



## SINGLE SYSTEM LICENCE FOR AnemoScope SOFTWARE

**THIS AGREEMENT**, made in duplicate

**BETWEEN**  
**NATIONAL RESEARCH COUNCIL OF CANADA**

whose address is:

1200 Montreal Road, Ottawa, Ontario, K1A 0R6, Canada (called "NRC"), OF THE FIRST PART

**AND**

\_\_\_\_\_.  
whose address is:

\_\_\_\_\_.  
(called the "Licensee"), OF THE SECOND PART

### WHEREAS

1. The National Research Council Canada (NRC) in collaboration with Environment Canada (EC) has developed a Wind Energy Simulation and Mapping system identified as AnemoScope (called "the Software") which it is willing to make available in executable format to run on a Windows XP personal computer. The term "Software" includes both original and modified versions of computer programs and computer data, and includes printed matter intended to explain or assist the use of parts of AnemoScope.
2. The Licensee desires to use this Software under licence from the NRC.
3. NRC is willing to license the use of the Software upon conditions that the Licensee will ensure that the Software is restricted to use within its own organisation, and will take all necessary steps to protect the economic value of the Software for the benefit of NRC and EC and the benefit of Canada.

**IN CONSIDERATION OF** the preceding recitals and of the following terms and conditions, the Parties agree as follows:

### 1.0 DELIVERY BY NRC AND GRANT OF LICENCE

- 1.1 NRC will provide to the Licensee one copy of the Software on CD-ROM media for the Microsoft Windows XP operating system.
- 1.2 NRC grants to the Licensee a non-exclusive, non-transferable licence to use the Software for its own internal use and to provide services to clients. All proprietary interest, right, copyright, translation, registered trademark, intellectual property and possible patents filed in relation with the Software are and remain definitely owned by NRC and EC.
- 1.3 NRC will provide to the Licensee one printed copy of the documentation for the software.
- 1.4 NRC will provide to the Licensee one HASP software protection key, which enables the Software on a single computer.



## **2.0 OBLIGATIONS OF THE LICENSEE**

- 2.1 The Software is provided solely for the purpose described in Paragraph 1.2 of this Agreement.
- 2.2 The Licensee may not sub-licence any use of the Software, or make it available to third parties outside the Licensee's organization, without the further written consent of NRC.
- 2.3 If a component of the Software is not provided by NRC in source code, the Licensee or User must not attempt disassembly or reverse engineering to obtain the source code.
- 2.4 The Licensee may install and use the Software only on one (1) Windows personal computer at a time within the Licensee's organization.
- 2.5 The Licensee may copy the Software for backup or archival purposes.
- 2.6 In all reports, publications and presentation materials related to the studies carried out using the Software, the Licensee shall report both the name and the origin of the software. The name used shall be "AnemoScope". The origin shall be stated as "Collaborative effort between the Canadian Hydraulics Centre of the National Research Council Canada and Recherche en Pr evision Num erique of Environment Canada".

## **3.0 PAYMENT OF LICENSE FEE**

- 3.1 The Licensee must pay to NRC a once-only fee of Ten Thousand Canadian Dollars (\$10,000.00 CAD) for the AnemoScope software license granted by this Agreement.
- 3.2 Any new release, comprising minor changes resulting either from the correction of errors, anomalies or minor improvements, will be provided to the Licensee free of charge only for a period of one (1) year, unless the Agreement is terminated sooner by the provisions of the Article 4.
- 3.3 Continued maintenance and support beyond the first year will be offered to the licensee under a separate contract at 10% of the prevailing purchase price per year. Out of revision software can be brought up to date for the purpose of re-establishing ongoing maintenance for a fee equivalent to two and one half years of annual maintenance.
- 3.4 Major upgrades of this Software may become available for sale in the future.

## **4.0 ENTRY INTO FORCE AND TERMINATION**

- 4.1 This Agreement enters into force when signed by both Parties.
- 4.2 This Agreement continues indefinitely unless it is terminated by the provisions of this Article 4.
- 4.3 NRC may terminate this Agreement forthwith if the Licensee, knowingly or recklessly permits misuse of the Software.
- 4.4 The Licensee may terminate this Agreement by notice in writing at any time.
- 4.5 NRC may terminate this Agreement if the Licensee breaches a term of this Agreement and fails to correct the breach within thirty (30) days after receipt of written notice from NRC of the breach.
- 4.6 This Agreement terminates forthwith if the Licensee takes the benefit of any statute relating to winding up, bankruptcy, insolvency, or orderly payment of debts, or if a receiver is appointed for the Licensee.



- 4.7 Immediately upon termination for any reason as a result of notice by either the Licensee or NRC,
- (a) The Licensee must return to NRC by registered mail, all copies of the Software (defined above; including the HASP software protection key) which remain in their possession;
  - (b) The Licensee must certify that no copies, portions, modified versions, or translations of the Software remain accessible to the Licensee.

4.8 Termination does not prejudice accrued rights of either party.

4.9 This Agreement is binding on the successors of the Licensee.

## 5.0 LIMITED WARRANTY

5.1 NRC and EC do not warrant the Software to be correct, free from defects, suitable for any purpose, or compatible with any model of computer. However, should the electronic files be defective, NRC will either repair or replace them at NRC's option. In no event will NRC's liability under this Agreement exceed the license fee paid to NRC under this Agreement.

5.2 Because software is inherently complex, it is the Licensee's responsibility to verify the Software and any work produced using the Software. NRC and EC reject all liability and responsibility relating to the consequences of using the Software. In no event will NRC or EC be liable for indirect, incidental, economic or consequential damages arising out of the use of the Software, including, without limitation, damages or costs relating to loss of revenue or profits, business, goodwill, data or computer programs, or claims by a third party. Except for representations and warranties expressly made in this Agreement, the Software is provided on an "as is" basis, and there are no representations or warranties, express or implied by statute, including, without limitation, any with respect to:

- (a) Merchantability or fitness for any purpose;
- (b) Operational state, character, quality or freedom from defects.

5.3 NRC will accept the Licensee's request to terminate this licence and to refund the licence fee defined in Paragraph 3.1 of this Agreement if the Software is found to be unacceptable by the Licensee for any reason (including an alleged defect), and if the Licensee does the following within fifteen (15) days of delivery:

- (a) Returns the HASP software protection key and returns or destroys all copies of the Software and all copies of documentation supplied by NRC, and
- (b) Submits to NRC a signed certificate stating that no copies of the Software in any form or translation remain with the Licensee.

5.4 The licensee shall indemnify and save harmless NRC and EC, their employees and agents from and against, and be responsible for:

- (a) All claims, demands, losses, damages, costs including solicitor and client costs, actions, suits or proceedings brought by any third party, that are in any manner based upon, arising out of, related to, occasioned by, or attributable to the use of the Software
- (b) Other costs, including extra-judicial costs, of NRC or EC defending any such action or proceeding, which NRC and EC shall have the right to defend with counsel of their choice.

5.5 NRC and EC have not knowingly infringed on any copyright. If the Licensee receives or becomes aware of any claim or assertion by a third party that the software licensed under this Agreement constitutes an infringement or other violation of third party's patents or other intellectual property, the Licensee shall notify NRC and shall provide NRC with all the details relating to the allegation, within 15 days of its knowledge of the allegation. NRC shall promptly enter into discussions with the third party to obtain any additional rights required, such as may arise if a third party's patent emerges. If necessary rights are not obtainable on commercially reasonable terms, NRC agrees to cancel the licensing agreement if requested by the licensee.

## 6.0 LIMITED RELATIONSHIP BETWEEN PARTIES

6.1 This Agreement does not create the relationship of principal and agent, partnership, or joint venture between the Parties. This Agreement does not create any relationship other than that of Licensor and Licensee.



7.0 GENERAL TERMS AND CONDITIONS

- 7.1 This Agreement supersedes all prior communications...
7.2 No amendment or waiver of this Agreement is effective unless it is in writing...
7.3 This Agreement may not be assigned in whole or in part by either Party...
7.4 It is a condition of this Agreement that no member of the House of Commons shall be admitted to any share...
7.5 The Licensee warrants (a) That no bribe, gift, or other inducement has been paid... (b) That it has not employed any person to solicit or secure this Agreement...
7.6 No person will receive a direct benefit from this contract if that person is subject to, and not in compliance with, a federal Conflict of Interest and Post-Employment Code...
7.7 Any notice required or permitted by this agreement, unless a different address is herein specified or is subsequently notified to the other Party in writing, must be sent by registered mail...
7.8 This Agreement is made in Ontario, Canada and construed according to the laws of Ontario, Canada.

SIGNED by Licensee at the City of \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_, 20\_\_\_\_\_.

Per: \_\_\_\_\_
Title: \_\_\_\_\_

SIGNED by NRC at the City of Ottawa, Province of Ontario, Canada, this \_\_\_\_\_, 20\_\_\_\_\_.

NATIONAL RESEARCH COUNCIL OF CANADA

Per: \_\_\_\_\_
Title: \_\_\_\_\_