

# SOFTWARE LICENSE AGREEMENT

END USER

Effective as of [date] (hereinafter referred to as the "Effective Date") the following Software License Agreement (hereinafter the "Agreement") is entered into by and between

## 1. Company name and address

VAT.-Ident. No.: [nr.]

(hereinafter referred to as "COMPANY")

## 2. DTU Wind Energy

Technical University of Denmark

Risø Campus

Frederiksborgvej 399

Building 118

DK-4000 Roskilde

CVR no. 30060946

(hereinafter referred to as "DTU Wind Energy")

regarding COMPANY's purchase of an end-user license to DTU Wind Energy's software HAWC2.

**Whereas** employees of DTU Wind Energy within the program called Aeroelastic Design has developed software called HAWC2, which main features are time domain computations of integrated Aerodynamic, structural and hydrodynamic loads of a wind turbine;

**Whereas** this software has been developed on basis of DTU Wind Energy's extensive research within the field of wind energy;

**Whereas** COMPANY want to obtain an end user license to the HAWC2 Software and DTU Wind Energy is willing to grant such license;

**Now**, therefore the Parties have agreed as follows:

## 1. Definitions

1.1. In this Agreement the following definitions are used:

**Software** means the computer program named HAWC2 in executable code capable of operating on a PC under the operative systems Windows XP/2000/NT4/Vista/Windows 7/ Windows 8.

**Documentation** means the manual named "How to HAWC2 – the user's guide".

## 2. License

DTU Wind Energy hereby grants to COMPANY a non-exclusive and non-assignable license upon due payment to use Software and Documentation for analysis of COMPANY's own blades and turbines in COMPANY' R&D department office on premises [company address]

- 2.1. The license granted according to article 2.1 is a multiple-user multiple-pc license. The software can be installed on a number of computers (with a maximum of 500 computers), restricted to computers located at the COMPANY premises, as indicated by the address stated at the beginning of this Agreement, to which it is locked using a license manager. COMPANY can therefore only use the Software on these computers owned by COMPANY and used by COMPANY's employees and /or in-house consultants. The license manager will include computers connected to the COMPANY domain and will on quarterly basis be updated for additional local computers within the maximum. The Software may not be used on any other computer.
- 2.2. COMPANY is not allowed to sell, assign, distribute, sub-license, rent, lease, lend, or in any other way transfer or assign Software and Documentation, or any of the rights or obligations granted by DTU Wind Energy to COMPANY under this Agreement to a third party without the prior written approval of DTU Wind Energy. DTU Wind Energy may give such approval at its own discretion.
- 2.3. COMPANY undertakes not to let any third party other than the above mentioned in-house consultants get access to or to use the Software or Documentation without approval from DTU Wind Energy. COMPANY has the responsibility for its consultants' observance of obligations at least corresponding to the obligations of COMPANY as laid down in this Agreement.
- 2.4. All rights to Software or Documentation not explicitly mentioned or granted in this Agreement are reserved by DTU Wind Energy.

## 3. Copyright and ownership rights

- 3.1. Software and Documentation is protected by the Danish Copyright Act and international treaties and conventions on the protection of copyright and other relevant legislation on intellectual property rights and copyright. Section 36, subsection 1, no. 1, of the Danish Copyright Act does not apply to this Agreement, and thus COMPANY is not allowed to make copies of or make any changes to the Software.
- 3.2. DTU Wind Energy holds all copyright and any other rights, including intellectual property rights and ownership rights, to Software and Documentation including all copies thereof.
- 3.3. COMPANY is not allowed to change or remove any marks or notices regarding copyright, trademarks or the like on Software or Documentation or copies thereof.

## 4. Delivery

- 4.1. DTU Wind Energy will deliver the Software, including the license manager, and the Documentation to COMPANY, when both Parties have signed this Agreement and DTU Wind Energy has received a signed copy of the Agreement.

## 5. License fee

- 5.1. COMPANY shall pay to DTU Wind Energy a first annual license fee of € 40,000 (Forty thousand Euros) ex. VAT for the first year and an annual license fee of €25,000 (Twenty five thou-

sand Euros) ex. VAT for subsequent years. The price includes assistance (up to a maximum of 40 working hours) for the analysis of a specific wind turbine chosen by COMPANY. The price further includes support and e-learning as described in article 6.

- 5.2. DTU Wind Energy will issue an invoice for the first annual license fee to COMPANY at the signing of this agreement. The terms of payment are current month + 30 days.
- 5.3. Invoices for subsequent annual fees mentioned in article 5.1 shall be issued to COMPANY on the same day and month as the Effective Date of each subsequent year and will be payable to DTU Wind Energy current month + 30 days.

## **6. Support and e-learning**

- 6.1. DTU will assist COMPANY' technical contact persons in the use of the Software by telephone or e-mail (up to a maximum of 40 working hours per year). DTU will respond to all support calls as soon as possible. All support calls or e-mails have to be directed to the Research Program Aeroelastic Design in the Wind Energy Department at DTU.
- 6.2. DTU Wind Energy shall inform and make available to COMPANY new releases, buildcodes, fixes, patches or workarounds to the Software that DTU Wind Energy may decide to make available at the date of release of such. DTU Wind Energy warrants that any releases of, buildcodes, fixes, patches and workarounds to the Software are compatible with the Software.
- 6.3. DTU Wind Energy provides e-learning to Licensee by the itslearning platform which is a learning management system that facilitates online courses. COMPANY is entitled for 10 (ten) users to each participate in one HAWC2 e-learning course offered by DTU Wind Energy.

## **7. Term and termination**

- 7.1. This Agreement will come into force on the Effective Date.
- 7.2. If COMPANY is in breach of any of its obligations under this Agreement then DTU Wind Energy has the right to terminate this Agreement with immediate effect by written notice to COMPANY.
- 7.3. This Agreement shall remain in force until terminated by written notification from either Party with 3 months prior written notice to the other Party. A proportional share of any prepaid license fee for a period beyond the termination date will be returned by DTU Wind Energy. In case of expiry or termination of the Agreement, regardless of the reason for termination, COMPANY undertakes immediately to cease any further use of the Software and to delete or destroy all copies of Software and Documentation and to confirm this by sending a written declaration to DTU Wind Energy.

## **8. Liability**

- 8.1. The Software is provided "as is" and in the present version at the Effective Date and any express or implied warranties, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose are disclaimed. The Software is delivered without warranties or guarantee of any kind.
- 8.2. Except in the event that such damages are attributable to intentional acts or gross negligence on the part of DTU Wind Energy, DTU Wind Energy cannot be held liable for any loss or damage whatsoever caused by the Software or which may arise in connection with COMPANY's

use of Software and Documentation, including but not limited to Software's potential infringement of any third party intellectual property rights. DTU Wind Energy's aggregate liability to COMPANY for damages concerning performance or nonperformance by DTU Wind Energy or in any way related to this Agreement will for the term of the Agreement not exceed the license fees received by DTU Wind Energy from COMPANY for the Software preceding the occurrence of such liability. The Parties shall, however, not in any event be liable for any indirect, special or consequential loss, howsoever arising, including but not limited to loss of anticipated profits or loss of data.

- 8.3. COMPANY shall indemnify and hold harmless DTU Wind Energy from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with COMPANY's acts or omissions arising from or relating to this Agreement.

## 9. Confidentiality

- 9.1. The Software shall be regarded as confidential information. COMPANY shall not disclose the Software or any other confidential information disclosed by or received from DTU Wind Energy to any third party without the prior written approval from DTU Wind Energy.
- 9.2. COMPANY shall not be entitled to reverse engineer, reverse assemble or decompile or in any other way create derivative works or modified versions of the Software or knowingly permit any third party to do so, unless expressly permitted by law.
- 9.3. The duty of confidentiality pursuant to this article shall survive the termination of this Agreement. Termination of this Agreement shall not release COMPANY from the obligations set out in this article, regardless of the reason for its termination.

## 10. Governing Law and Venue

- 10.1. This Agreement shall be enforced, interpreted and construed in accordance with Danish law except for its provisions on choice of law if such rules where applied would cause the law of another country to be applied. Venue for any dispute arising from or relating to this Agreement shall be the Court of Lyngby as the court of first instance.

## 11. Signatures

- 11.1. This Agreement is executed in two (2) original copies and each party has received a copy

Date: \_\_\_\_\_

Date: \_\_\_\_\_

For and on behalf of COMPANY:

For and on behalf of DTU Wind Energy:

\_\_\_\_\_  
[name]

\_\_\_\_\_  
Flemming Rasmussen