION

Customer agrees that Customer will defend and hold Zodiac harmless, including all employees, subsidiaries or affiliates, to the fullest extent permitted by law, from any claim, cause of action, or liability that relates to any of the following: (1) Customer modification of Zodiac products or services; (2) a third party alleging that Customer Data, or use of the Software is in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law; (3) any breach of this Agreement; (4) any omission, misrepresentation, or negligence by Customer; (5) any damages to third parties caused by Zodiac products or services that are sold or resold by Customer in breach of this Agreement; or (6) failure by Customer to abide by all applicable laws, regulations or guidelines.

10. GENERAL PROVISIONS

10.1. **Notice.** All notices, permissions and approvals hereunder shall be in writing and should be addressed to:

Zodiac Pool Care Europe
Parc d'Activités du Chêne
2 Rue Edison
69500 BRON, France

10.2. **Agreement to Governing Law and Jurisdiction.** All disputes arising out of this Agreement or the interpretation of this Agreement shall be governed by the laws of France. The United Nations Convention on the International Sale of Goods shall not apply to any sale of products. Procedures for such disputes shall be instituted at the court having jurisdiction of the Court of Appeal of Lyon, principal place of business of Zodiac Pool Care Europe. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, the sale of any products in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section.

10.3. **Export Compliance.** Each party shall comply with the export laws and regulations of USA & Europe and other applicable jurisdictions in providing and using the Device, Software or Website. Without limiting the foregoing: (1) each party represents that it is not named on any European and/or U.S. governments list of persons or entities prohibited from receiving exports, and (2) Customer shall not permit any individual to access or use any Zodiac software, product or service in violation of any European and/or U.S. export embargo, prohibition or restriction.

10.4. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

10.5. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

10.6. **Waiver of Rights.** No failure or delay by Zodiac in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

10.7. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

10.8. **Attorney Fees.** Customer shall pay on demand all of Zodiac's reasonable attorney fees and other costs incurred by Zodiac to collect any fees or charges due Zodiac under this Agreement following Customer breach of any payment obligation of Customer hereunder.

10.9. **Transfer.** This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns; provided however, that the subsequent transferee agrees to be bound by this Agreement and Customer ceases from using the Device Software.

10.10. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto, the terms of the exhibit or addendum shall prevail.