

WIND LOADING SOFTWARE

Software as a Service

And

Software Licence

For

SCI Software Components

Draft

THIS AGREEMENT is made the [] day of []

BETWEEN:

- (1) THE STEEL CONSTRUCTION INSTITUTE whose registered office is at Silwood Park, Buckhurst Road, Ascot, Berkshire SL5 7QN, England ('SCI') and
- (2) _____ whose [registered office or principal place of business] is at (*address*) (the 'Client')

1. DEFINITIONS

1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'Access Key' means the code provided by SCI to the Client and which enable the Client Software to access the Hosted Services;

'Agreement' means this agreement including any Schedules, and any amendments made in writing to this Agreement;

'Business Day' means any week day other than a bank or public holiday in England;

'Charges' means:

- a. the fee payable annually in advance for use of the Hosted Software Components specified in SCHEDULE A;
- b. the fee payable annually in advance for the licence of the Licensed Software Components as specified in SCHEDULE A;
- c. the amounts calculated by multiplying SCI's standard time-based charging rates (given in SCHEDULE C) by the time spent by SCI's personnel performing any services not related to the subject matter of this Agreement but not explicitly covered by the other charges.

'Client Data' means all data, works and materials: uploaded to the Platform by the Client or transmitted by the Platform at the instigation of the Client or generated by the Platform as a result of the use of the Hosted Services by the Client (but excluding analytics data relating to the use of the Platform and server log files);

'Client Software' means the software identified in SCHEDULE B which when provided with an Access Key may be used to access the Hosted Software Components;

'Documentation' means the documentation for the Hosted Services

and Licence Software Components produced by SCI and made available to the Client;

'Effective Date' means the date of execution of this Agreement;

'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 the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

'Hosted Services' means the services provided by SCI to the Client under this Agreement via www.sci-wind.com or any other website notified to the Client by SCI from time to time, as more particularly described in the Documentation;

'Hosted Services Defect' means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- a. any act or omission of the Client or any person authorised by the Client to use the Platform or Hosted Services;
- b. any use of the Platform or Hosted Services contrary to the Documentation, whether by the Client or by any person authorised by the Client;
- c. a failure of the Client to perform or observe any of its obligations in this Agreement; and/or
- d. an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible with the Hosted Services;

'Hosted Software Components' means those software components of SCI which are made accessible to the Client via the Hosted Services under the terms of this Agreement and are specified in SCHEDULE A;

'Intellectual Property Rights' means all vested contingent and future intellectual property rights including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created to which SCI may be entitled;

'Licensed Software Components' means the software components

of SCI which are licensed to the Client under the terms of this Agreement and are specified in SCHEDULE A and all releases and versions thereof;

'Maintenance' means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

'Platform' means the platform managed and used by SCI to provide the Hosted Services, including the Hosted Software Components, the system and server software used to provide the Hosted Services and the computer hardware on which the Hosted Software Components, system and server software is installed;

'Software Defect' means a defect, error or bug in the Licensed Software Components having a material adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- a. any act or omission of the Client or any person authorised by the Client to use the Licensed Software Components;
- b. any use of the Licensed Software Components contrary to the Documentation by the Client or any person authorised by the Client to use the Licensed Software Components;
- c. a failure of the Client to perform or observe any of its obligations in this Agreement; and/or
- d. an incompatibility between the Licensed Software Components and any other system, network, application, program, hardware or software including but not limited to the Client Software;

'Support' means

- a. In the case of the Hosted Software Components (as identified in SCHEDULE A) support in relation to the use of, and the identification and resolution of errors;
- b. In the case of Licensed Software Components (as identified in SCHEDULE A) support in relation to the download, use of, and the identification and resolution of errors in the Licensed Software Components;

but in both cases excluding the provision of any training;

'Term' means the term of this Agreement, commencing in accordance with CLAUSE 2.1 and ending in accordance with CLAUSE 2.2;

'Update' means a hotfix, patch or minor version update to any Platform software;

'Upgrade' means a major version upgrade of any Platform software.

- 1.2. In this Agreement unless the context otherwise requires:
 - 1.2.1. words importing any gender include every gender;
 - 1.2.2. words importing the singular number include the plural number and vice versa;
 - 1.2.3. words importing persons include firms, companies and corporations and vice versa;
 - 1.2.4. any reference to a Party or Parties is a reference to a party or parties to this Agreement;
 - 1.2.5. any reference to numbered clauses and Schedules are references to the relevant clause in or Schedule to this Agreement;
 - 1.2.6. reference in any Schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that Schedule;
 - 1.2.7. the headings to the clauses, Schedules and paragraphs of this Agreement will not affect their interpretation;
 - 1.2.8. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 1.3. In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Schedule, the provision in the body of this Agreement shall take precedence.

2. TERM

- 2.1. This Agreement shall come into force on the Effective Date.
- 2.2. This Agreement shall continue in force for a period of ONE (1) year and thereafter shall be renewed from year to year on the anniversary of the Effective Date until or unless terminated in accordance with the provisions of CLAUSE 11 of this Agreement.

3. GRANT OF ACCESS TO HOSTED SERVICES

- 3.1. Where SCHEDULE A indicates that one or more Hosted Software Components form part of this Agreement, SCI shall provide the Client with an Access Key which when embedded in the Client Software permits the Client Software to access the Hosted Services and use the Hosted Software Components identified in SCHEDULE A during the Term.
- 3.2. The Client shall be entitled to embed the Access Key in the Client Software in accordance with SCHEDULE B.

- 3.3. The Client shall limit the use of the Client Software with the embedded Access Key during the Term to:
 - 3.3.1. the officers, employees, agents and subcontractors of the Client; and
 - 3.3.2. the customers and prospective customers of the Client to whom the Client licenses the Client Software free of charge.
- 3.4. Except to the extent expressly permitted in CLAUSE 3.2 and 3.3 or cannot be excluded by law, the Client shall not:
 - 3.4.1. sub-license its right to access and use the Hosted Services;
 - 3.4.2. permit any unauthorised person to access or use the Hosted Services;
 - 3.4.3. use the Hosted Services to provide services to third parties;
 - 3.4.4. republish or redistribute any content or material from the Hosted Services;
- 3.5. The Client shall not:
 - 3.5.1. conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, from or by means of or in relation to the Hosted Services;
 - 3.5.2. use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services;
 - 3.5.3. make any alteration to the Platform; and
 - 3.5.4. conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services;
 - 3.5.5. use the Hosted Services in any way that is unlawful, illegal, fraudulent or harmful;
 - 3.5.6. use the Hosted Services in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.6. The Client shall use all reasonable endeavours to maintain the security of the Access Key so that no unauthorised person gains access to the Hosted Services using the Access Key. The Client acknowledges that breach of Access Key security is a material breach of this Agreement. The Client shall notify SCI immediately if the Client becomes aware of any unauthorised access to any part of the Hosted Services or the Hosted Software Components by any person.
- 3.7. The Client has no right to access the software code (including object code, intermediate code and source code) of the Platform, Hosted

Services or Hosted Software Components either during or after the Term.

- 3.8. The Client hereby grants SCI a non-exclusive licence to process the Client data submitted by the Client Software to the Platform to the extent reasonably required for the performance of SCI's obligations and the exercise of SCI's rights under this Agreement. The Client warrants to SCI that the Client data when used by SCI in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation in any jurisdiction and under any applicable law.
- 3.9. SCI shall use reasonable endeavours to maintain the availability of the Hosted Services to the Client at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.
- 3.10. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
 - 3.10.1. a Force Majeure Event;
 - 3.10.2. a fault or failure of the internet or any public telecommunications network;
 - 3.10.3. a fault or failure of the Client's computer systems or networks;
 - 3.10.4. any breach by the Client of this Agreement; or
 - 3.10.5. Maintenance.
- 3.11. SCI shall give the Client at least 10 (ten) Business Days' prior written notice of scheduled Maintenance that is likely to affect the availability of the Hosted Services or have a material negative impact on the Hosted Services.
- 3.12. The Client acknowledges that SCI may actively monitor the use of the Hosted Services.
- 3.13. SCI may suspend the provision of the Hosted Services if any amount due to be paid by the Client to SCI under this Agreement is overdue, and SCI has given to the Client at least 7 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

4. GRANT OF LICENCE FOR LICENCED SOFTWARE COMPONENTS

- 4.1. Where SCHEDULE A indicates that one or more Licensed Software Components form part of this Agreement SCI shall make the Licensed Software Components available for download by the Client for a period of 10 (ten) Business Days from the Effective Date, and shall provide the Client with such assistance in relation to the download of the Software as the Client may reasonably request.

- 4.2. SCI hereby grants the Client during the Term a non-exclusive licence to:
 - 4.2.1. read all or any part of the Licensed Software Components from magnetic or other storage media;
 - 4.2.2. load the Licensed Software Components for storage and running;
 - 4.2.3. integrate the Licensed Software Components in the Client Software in accordance with SCHEDULE B;
 - 4.2.4. run the Licensed Software Components when integrated into the Client Software;
 - 4.2.5. read and possess the Documentation in conjunction with the use of the Licensed Software Components;
 - 4.2.6. license the Client Software with the Licensed Software Components integrated into it to the customers and prospective customers of the Client free of charge.
- 4.3. The Client Software with the integrated Licensed Software Components may only be used by the officers and employees of the Client, and the officers and employees of the Client's agents, subcontractors and, pursuant to CLAUSE 4.2.6, customers and prospective customers of the Client.
- 4.4. Except to the extent expressly permitted in CLAUSE 4.2 or cannot be excluded by law, the Client shall not:
 - 4.4.1. sub-license and or purport to sub-license any rights granted under CLAUSE 4.2;
 - 4.4.2. sell, rent, lease, loan, supply, publish or distribute the Licensed Software Components;
 - 4.4.3. alter, edit or adapt the Licensed Software Components;
 - 4.4.4. decompile or reverse engineer, or attempt to decompile or reverse engineer the Licensed Software Components;
- 4.5. Notwithstanding CLAUSE 4.4.4, in the case of reverse engineering where permitted by applicable law, the Client may decompile the Licensed Software Components only if it is essential to do so in order to achieve interoperability of the Licensed Software Components with the Client Software and provided the information obtained by the Client during such decompilation is only used to achieve interoperability with the Client Software and is not disclosed or communicated to any third party and is not used to create any software which is substantially similar to the expression of the Licensed Software Components nor used in any manner which would be restricted by copyright.
- 4.6. Notwithstanding CLAUSE 4.5, the Client undertakes to first consult SCI

regarding any data the Client requires over and above that provided in the Documentation in order to achieve interoperability or to deduce underlying ideas and principles so that SCI may consider making the same available to the Client (without the Client having to rely on CLAUSE 4.5) subject to the restrictions on disclosure set out in CLAUSE 4.5.

- 4.7. The Client shall be responsible for the security of the Licensed Software Components supplied to the Client under this Agreement (and all copies thereof) and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access is restricted to persons authorised to use them under this Agreement. The Client shall notify SCI immediately if the Client becomes aware of any unauthorised use of the whole or any part of the Licensed Software Components by any person.
- 4.8. The Licence shall not be deemed to extend to any programs or materials of SCI other than the Licensed Software Components unless specifically agreed to in writing by SCI.
- 4.9. The Client hereby acknowledges that it is licensed to use the Licensed Software Components only in accordance with the express terms of this Agreement and not further or otherwise.
- 4.10. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from SCI to the Client, or from the Client to SCI.

5. SUPPORT

- 5.1. SCI shall provide Support to the Client with reasonable skill and care.
- 5.2. The Support provided shall be limited to the officers and employees of the Client and shall not extend to any other authorised users.
- 5.3. When notifying a defect or error the Client shall (so far as it is able) provide SCI with a documented example of such defect or error.
- 5.4. SCI may suspend the provision of Support if any amount due to be paid by the Client to SCI under this Agreement is overdue, and SCI has given the Client at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend Support on this basis.

6. CHARGES

- 6.1. The Client shall pay the Charges to SCI in accordance with this Agreement. All amounts stated in or in relation to this Agreement are exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Client to SCI.
- 6.2. SCI shall issue invoices to the Client for the annual Charges for use of

the Hosted Software Components and for the licence of the Licensed Software Components as specified in SCHEDULE A and accessed or licensed by the Clients in accordance with SCHEDULE B. Such invoices shall be issued on or around the Effective Date and the anniversaries of the Effective Date for as long as the Agreement remains in force. The Client shall pay such invoices within 30 days of the date of the invoice.

- 6.3. If the Charges are based in whole or part on the time spent by SCI performing the services, SCI must obtain the Client's written consent before performing services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the Parties being exceeded. Unless the Client agrees otherwise in writing, the Client shall only be liable to pay SCI the agreed Charges in respect of the time based services performed.
- 6.4. SCI shall issue monthly invoices in arrears to the Client for any Charges that are based on time spent by SCI performing the services and the Client shall pay such invoices within 30 days of the date of the invoice.
- 6.5. SCI may increase the Charges by giving the Client at least 30 days' notice once each year (but not during the first Term of the Agreement) by the percentage change in the Retail Price Index published by the UK Office for National Statistics (or similar or equivalent index if that index ceases to be published) over the 12 months preceding the last quarterly publication of that index.
- 6.6. If the Client does not pay any amount properly due to SCI under this Agreement, SCI may:
 - 6.6.1. charge the Client interest on the overdue amount at the rate of 6% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); and
 - 6.6.2. terminate this agreement in accordance with CLAUSE 11.3.

7. WARRANTIES

- 7.1. SCI warrants to the Client that
 - 7.1.1. it has the legal right and authority to enter into and perform its obligations under this Agreement;
 - 7.1.2. the Hosted Services, Hosted Software Components and Licensed Software Components will conform in all material respects with the Documentation;
 - 7.1.3. the Hosted Services will be free from Hosted Services Defects;
 - 7.1.4. the Licensed Software Components will be supplied free from

Software Defects and will remain free from Software Defects for a period of at least 12 months;

- 7.1.5. the Platform and the Licensed Software Components will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs;
 - 7.1.6. the Hosted Software Components and the Licensed Software Components when used by the Client in accordance with this Agreement will not breach any laws, statutes or regulations applicable under English law or infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 7.2. SCI shall defend at its own expense any claim brought against the Client alleging that the use of the Hosted Services, Hosted Software Components or Licensed Software Components infringes the Intellectual Property Rights of a third party ('Intellectual Property Claim') and SCI shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that the Client:
- 7.2.1. furnishes SCI with prompt written notice of the Intellectual Property Claim;
 - 7.2.2. makes no admission of liability nor otherwise prejudices the Intellectual Property Claim;
 - 7.2.3. provides SCI with reasonable assistance in respect of the Intellectual Property Claim;
 - 7.2.4. gives SCI the sole authority to defend or settle the Intellectual Property Claim.
- 7.3. SCI shall have no liability for any Intellectual Property Claim resulting from the use of the Hosted Services, Hosted Software Components or Licensed Software Components if such claim arises from or in connection with:
- 7.3.1. the Client's breach of the Agreement;
 - 7.3.2. use of the Hosted Services, Hosted Software Components or Licensed Software Components in a manner or for a purpose not reasonably contemplated by the Agreement;
 - 7.3.3. incorrect use, operation or corruption of the Hosted Services, Hosted Software Components or Licensed Software Components;
 - 7.3.4. any unauthorised modification or alteration of the Hosted Services, Hosted Software Components or Licensed Software Components;
 - 7.3.5. use of the Hosted Services, Hosted Software Components or

Licensed Software Components in combination with any programs (including the Client Software) where such infringement is caused by such other programs.

- 7.4. If, in SCI's reasonable opinion, the use of the Hosted Services, Hosted Software Components or Licensed Software Components in accordance with this Agreement is or may become the subject of an Intellectual Property Claim then SCI may either:
 - 7.4.1. obtain for the Client the right to continue using the Hosted Services, Hosted Software Components or Licensed Software Components which are the subject of the Intellectual Property Claim; or
 - 7.4.2. replace or modify the Hosted Services, Hosted Software Components or Licensed Software Components which are the subject of the Intellectual Property Claim so they become non-infringing.
- 7.5. If the remedies set out in CLAUSE 7.4 above are not in SCI's opinion reasonably available, then the Agreement shall immediately terminate in respect of those elements that are the subject of the Intellectual Property Claim and SCI shall refund to the Client the corresponding portion of the Charges, as normally depreciated, relating to those elements.
- 7.6. The warranties above given by SCI shall be subject to the Client complying with its obligations under the terms of this Agreement and shall also be subject to the limits and exclusions of liability set out in CLAUSE 8. In particular, the said warranties shall not apply to the extent that any Hosted Services Defect or Software Defect arose or was exacerbated as a result of any of the matters listed in CLAUSE 7.3.1 to 7.3.4.
- 7.7. SCI does not warrant or represent that the Hosted Services, Hosted Software Components or Licensed Software Components are compatible with any other software.
- 7.8. The Client acknowledges that software is never wholly free from defects, errors and bugs and, subject to the other provisions of this Agreement, SCI gives no warranty or representation that the Hosted Services, Hosted Software Components or Licensed Software Components will be wholly free from defects, errors and bugs.
- 7.9. The Client warrants to SCI that it has the legal right and authority to enter into and to perform its obligations under this Agreement.
- 7.10. All of the Parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

8. LIABILITY

- 8.1. Nothing in this CLAUSE 8 shall exclude or limit either Party's liability:
 - 8.1.1. for death or personal injury resulting from negligence;
 - 8.1.2. for fraud or fraudulent misrepresentation;
 - 8.1.3. in any way that is not permitted under applicable law.
- 8.2. Neither Party shall be liable to the other for any:
 - 8.2.1. loss of profits or anticipated savings;
 - 8.2.2. loss of revenue or income;
 - 8.2.3. loss of use or production;
 - 8.2.4. loss of business, contracts or opportunities;
 - 8.2.5. losses arising out of a Force Majeure Event
 - 8.2.6. loss or corruption of any data, database or software;
 - 8.2.7. special, indirect or consequential loss arising out of or related to this Agreement, however caused, and whether arising from negligence, breach of contract, misrepresentation (except for fraudulent misrepresentation) or otherwise, even if such loss or damage was foreseeable or actually foreseen or the Party was advised of the possibility of such loss or damage.
- 8.3. In any event (including without limitation if any exclusion or other provision contained in this clause shall be held ineffective for any reason), the liability of each Party to the other Party (including any liability for the act and omission of a Party's employees, agents or sub-contractors) in respect of any breach of such Party's contractual obligations arising under this Agreement or any representation, statement, tortious act or omission including negligence arising under or in connection with this Agreement shall be limited in total (no matter how many claims are made or whatever the basis of such claims) to the total amount paid by the Client to SCI under this Agreement in the TWELVE (12) months preceding the breach(es) or event(s) the subject of the claim or due to be paid in respect of the same TWELVE (12) months period.
- 8.4. SCI shall have no liability for the use of the Hosted Services, Hosted Software Components or Licensed Software Components for any purpose other than as set out in the Documentation.
- 8.5. No actions or proceedings under or in respect of this Agreement whether in contract or in tort in negligence or for breach of statutory duty or otherwise shall be commenced against SCI after the expiry of 6 years following termination for whatever reason of this Agreement or such earlier date that may be prescribed by law.

8.6. The Parties hereby acknowledge and agree that the limitations contained in this CLAUSE 8 and elsewhere in this Agreement are

8.6.1. subject to CLAUSE 8.1;

8.6.2. reasonable in light of all the circumstances; and

8.6.3. govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

9. FORCE MAJEURE

9.1. If a Force Majeure Event gives rise to a failure or delay in either Party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

9.2. A Party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that Party performing any obligation under this Agreement, shall

9.2.1. promptly notify the other; and

9.2.2. inform the other of the period for which it is estimated that such failure or delay will continue.

9.3. If either Party shall have been prevented from meeting its obligations by a Force Majeure event for more than 60 (SIXTY) days following receipt of such notice, then either Party may terminate the Agreement forthwith upon written notice.

9.4. A Party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

10. CONFIDENTIAL INFORMATION

10.1. Both Parties undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential, including, without limitation, information contained or embodied in the Hosted Services, Hosted Software Components, Licensed Software Components, Documentation, Access Key and other information supplied by the Client or SCI (in this CLAUSE 10 collectively referred to as 'Confidential Information') with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this CLAUSE 10 shall

not extend to any information which was rightfully in the possession of either Party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

- 10.2. Both Parties shall not without the prior written consent of the other Party divulge any part of the Confidential Information to any person except:
 - 10.2.1. to their own employees and then only to those employees who need to know the same;
 - 10.2.2. to either Parties' auditors, HM Inspector of Taxes, HM Customs and Excise, a court of competent jurisdiction, governmental body or applicable regulatory authority, a person providing professional or legal advice and any other persons or bodies having a right duty or obligation to know the business of the other Party and then only in pursuance of such right duty or obligation;
 - 10.2.3. any person who is for the time being appointed by either Party to maintain the equipment on which the Confidential Information is stored (in accordance with the terms of this Agreement) and then only to the extent necessary to enable such person to properly maintain the equipment.
- 10.3. Both Parties undertake to ensure that persons and bodies referred to in CLAUSE 10.2 are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the other Party.
- 10.4. No Party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior written consent has been obtained from the other Party.
- 10.5. Each Party shall promptly notify the other Party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other Party all reasonable assistance in connection with any proceedings which the other Party may institute against such person for breach of confidence.
- 10.6. The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

11. TERMINATION

- 11.1. Either Party may terminate this Agreement by giving to the other Party at any time a minimum of NINETY (90) days written notice before the next anniversary of the Effective Date. If such notice is given the Agreement shall terminate on the day preceding the next anniversary of the Effective Date.
- 11.2. Either Party may terminate this Agreement forthwith by written notice to

the other if the other Party:

- 11.2.1. commits any material breach of any provision hereof which in the case of a breach capable of remedy is not remedied within THIRTY (30) days of service of a notice specifying the breach and requiring the same to be remedied;
 - 11.2.2. persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach);
 - 11.2.3. is or gives reasonable grounds for suspicion that it is unable to pay its debts as they arise or if a receiver, administrative receiver or a similar officer is appointed in respect of all or part of its business assets or if the other, being a partnership, has any order made or petition presented to it for its winding up;
 - 11.2.4. is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes insolvent or is declared insolvent, convenes a meeting or makes or proposes to make any arrangement or composition with its creditors.
- 11.3. If the Client fails to pay an amount that is due, SCI may give to the Client at least 30 days' written notice SCI of its intention to terminate this Agreement in accordance with this CLAUSE 11.3. SCI may terminate this Agreement immediately by giving written notice to the Client upon expiry of this notice.
- 11.4. Forthwith upon the termination of this Agreement, the Client shall return to SCI the Licensed Software Components, Documentation and all copies of the whole or any part thereof or, if requested by SCI, shall destroy the same (in the case of electronically or magnetically stored material by erasing them from the media on which they are stored) and within 10 (ten) Business Days of termination certify in writing to SCI that they have been destroyed, provided that the Client may extract and store any Client Data for continuity purposes.
- 11.5. For the avoidance of doubt, the licences of the Licensed Software Components in this Agreement shall terminate upon the termination of this Agreement and accordingly, the Client and all other persons who have been authorized by the Client must immediately cease to use the Licensed Software Component and any other software in which the Licensed Software Component is embedded upon the termination of this Agreement.
- 11.6. Any termination of this Agreement (howsoever occasioned) shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement which is expressly or by implication intended to come into or continue in force on or after such

termination.

12. AGENCY, PARTNERSHIP

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement

13. ENTIRE AGREEMENT, WAIVER, SEVERANCE AND VARIATION

- 13.1. This Agreement supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. However the obligations of the Parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 13.2. No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party.
- 13.3. If any provision or part of any provision of this Agreement shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provisions (or part) shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provisions.
- 13.4. This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties hereto.

14. NOTICES

- 14.1. All notices hereunder shall be in writing.
- 14.2. Notices shall be deemed to have been duly given:
 - 14.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the

recipient; or

- 14.2.2. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- 14.2.3. on the fifth Business Day following mailing, if mailed by national ordinary mail, postage pre-paid; or
- 14.2.4. on the tenth Business Day following mailing, if mailed by airmail, postage pre-paid,

in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

15. ASSIGNMENT, ASSIGNEES AND SUCCESSORS

- 15.1. This Agreement is personal to the Parties and, subject to CLAUSE 15.2 below, neither this Agreement nor any rights, licenses or obligations under this Agreement, may be assigned by either Party without the prior written approval of the other Party.
- 15.2. Notwithstanding the foregoing, either Party may assign this Agreement to any acquirer of all or of substantially all of such Party's equity securities, assets or business relating to the subject matter of this Agreement or to any entity controlled by, that controls, or is under common control with a Party. Any attempted assignment in violation of this clause will be void and without effect.
- 15.3. References to a Party in this Agreement shall include its successors, permitted assignees and persons:
 - 15.3.1. who for the time being are entitled (by assignment, novation or otherwise) to that Party's rights under this Agreement (or any interest in those rights); or
 - 15.3.2. who, as administrator, liquidator or otherwise, are entitled to exercise those rights;

and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that Party. For this purpose, references to a Party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

16. SUB-CONTRACTING

- 16.1. SCI may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

16.2. With the prior written consent of SCI (such consent not to be unreasonably withheld or delayed) the Client may perform any or all of its obligations under this Agreement through agents or sub-contractors, provided that the Client shall remain liable for such performance and shall indemnify SCI against any loss or damage suffered by SCI arising from any act or omission of such agents or sub-contractors.

17. NON POACHING OF STAFF

17.1. Neither Party shall during the term of this Agreement or within a period of 12 (TWELVE) months following termination of this Agreement for whatever reason directly or indirectly entice away or endeavour to entice away from the other Party any person who has during the previous 12 months been employed by that other Party in the performance of its obligations under this Agreement.

17.2. In the event that either Party employs or uses the services of any employee as described in CLAUSE 17.1, whether directly or indirectly in contravention of that clause it will pay the other Party a sum equal to the annual salary of the employee in the 12 (TWELVE) months prior to his leaving employment such sum to be payable on the date when such employee is first employed or his services first used by the contravening Party, it being acknowledged that in view of recruitment and training costs in the industry, this sum is a reasonable pre-estimate of loss caused by such transfer.

18. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

18.1. Nothing in this Agreement confers any rights on any person under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

19. DISPUTE PROCEDURE

19.1. If the Parties are unable to resolve any issue arising under or in connection with this Agreement within 14 (FOURTEEN) days after one Party has notified the other of that issue, they will refer the matter to a Director of each of the Parties in an attempt to resolve the issue within 14 (FOURTEEN) days after the referral. Either Party may bring proceedings in accordance with CLAUSE 20 but only if the matter has not been resolved within the 14 (FOURTEEN) day period. Either Party may apply to the court for an injunction whether or not any issue has been escalated under this clause.

20. GOVERNING LAW AND JURISDICTION

20.1. This Agreement and all matters arising from it shall be governed by, and construed in accordance with, English law. The English Courts shall

have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with, this Agreement, except that either Party may bring proceedings for an injunction in any jurisdiction.

This Agreement has been signed by the duly authorised representatives of the Parties on the Effective Date of this Agreement.

SIGNED

SIGNED

NAME

NAME

POSITION

POSITION

For and on Behalf of SCI

For and on Behalf of the Client

Draft

SCHEDULE A

SOFTWARE COMPONENTS AND ANNUAL FEES

Program name and description	Available as	Covered by this Agreement	Annual fee (£) [§]
<p>Wind360 Calculates the peak velocity pressure in 12 directions around a site taking account of the site altitude, distance from the sea, terrain category and orography.</p>	Hosted Software Component	YES / NO	
<p>WindPlus Uses the output from Wind360 to calculate loads on the walls and roofs of a building of known orientation in four orthogonal directions.</p>	Hosted Software Component	YES / NO	
<p>Zone Viewer Provides an interactive graphical representation of the data generated by WindPlus. It is a Microsoft Windows software component that runs on a desktop or laptop computer under Microsoft Windows versions [.....]</p>	Licensed Software Component	YES / NO	
<p>§ The figures shown for each software component are for use in conjunction with ONE Client Software.</p>			

SCHEDULE B

CLIENT SOFTWARE

Name of Client Software: _____

Description of Client Software: _____

[Name of Client Software] is covered by this Agreement and may be used to (tick as appropriate):

- Access the Hosted Services and specifically Wind360 as a Hosted Software Component
- Access the Hosted Services and specifically WindPlus as a Hosted Software Component
- Embed Zone Viewer as a Licensed Software Component

Name of Client Software: _____

Description of Client Software: _____

[Name of Client Software] is covered by this Agreement and may be used to (tick as appropriate):

- Access the Hosted Services and specifically Wind360 as a Hosted Software Component
- Access the Hosted Services and specifically WindPlus as a Hosted Software Component
- Embed Zone Viewer as a Licensed Software Component

SCHEDULE C

SCI'S STANDARD TIME-BASED CHARGING RATES

Staff grade	Hourly rate (£)

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