SOFTWARE LICENCE AGREEMENT

THIS AGREEMENT is made on the date on which you confirm your acceptance of the Software Licence Agreement by clicking on the appropriate tick box.

PARTIES

1. **NEW ZEALAND HEAVY ENGINEERING RESEARCH ASSOCIATION INCORPORATED (218280)**
    ("HERA")

2. **THE ENTITY THAT YOU ARE A REPRESENTATIVE OF AS RECORDED ON THE PURCHASE ORDER FORM**
    ("Customer")

BACKGROUND

A. HERA has developed the Software, and the Customer wishes to licence the Software as detailed in the Key Details below).

B. HERA agrees to licence the Software, and the Customer agrees to purchase the Software licence from HERA for the Licence Term, on the terms and conditions set out in this Agreement.

THE PARTIES AGREE

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"**Agreement**" means this Software Licence Agreement.

"**Affiliate**" means any entity under the common control of HERA (control meaning the direct or indirect ownership of more than fifty percent (50%) of voting rights and/or capital shares), as well as the employees, officers, licensors, agents, developers, testers, partners, reviewers, subcontractors, suppliers and third-party licensors of HERA and the entity described above.

"**Confidential Information**" includes the Documentation, the Intellectual Property, all computer code in relation to the Software and all information relating to HERA or the Customer's business or financial affairs, trade secrets, specialised know-how or practices and all information about HERA or the Customer. It does not include any information which is already in the public domain at the time it is disclosed to the receiving party or becomes available to the public domain other than via breach of this Agreement, or was received by a third party who had the legal right to disclose the information, or was already in the recipient's possession prior to being disclosed to the recipient by a party.

"**Disclosing Party**" is as defined in clause 11.1.

"**Dispute**" is as defined in clause 14.1(b).

"**Documentation**" means the high level and brief user and technical documentation designed to enable the Customer to use and operate the Software and includes any update of the documentation.

"**Due Date**" means the date upon which the relevant Fees under this Agreement is due to be paid.

"**Effective Date**" means the date this Agreement is signed, or accepted by way of click through, by all parties to this Agreement.

"**Feedback**" means any idea, comment or suggestion relating to the Software, Software Description, or Documentation provided by the Customer.

"**Fees**" means the Software Licence Fees for the Software set out in the Key Details and any other fees payable by the Customer to HERA under this Agreement.

"**GST**" means goods and services tax levied under the Goods and Services Tax Act 1985, or any value-added tax, sales tax or similar tax, or any successor legislation.

"**Intellectual Property Rights**" means any patent, trade mark, service mark, copyright, moral right, design, and all rights existing anywhere in the world conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, and all other rights resulting from intellectual activity. **Intellectual Property** has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

"**IP Claim**" is as defined in clause 8.4.

"**Key Details**" means the Agreement specific details set out in Schedule 1 of the Agreement.

"**Licence Term**" means the period as specified in the Key Details schedule.

"**Personnel**" means its officers, employees, contractors and agents.

"**Receiving Party**" is as defined in clause 11.1.

"**Software**" means the software set out in the Key Details, including any Update.

"**Software Description**" means the purpose and description section of the Software and its functionality as described on Hera's website from time to time and includes any updates issued by HERA.

"**Software Output**" means the data or information generated by a Software which includes but is not limited to reports, presentations, visual displays, and printed documents.

"**Third Party**" is as defined in clause 15.13.

"**Update**" means a new version of the existing Software released to the Customer by HERA and intended to provide bug fixes and resolve other technical issues without providing new features or additional functionality.

"**Working Day**" means each day not being a Saturday, Sunday or public holiday in Auckland but excluding the period between 24 December and 5 January inclusive in any year.

1.2   Any terms defined in the Schedules shall bear that same meaning in the body of this Agreement.

Interpretation

1.3   The provisions set out in the Schedules are part of this Agreement and shall have the same effect as if set out in the body of this Agreement.

1.4   Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.5   All prices and fees quoted in this Agreement or to be paid under this Agreement are in New Zealand dollars and all prices quoted in this Agreement are exclusive of GST unless otherwise stated.

1.6   The word "person" includes any individual, company, corporation, corporation sole, trust, organisation, firm, partnership, joint venture, syndicate, the Crown, any central or local government department, authority, association or group, and any other entity, or any other association of persons either corporate or unincorporate.

1.7   Any obligation in this Agreement not to do anything includes an obligation not to allow, permit or cause that thing to be done.

1.8   Any reference to or obligation in this Agreement which requires payment of money will be a reference to or deemed to be an obligation requiring payment of money in immediately available cleared funds.

2.   **USE AND PROVISION OF THE LICENCE**

2.1   Subject to the terms and conditions of this Agreement and the Customer having a valid and fully paid Licence Term, HERA grants to the Customer a revocable (only in accordance with clause 13.2), non-exclusive, non-transferable, licence of the Licence Type during the term of this Agreement to use the Software (solely in object code form) and the Documentation.

3.   **DELIVERY, INSTALLATION AND SUPPORT**

3.1   HERA will deliver the Software (or the activation key required to activate the Software) and the Documentation to the Customer by the later of:
(a)   The Effective Date; or
(b)   The day of HERA's receipt of the full payment of the Software Licence Fees by the Customer.

3.2   The Customer must ensure that the computer equipment on which the Software is to be installed is:
(a)   in good, up to date working order and operating condition when HERA commences installation of the Software; and
(b)   has appropriate security solutions to avoid unauthorised access to the Software, including without limitation adequate firewall, intrusion detection, anti-virus and security solutions in accordance with applicable laws.

3.3 HERA may provide consultation and support services at the Customer's request, provided that HERA may charge the Customer additional Fees on a time and materials basis at the Consulting Rates in accordance with clause 5.1 for the provision of such services. The Customer acknowledges and agrees that any written or oral communication, arrangement, or understandings arrived at during the provision of such services do not constitute a representation or warranty by HERA.

4. CUSTOMER'S OBLIGATIONS AND WARRANTIES

4.1 The Customer will be responsible for all its own costs incurred in connection with the selection, implementation, and testing of the Software.

4.2 The Customer assumes all risk related to the selection and use of the Software or any products, services or organisation referenced in the Software. HERA does not recommend or endorse any product, service, or organisation referenced in the Software.

4.3 The Customer will use best endeavours to ensure that all username and passwords required to access the Software are kept secure and confidential. The Customer must immediately notify HERA if the Customer becomes aware of any unauthorised use of its usernames and passwords or any other breach of security. The Customer is responsible for any act or omission of any person who accesses the Software using the Customer's username and password. HERA shall have no liability to the Customer or any third party for unauthorised access to the Software resulting from a failure of the Customer to maintain the confidentiality and security of their passwords.

4.4 The Customer must ensure that its Personnel, and any person whom the Customer grants access to the Software with HERA's consent, comply with the terms of this Agreement (including but not limited to the clause 4.6 below) when using the Software. Any breach of this Agreement by the Customer's Personnel or a person granted access to the Software by the Customer (or any act or omission by any of them which would have been a breach of this Agreement if the act or omission had been undertaken by the Customer) shall be deemed to be a breach of this Agreement by the Customer.

4.5 The Customer shall not market or advertise that it is a user of the Software without first obtaining HERA's written approval.

4.6 The Customer warrants that it will at all times, including before or after the Licence Term (as applicable):
   (a) ensure its use of the Software complies with the Software Instructions as specified in the Key Details and as updated from time to time by HERA;
   (b) use the Software and Documentation only for the Approved Purpose;
   (c) use, install, and configure the Software only as specified by HERA and according to the Software Use Restrictions;
   (d) not in any way infringe upon, translate, decompile, reverse assemble, reverse compile, reverse engineer, or attempt to derive the Software's source code or any part of the Software or the structural processes or logic used to design the Software, nor profit from any version of the Software that would (if created by the Customer) constitute a breach of this clause;
   (e) not make copies, modify, enhance, or create derivative works of the Software, Documentation, or the Software Output;
   (f) not rebrand, lease, sublease, sublicence, sell, distribute, transfer possession, assign, encumber, rent, or grant other rights in the Software, or take actions that would place the Software or Documentation in the public domain;

(g)   not allow third-party access to the Software;

(h)   protect the Software, Documentation, and Software Output from misuse, damage, destruction, or unauthorised use, copying, or disclosure;

(i)   maintain all proprietary notices on the Software, Documentation and Software Output;

(j)   not transfer, assign, or deal with or grant a security interest in the Software, Documentation, or rights under the Agreement;

(k)   not challenge HERA's ownership or the validity of the Software, Documentation, Software Output, or any material created by or for HERA under the Agreement, including Intellectual Property Rights;

(l)   notify HERA in writing immediately if aware of any unauthorised knowledge, possession, or use of the Software, Documentation or Software Output;

(m)   not in any way interfere, attempt to interfere or cause or permit interference with the Software or their normal operation;

(n)   not use the Software, Documentation, and Software Output to violate any laws or regulations of any kind;

(o)   not enter into or upload onto the Software anything which infringes the rights (including the Intellectual Property Rights) of others or which contains a virus, malware or other harmful item or which is unlawful, indecent, threatening or offensive or which could in any way create any liability on or loss to HERA or to HERA's other customers;

(p)   ensure that the Customer has the rights and authority to enter or upload any information to the Software and will use reasonable endeavours to ensure the information entered or uploaded is correct in all material respects and that the information continues to be correct in all material respects;

(q)   ensure that that Software, the contents of the Software, the Software Output, and any Documentation is not used or relied on (in whole or part) by anyone else, or for any other purpose or in any other contexts, without HERA's prior written agreement. Where permitted by HERA, the Customer agrees that Software may not be read or reproduced except in its entirety;

(r)   not use the Software, Documentation, or Software Output in any way that could damage HERA's reputation or goodwill;

(s)   conduct its own independent enquiries and investigations and obtain its own professional advice in relation to all material, and content contained in, and results obtained from the Software;

(t)   verify the materials, content, and Software Output to its own satisfaction, including compliance with building codes and any referenced products, services, or organisations; and

(u)   not rely on the contents of the Software or Software Output in any manner or on any statement, representation, undertaking or warranty of any kind by HERA or by its Affiliates in connection with the Software. The Customer acknowledges that HERA does not accept any responsibility or liability for any action taken in reliance on any content in the Software.

4.7   HERA does not authorise and is not responsible for any external use, misrepresentation, or reliance on the Software by third parties.

5.   FEES

5.1   The Customer shall be liable for and agrees to pay HERA all Fees plus any applicable taxes within thirty (20) Working Days of receipt of an invoice from HERA. Except as otherwise set forth in the Key Details:

(a)   Software Licence Fees will be invoiced on the Effective Date; and

(b)   any consultation or support fees (if applicable) will be payable on a time and materials basis in accordance with the Consulting Rates, invoiced monthly in arrears.

5.2   All Fees must be paid in cleared funds without set-off or deduction.

5.3 If the Customer disputes the accuracy of any invoice, the Customer must within twenty (20) Working Days after receipt of the invoice, give notice of that fact to HERA. The Customer must pay the undisputed portion of the invoice and may withhold payment of the portion disputed. If the parties do not resolve the dispute within ten (10) Working Days of the date of the notice, the dispute shall be determined in accordance with clause 14.

5.4 All amounts payable under this Agreement are expressed exclusive of GST.

5.5 In respect of any taxable supply, the Customer must pay to HERA an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Fees, subject to the receipt by the Customer of a valid tax invoice.

5.6 HERA reserves the right to review and amend the Fees and the Consulting Rates at each annual anniversary of the Effective Date.

5.7 HERA may charge the Customer interest at the rate equivalent to the higher of: (a) HERA's then-current bank's (currently Bank of New Zealand) business lending rate plus a margin of 2.5% per annum; or (b) HERA's then-current bank's 12-month term deposit rate plus a margin of 2.5% per annum, on any amount under this Agreement which is due to be paid by the Customer to HERA and not paid by its Due Date, from the Due Date until it is paid (other than a disputed amount that is pending agreement or resolution under clause 14).

6. AUDIT

6.1 The Customer agrees that HERA may (at HERA's own cost) audit the Customer's use of the Software at any time (acting reasonably) for the purpose of confirming the Customer's compliance with this Agreement. The Customer agrees to co-operate with HERA's audit and provide reasonable assistance and access to information, provided that any such audit will not unreasonably interfere with the Customer's normal business operations. Following completion of an audit, the Customer agrees to pay all additional fees payable by the Customer in accordance with this Agreement if the Customer has used the Software in excess of the rights granted to the Customer under this Agreement. Request of payment by HERA does not preclude or limit HERA's rights to suspend the Customer's access to the Software or terminate this Agreement and revoke the licences granted to the Customer under this Agreement.

7. MODIFICATIONS AND UPGRADES

7.1 HERA may from time to time modify or upgrade the Software, provided that no such upgrade is materially detrimental to the functionality of the Software and the Customer's rights to use the Software as permitted under this Agreement. However, without limiting HERA's obligations under clause 9.4, HERA is under no obligation to modify or upgrade the Software.

7.2 The Customer agrees that it does not have any right to claim losses or damages from HERA for any modification or upgrade of the Software, unless such upgrade or modification materially detrimentally affects the functionality or performance of the Software or results in a material breach of any term of this Agreement (including any warranty or other representation in this Agreement relating to the Software).

7.3 The Customer must install any modifications, upgrades, and Updates within three (3) months of delivery by HERA.

7.4 HERA shall have no obligation to support, or provide any services for, any version of the Software that is not the most current version or any Software that HERA has withdrawn from the market.

8. INTELLECTUAL PROPERTY

8.1 Subject to clause 8.2, the following Intellectual Property Rights remains the property of the current owner:
   (a)   Intellectual Property Rights that existed prior to the Effective Date; and
   (b)   Intellectual Property that was developed independently of the Agreement.

8.2 Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights to the Customer. HERA owns and shall be deemed to own all right, title, and interest in:
   (a)   the Software;
   (b)   the Documentation;
   (c)   the Software Output to the extent that it is not the Customer's pre-existing Intellectual Property as at the Effective Date;
   (d)   The content of the Software, Documentation, and materials in the Software and Documentation, including but not limited to the logos, graphics, images, design, compilation, layout, user interface and presentation of the Software;
   (e)   all current and future Intellectual Property Rights in any modification or upgrade of the Software at any time (including any modifications or upgrades requested by the Customer, even if the Customer paid for such modifications or upgrades) and any other works provided in any form whatsoever to the Customer by HERA or accessible to the Customer because of the Customer's entry into this Agreement; and
   (f)   all current and future Intellectual Property Rights in any Feedback, including anything created as a result of that Feedback (including new material enhancements, modifications, or derivative works) and no payment to the Customer shall be required.

8.3 Nothing in this Agreement prevents or restricts HERA from developing and/or using pre-existing Intellectual Property, its Confidential Information, any ideas, concepts, know-how, information, techniques, inventions and improvements developed or arising during the course of providing the Software for itself or other customers.

8.4 Subject to clauses 8.5 and 10.2, HERA indemnifies the Customer for the amount awarded against the Customer in a final judgement or settlement arising as a result of a valid third party claim or proceeding brought against the Customer in New Zealand to the extent that the claim or proceeding alleges that the Customer's use of the Software in accordance with the Agreement constitutes an infringement of that third party's Intellectual Property Rights in New Zealand ("**IP Claim**"). The indemnity is further subject to the Customer:
   (a)   promptly notifying HERA in writing of any IP Claim;
   (b)   not admitting liability or prejudicing or settling the IP Claim without HERA's prior written consent; and
   (c)   providing HERA with sole authority and necessary information to conduct or settle negotiations and litigation related to the IP Claim.

8.5 The indemnity in clause 8.4 does not apply to the extent that an IP Claim arises from or in connection with:
   (a)   the Customer's breach of the Agreement;
   (b)   use of the Software in a manner not reasonably contemplated by the Agreement or not authorised in writing by HERA;
   (c)   any third party data or data owned by the Customer;
   (d)   modification or alteration of the Software by anyone other than HERA;
   (e)   the Customer's continued use of the infringing Software after HERA has notified them that the IP Claim has merit; and

(f)   the Customer's failure to install the latest Update.

8.6   If an IP Claim is made, or likely to be made in HERA's reasonable opinion, HERA may, in defence or settlement of the IP Claim, at HERA's option:

(a)   obtain for the Customer the right to continue using the Software or element of the Software subject to the IP Claim; or

(b)   modify, re-perform or replace the Software or element of the Software so they become non-infringing; or

(c)   if neither of 8.6(a) or (b) is reasonably available, terminate this Agreement on five (5) Working Days' notice to the Customer and refund to the Customer the pro-rated Fees equivalent to the remainder of the then current Licence Term without any additional liability.

8.7   Clauses 8.4 to 8.6 state the Customer's sole and exclusive rights and remedies, and HERA's entire obligations and liability, in relation to IP Claims.

9.   WARRANTIES AND LIABILITY

9.1   Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, upon acceptance by way of signing this Agreement or clicking through on HERA's website, will constitute binding obligations on the warranting party.

9.2   HERA does not warrant that the Software will meet the Customer's requirements or that the Software will be entirely error free, free from viruses, or uninterrupted or appear precisely as described in the accompanying Documentation. The risk as to the selection and use of the Software is with the Customer.

9.3   To the fullest extent permitted by New Zealand Law, the Software is provided and licenced "as is" and HERA and its Affiliates disclaim any and all guarantees, representations, undertakings, and warranties (express or implied including any warranty under part 3 of the Contract and Commercial Law Act 2017) including any express or implied warranty of merchantability, non-infringement or fitness for a particular purpose in relation to, or in connection with:

(a)   the Software or any aspect of the Software;

(b)   any products, services, or organisations in relation to, contained in, or referenced by, the Software;

(c)   any documentation pertaining to or developed by the Software; and

(d)   Software Output.

To the extent that HERA's obligations cannot be excluded under clauses 9.2 and **Error! Reference source not found.**, HERA's liability is limited to the maximum aggregate amount as recorded in clause 10.2.

9.4   Where the Customer is a business, the Customer agrees and represents that it is acquiring the Software for the purposes of trade and the Customer agrees that the Software is licenced to them as a business and not as a consumer and to the fullest extent permitted under New Zealand Law, the Consumer Guarantees Act 1993 does not apply with respect to the supply of the Software, and that it is fair and reasonable for the parties to be bound by this clause 9.4.

9.5   HERA shall have no liability under this Agreement in connection with:

(a)   the misuse, improper use, or use of the Software for a purpose not reasonably contemplated by the Agreement or use other than in accordance with the Software Description, Documentation, and this Agreement;

(b) any modifications or alterations to the Software not made or approved in writing by HERA;

(c) issues that could be corrected by the installation of an Update or a more current release or version of the Software;

(d) any act or omission of the Customer in breach of this Agreement; or

(e) any information given to HERA by the Customer being untrue, inaccurate and misleading in a material respect.

9.6 The Customer further agrees that the Software provides general information only and is not tailored to the Customer's specific organisation and circumstances.

10. LIABILITY AND INDEMNITY

10.1 To the fullest extent permitted by law, HERA and its Affiliates are not liable to the Customer under or in connection with this Agreement for any of the following:

(a) indirect, special, incidental, or consequential loss or damages of any nature;

(b) loss of profits, revenue, savings, business, data and/or goodwill;

(c) use or inability to use the Software;

(d) for any third party claim (except under clause 8.4); or

(e) punitive or exemplary damages, even if HERA has been advised of the possibility of such damages.

10.2 The maximum aggregate liability of HERA and its Affiliates under or in connection with the Agreement or relating to the Software, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will not in any Licence Term exceed the amount equal to the Fees actually paid by the Customer under the Agreement in the previous Licence Term (which in the first Licence Term is deemed to be the total Fees paid by the Customer from the Effective Date to the date of the first event giving rise to liability). The cap in this clause 10.2 is inclusive of the amount set out in clause 9.2 and **Error! Reference source not found.**.

10.3 The Customer agrees to indemnify, defend and hold HERA and its Affiliates harmless from and against any and all liabilities, expenses, loss, claims, damages and costs by any third party in relation to:

(a) the Customer's, the Customer's Personnel, or any person authorised by the Customer's (with or without HERA's consent), use or modification of the Software or its content; and

(b) any of the Customer's action that infringes on HERA's Intellectual Property Rights in the Software or the content.

This indemnity is not limited by any limitations contained in this Agreement.

10.4 Each party ("**Indemnifying Party**") indemnifies the other and its Affiliates (together the "**Indemnified Party**") against any actions, proceedings, losses, damages, liabilities, claims, costs and expenses including fines, penalties, legal costs (on a solicitor to own client basis), debt collection and other professional costs that the Indemnified Party incur or suffer as a direct result of any breach by the Indemnifying Party of this Agreement, or the negligence of the Indemnifying Party or its authorised Personnel. HERA's requirement to indemnify pursuant to this clause is subject to the limitations in clause 10.2.

11. CONFIDENTIALITY

11.1 Each party ("**Receiving Party**") agrees that any Confidential Information received by it in relation to the other party ("**Disclosing Party**") under this Agreement must, unless it has the prior written consent of the Disclosing Party:

(a) keep confidential the Confidential Information of the Disclosing party at all times;

(b) take measures to protect the Confidential Information of the Disclosing Party that are no less protective than those measures the Receiving Party uses to protect its own comparable Confidential Information, and in any event not less than a reasonable degree of protection; and

(c) not disclose to any third party for any reason, except to the Receiving Party's Affiliates or professional advisors on a need to know basis only, and in that case, ensure that any Affiliate or professional advisor to whom the Confidential Information is disclosed is aware of, and complies with, the provisions of clause 11.1(a) and 11.1(b), or otherwise as may be required by law. The Receiving Party remains responsible for any Confidential Information disclosed pursuant to this clause 11.1(c).

11.2 The obligations of confidentiality in clause 11.1 do not apply to any disclosure or use of Confidential Information:

(a) for the purpose of performing the Agreement or exercising a party's rights under the Agreement;

(b) required by law (including under the rules of any stock exchange);

(c) which is publicly available through no fault of the recipient of the Confidential Information or its personnel; or

(d) which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality.

11.3 The parties acknowledge and agree that a breach of this clause would cause irreparable harm and that either party shall be entitled to seek equitable relief from such breach.

12. PRIVACY AND DATA

12.1 The Customer authorises HERA to collect and use data relating to the Customer's details (including the Customer's representative's personal information, membership details, payment details, and contact details) and the Customer's use of the Software for purposes of contract management (e.g. the information recorded in the Key Details which includes the software licence purchased, the Licence Term, the Effective Date, the notice requirements, etc), statistical analysis, and improvement of the Software.

12.2 HERA's privacy policy can be found on HERA's website. HERA will comply with its privacy policy in relation to all of the Customer's personal information collected by HERA.

12.3 Except in the event of HERA's gross negligence, if there is any discrepancy or conflict between the records maintained by HERA in relation to the Key Details and details required for the management of this Agreement, and those maintained by the Customer, the records of HERA shall be deemed to be the accurate and prevailing records for the purposes of this Agreement.

13. TERMINATION AND CONSEQUENCES OF TERMINATION

13.1 Unless terminated under this clause 13, this Agreement shall commence on the Effective Date and continue until the final day of the Licence Term.

13.2 Either party may terminate this Agreement immediately (and in HERA's case, also revoke the Software licence granted to the Customer) by providing notice to the other party if that other party:

(a) breaches any material provision of this Agreement (including payment of Fees), and that breach is not remedied within 10 Working Days of the other party notifying it of the breach or the breach is not capable of being remedied; or

(b) becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

13.3 Following termination or expiry of this Agreement:

(a) neither party is released from liability for accrued obligations or any previous breach of this Agreement, and shall be without prejudice to other rights and remedies as may be available, including but not limited to injunctive and other equitable remedies;

(b) the Customer must pay Fees for the rights and services provided by HERA prior to the termination or expiry of this Agreement;

(c) the Customer must immediately stop accessing, utilising, and referring to the Software, Documentation, and Software Output; and

(d) the Receiving Party, at the other Disclosing Party's discretion and request, return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party (including, in the case of the Customer, the Software and Documentation) in the Receiving Party's possession or control except for Confidential Information that the Receiving Party is required to retain to meet their legal, regulatory, compliance or governance obligations and the obligations of confidentiality under this Agreement shall continue to apply to such retained Confidential Information.

13.4 The terms of this Agreement that are expressed to or by implication are intended to survive termination or expiry of this Agreement, including all payment obligations, ownership terms, confidentiality obligations, warranty disclaimers, indemnification obligations, exclusions and limitations of liability shall survive termination or expiry of this Agreement.

13.5 Unless HERA agrees otherwise in writing, on expiry of the Software Licence Term, the Customer must enter into HERA's then current software licence agreement and pay the then current software licence fees for a new software licence term if the Customer intends to have continued use of the Software.

14. DISPUTE RESOLUTION

14.1 If a dispute arises out of or relates to this Agreement:

(a) a party to this Agreement may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following subclauses of this clause except where the party seeks urgent interlocutory relief;

(b) a party to this Agreement claiming the dispute ("**Dispute**") has arisen under or in relation to this Agreement must notify the other party as to the nature of the Dispute;

(c) on receipt of that notice by the other party, the parties must endeavour in good faith to promptly resolve the Dispute;

(d) if the parties does not resolve the Dispute within fourteen (10) Working Days of receiving notice of the Dispute, the parties must mediate the Dispute in accordance with the procedures of the Resolution Institute New Zealand, and the Chair of the Resolution Institute (or the Chair's nominee) will select the mediator and determine the mediator's remuneration (which shall be paid equally by the parties); and

(e) if a binding agreement has not been reached as a result of that mediation process, then any party may (at its option) commence arbitration proceedings before a single arbitrator agreed by the parties or else (failing agreement within five (5) Working Days) appointed on application of any party by the then present Arbitrators' and Mediators' Institute of NZ President or their nominee. Any such arbitration shall be completed in accordance with and subject to the provisions of the Arbitration Act 1996. The decision of

the arbitrator (including any decision as to which party shall bear the costs of the arbitration) shall be final and binding on the parties.

15. GENERAL

15.1 This Agreement constitutes the entire agreement between the parties in relation to the transactions embodied in this Agreement and supersedes and extinguishes all prior agreements and understandings and all representations or warranties previously given.

15.2 No failure by HERA to exercise any power given to HERA under this Agreement or to insist upon strict compliance by the Customer with any obligation under this Agreement and no custom or practice of the parties at variance with the terms of this Agreement and no waiver of any particular default by the Customer shall constitute any waiver of any of HERA's rights or the Customer's obligations under this Agreement.

15.3 Neither party will not liable for any failure to fulfil its obligations under this Agreement to the extent that such failure arises from any cause reasonably beyond that party's control (including any failure by us to provide the Service through the Server as a result of as a result of riots, acts of war, epidemics, governmental interference, fire, communication line failures, equipment failures, power failures or earthquakes or other natural disasters) ("**Force Majeure**") provided that the affected party:
(a)   immediately notifies the other party and provides full information about the Force Majeure;
(b)   uses best efforts to overcome the Force Majeure; and
(c)   continues to perform its obligations to the extent practicable.

15.4 If any term or provision (the "offending provision") of this Agreement shall be declared or become unenforceable, invalid or illegal, the other provisions of this Agreement shall remain in full force and effect as if they had been executed without the offending provision appearing and the offending provision shall nonetheless be enforceable and binding to the fullest extent permitted by the applicable law.

15.5 The termination, revocation, expiry or repudiation of this Agreement shall not in any way restrict any right to relief or damages to which HERA may be entitled under this Agreement.

15.6 Each party's rights under this Agreement are personal to it and neither party shall assign, convey, subcontract, sublicence or delegate any of its rights, duties or obligations under this Agreement without the other party's express prior written consent (which consent shall not be unreasonably withheld).

15.7 This Agreement and every matter arising from or in any way connected with the subject matter of this Agreement shall be governed exclusively by the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand over all such matters.

15.8 This Agreement may be executed in any number of counterparts (including by scanned copy or electronic signature), each of which will be deemed an original, but all of which, taken together, shall constitute one and the same instrument. The date on which the last counterpart is executed will be the sign date of this Agreement.

15.9 Each party must do all things and execute all documents and as reasonably necessary to give full effect to the terms and intentions of this Agreement and use reasonable endeavours to cause any relevant third parties to do the same.

15.10 This Agreement may be amended only by a written document signed by all parties.

15.11 All notices provided for herein shall be in writing and sent via certified mail, return receipt requested to the contact addresses set forth on the Key Details, or by email using the email address set forth in the Key Details, or such other addresses as may be notified by either party from time to time. Notices sent via certified mail shall be deemed to have been given upon delivery (by post) with confirmation of receipt (unless received after 5:00pm in the place of receipt, in which case receipt shall be deemed to have occurred on the next Working Day). Notices sent via email shall be deemed to have been given on the day that the email is sent (unless the email is sent after 5:00pm or on a day that is not a Working Day, in which case receipt shall be deemed to have occurred on the next Working Day).

15.12 HERA is an independent contractor of the Customer. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

15.13 Where any provision of this agreement is expressed to be for the benefit of any person other than either party (a "**Third Party**"), such provision is intended to confer a benefit on each such Third Party and may be relied upon and enforced by each such Third Party. Except was expressly set out in this Agreement, nothing in this Agreement shall be construed as giving any Third Party any right, remedy or claim and any amendment made to this Agreement does not require consent of any Third Party.

SCHEDULE 1

KEY DETAILS	
Customer	As recorded on the form submitted by the Customer.
Software	As selected by the Customer and recorded on the Customer's invoice
Licence Type	Annual time-limited subscription licence
Licence Term	One (1) calendar year from the Effective Date or the date the Customer has paid the Software Licence Fees in full, whichever is later, until this Agreement is terminated or expired.
Software Licence Fees	The total fees as recorded on HERA's website for the Software or as advised by HERA which is payable annually in advance from the Effective Date
Consulting Rates	As updated by HERA from time to time.
Approved Purpose	• The purpose of the software is as recorded at the purpose and description section of the Software on HERA's webpage. • Customer may use the Software solely for the Customer's lawful internal business purposes.
Software Use Restrictions	The Customer: • may only install the Software on equipment owned by the Customer. • may only use the Software in New Zealand. • may only use the Software during the Licence Term. • must not use any of the materials in the Software for any public or commercial purposes. • must not copy, modify, reproduce, republish, post, transmit or distribute in any way any material from the Software, including the underlying code, except that the Customer may print off calculation and checking results in relation to the Customer's specific use of the information for the Customer's particular steelwork application requirements. Any use of the Software not expressly permitted by this Agreement is prohibited.
Notices to HERA	**Address**: HERA House, 17-19 Gladding Place, Manukau City, Auckland **Email**: info@hera.org.nz
Notices to Customer	The email and postal address as recorded on the form submitted by the Customer.