

**ProSAir Software
EVALUATION LICENCE AGREEMENT**

This Agreement made the day of two thousand

BETWEEN Cranfield University, whose address is at Cranfield, Bedford, MK43 0AL (hereinafter referred to as "Licensor")

AND whose registered office is at

(hereinafter referred to as "Licensee").

The Licensee should complete:

1. Their organisation name location above,
2. The Licensee and Licensee Contact details on page 9

Then email a scanned copy of the entire licence agreement to prosair@cranfield.ac.uk.

NOW, IT IS HEREBY AGREED as follows:-

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following definitions will apply:-

"Documentation"

means such operating manuals, user instructions and other related materials supplied by the Licensor to the Licensee (in electronic or written form) for aiding the use of the Software including any part or copy of it;

"Equipment"

means the computer specified in the Schedule;

"Installation of the Software"

Means to copy the Software from ftp server or supplied CD/DVD onto the Equipment;

"Location"

means the location of the Equipment specified in the Schedule;

"Software"

means the computer program[s] in object code form only developed by the Licensor and known as "ProSAir" as described briefly in the Schedule including any copies but excluding source code material and all preparatory design material;

"Use the Software"

means run and display the Software on the Equipment in accordance with the terms of this Agreement;

"Evaluation Purposes"

means use the software **only** in order to ascertain if it is suited to the requirements of the licensee and for the avoidance of doubt this expressly excludes both commercial and academic use and any modifications or enhancements thereof;

2. LICENCE

Subject to the terms and conditions of this Agreement and in consideration of the Licensee providing feedback in accordance with clause 8 for the Software in the amount and frequencies indicated and for the purposes and uses specified in the Schedule, Licensor hereby grants to Licensee for the period set out a non-exclusive non transferable revocable licence to Use the Software for **Evaluation Purposes only** by the Licensee's direct employees at the Location only. Licensee shall not and shall not have the right to sell, assign, transfer, rent, lease, sublicense, lend, give or make available to others or otherwise transfer or dispose of the Software in its present form or as converted or modified by Licensee or Licensor, or make the Software available in any manner for use by any subsidiary of Licensee or by any other person, or firm, or customer. Other than as permitted by law, Licensee shall not reverse assemble, decompile, or reverse engineer the whole or part of the Software nor copy, modify, adapt or translate the Software in any way, or otherwise attempt to reveal the source code of the Software, or extract ideas, algorithms, procedures, work flows or hierarchies from the Software for the purposes of creating any software or tools to be used as a substitute therefor, nor merge the whole or part of the Software with any other software. Licensee shall not engage in the development or marketing of a product or system commercially competitive with the Software at any time during the Licence Period.

3. PROPRIETARY RIGHTS AND CONFIDENTIALITY

The Software is a proprietary product of Licensor and is protected by Copyright law and Licensor reserves all rights of ownership and copyright and

all other intellectual property rights in any version of the Software in any format or any medium.

To the extent permitted by law the Licensee agrees that, during the term of this Agreement and thereafter, the Software including any versions modified by Licensor for use by Licensee and all other material, information and documentation made available to it by Licensor under this Agreement which is not already in the public domain or already lawfully in Licensee's possession are and shall remain the exclusive property of Licensor and are proprietary, and Licensee further agrees during the term of this Agreement and thereafter to maintain in confidence and not to disclose to any person, firm or company and to use its best efforts to prevent and protect the Software and all parts thereof and all such other material, know-how information and documentation from disclosure by its agents or employees to any person, firm or company. Licensee shall use the Software and all information and documentation only for the purpose of this Agreement. Neither the Software nor any parts thereof shall be copied or reproduced by Licensee for any purpose outside the scope of this Agreement, nor shall they be made available for use by Licensee's customers or any other person, firm or company without the prior written consent of Licensor.

Notwithstanding the above, Licensee may make such copies of the Software as are necessary for back-up purposes. The Licensee agrees to maintain records of the number and location of all copies of the Software, made by them and all copies shall bear the words "© This is copyright material and may not be copied in whole or in part without the express written permission of Cranfield University." The terms of this Licence shall apply to all such copies as it applies to the Software licensed hereunder.

4. SECURITY AND CONTROL

4.1 The Licensee shall during the continuance of the Licence:

4.1.1 effect and maintain adequate security measures to safeguard the Software and Documentation from access or use by any unauthorised person;

4.1.2 retain the Software and Documentation and all copies thereof under the Licensee's effective control; and

4.1.3 maintain a full and accurate record of the Licensee's copying and disclosure of the Software and Documentation and shall produce such record to the Licensor on request from time to time.

5. TERM

The duration of this Agreement shall be from two (2) months after the date of signature of the Cranfield University signatory, unless sooner terminated in accordance with the provisions of this Agreement.

6. TERMINATION

- 6.1 After delivery of the Software Licensee may terminate this Agreement at any time upon sixty (60) days written notice to Licensor. If Licensee decides to terminate, there is to be no refund of any part of the Licence fee payment.
- 6.2 In the event that Licensee makes any use of the Software outside the rights granted hereunder or commits any other material breach of this Agreement, Licensor shall give written notice to Licensee and if such default has not been remedied within thirty (30) days after such notice, Licensor may thereafter terminate this Agreement.
- 6.3 Licensor shall have the right to terminate this Agreement forthwith without notice if Licensee becomes insolvent, compounds with its creditors, files a petition in bankruptcy, enters into liquidation, has a receiver appointed or has any distress or execution levied against it.
- 6.4 Upon expiration or termination of this Agreement, the Software shall promptly be deleted from any files of Licensee and all copies taken for back-up purposes promptly be destroyed, Licensee shall make no further use of the Software. Licensee agrees to provide to Licensor written confirmation of the deletion and destruction of all copies. Licensee shall promptly return all documentation provided by Licensor hereunder relating to the Software.

7. TITLE

Legal title to the Software and any modifications or enhancements thereto made by Licensor shall at all times be vested in Licensor and legal title to reproductions, converted versions or duplications of the Software and any other supporting documentation and information delivered to Licensee shall remain vested in Licensor and shall be returned to Licensor upon termination of this Agreement.

8. RESPONSIBILITY AND LIABILITY

8.1 Warranties

- 8.1.1 Licensee shall not make nor permit to be made any publication involving use and development of the Software without the prior written consent of the Licensor.
- 8.1.2 Licensee agrees and acknowledges that it may use the software for evaluation purposes only for the avoidance of doubt this expressly excludes commercial use and any modifications or enhancements thereof, and, accordingly, the Licensee shall be solely responsible for any designs, systems, products or any use made of the Software.

- 8.1.3 Other than as set out in this Agreement Licensor shall not be liable to the Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Licence Agreement, the Software, its use or otherwise.
- 8.1.4 Licensor expressly excludes liability for consequential loss or damage which may arise in respect of the Software, its use, the system or in respect of other equipment or property, or for loss of profit, loss of production, business revenue, loss of contracts, goodwill or anticipated savings.
- 8.1.5 Licensor accepts no liability for any design, system or use of any product resulting from the use of the Software and makes no warranty as to its completeness or accuracy nor that the Software is free of defects, error-free or is of a satisfactory quality.
- 8.1.6 Notwithstanding the above, nothing herein shall be deemed to restrict or exclude any liability of the Licensor for death or personal injury to the extent only that the same arises as a result of the negligence of Licensor, its employees, servants, agents or authorised representatives.
- 8.1.7 The Licensee will periodically, and at the request of the Licensor, provide the Licensor with details of the following:
- 8.1.7.1 the testing environment for the Beta Software; and
 - 8.1.7.2 any general user feedback including suggestions for improvements or enhancements which the Licensee or its employees or agents may have.
- 8.1.8 The Licensee shall provide the Licensor with immediate feedback on any bugs, faults or errors encountered during testing and evaluation of the Beta Software.
- 8.1.9 Subject to the provisions of this clause the Licensor's entire liability whether in contract or in tort and whether or not attributable to negligence, shall be limited to £1,000,000 if arising out of or in connection with any damage to property of the Licensee or in any other case, shall be limited to the amount of the Licence Fee specified in the Schedule.
- 8.1.10 Licensee shall protect, indemnify, save harmless and defend Licensor from and against any and all liabilities, claims, demands, loss, costs, damages or expenses including legal fees, arising from any claim asserted against Licensor that is in any way associated with Licensee's use of the Software.
- 8.2 Licensor gives no further warranty or representation as to the fitness of the Software or any part thereof nor as to its performance. The express warranties given by the Licensor in Clause 8.1 are given to the exclusion of all

other warranties and conditions and representations whether express or implied or otherwise.

- 8.3 The Licensor may from time to time update or alter the Software in response to information received from the Licensee or other Licensees. The Licensee shall on receiving notification of such update and receipt of further instructions from the Licensor, promptly replace the version of the Software it is currently using with such updated version. Any issue of an updated or altered Software version to the Licensee by the Licensor will be covered under this licence. The Licensor will notify the Licensee of any extension to the dates of termination.

9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 9.1 The Licensor will indemnify the Licensee and keep the Licensee fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the Use of Software infringes the Intellectual Property Rights (including without limitation of patents, copyright, registered design, design right or trademark) of any third party, subject to the following conditions:-

9.1.1 the Licensee shall promptly notify the Licensor in writing of any allegations of infringement of which it has notice and will not make any admissions without the Licensor's prior written consent;

9.1.2 the Licensee, at the Licensor's request and expense, shall allow the Licensor to conduct and/or settle all negotiations and litigation resulting from any such claim;

9.1.3 the Licensee shall, at the request of the Licensor, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by the Licensor for any out of pocket expenses incurred in so doing.

- 9.2 The indemnity given under sub-clause 9.1 above will not apply to infringement arising out of the use of the software or any part thereof in combination with any equipment and/or computer programs not supplied or approved by the Licensor for use with the Software.

- 9.3 If the Licensee's normal use or possession of the Software is held by a Court of competent jurisdiction to constitute an infringement of the third party's Intellectual Property Rights or if the Licensor is advised by legal counsel that such use or possession is likely to constitute such an infringement, then the Licensor shall promptly and at its own expense:-

9.3.1 procure for the Licensee the right to continue using and possessing the Software; or

9.3.2 modify or replace the Software, so as to avoid the infringement; or

9.3.3 remove the Software from the Location and refund the Licence Fee to the Licensee.

9.4 The foregoing states the Licensor's entire liability to the Licensee in respect of the infringement of the Intellectual Property Rights of any third party.

10. NOTICE

Any notice or other communication given hereunder shall be in writing and mailed, if to Licensor, to **Dr Shaun Forth, Centre for Simulation and Analytics, Cranfield Defence and Security, Cranfield University, Shrivenham Campus, Swindon, SN6 8LA** and if to Licensee to the Licensee's Contact Staff Member specified on page 8 or to such other address as either party shall have previously designated by notice in writing. Such notice or communication shall be deemed delivered when sent by registered post or facsimile transmission and subsequently confirmed in writing.

11. ENTIRE AGREEMENT

This Agreement represents the entire Agreement between Licensor and Licensee and shall supersede all representations, agreements, statements and understandings made prior to the date of this Agreement whether oral or in writing other than those representations, agreements, statements and understandings which have been expressly incorporated into this Agreement.

12. UNCONTROLLABLE CIRCUMSTANCES

Licensor shall not be responsible for any failure on its part to fulfil any obligations to Licensee caused by events or circumstances outside Licensor's control.

13. VARIATION OF CONDITIONS

The terms and conditions of this agreement shall not be varied except in writing, signed by the parties, each by its duly authorised representatives.

14. NON-ASSIGNMENT

Licensee shall not assign this Agreement or any interest therein to any person without the prior written consent of Licensor.

15. NON-WAIVER

Failure to terminate this Agreement following a breach or other failure to comply shall not be deemed to be a waiver of a Party's defences rights or causes of action arising from such or any future breach or non-compliance.

Nor shall failure on the part of either Party at the time or from time to time to enforce or to require the strict adherence and performance of any of the terms and conditions affect or impair its right to enforce such terms or conditions in any way.

16. HEADINGS AND SEVERABILITY

The clause headings are for convenience only and shall not affect their interpretation. If any part of this Agreement shall be held to be unenforceable to any extent, the remainder of the Agreement shall nevertheless remain in full force and effect.

17. SURVIVAL

The provisions of clauses 3, 7, 8 and 18 shall remain binding upon Licensee after the expiry or termination of this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

19 DATA PROTECTION

The Licensee personal data of page 9 and any electronic or written communications held by Licensor will be treated as confidential and reasonable measures will be taken to ensure that it is processed securely and in accordance with current UK Data Protection legislation. It will be not be shared with any Third Parties and will be used for the sole contractual purpose of administrating the use and functionality of the software provided.

The Licensor will process personal data on persons with whom it has a relationship when concluding a contract. These personal data are collected directly from these persons or from the service provider as part of the business relationship. The Licensor makes use of the following categories of personal data: names, surnames and professional contact address, email and telephone number.

These personal data are necessary for the legitimate interests pursued by the Licensor and are received by the Licensor services concerned and, when necessary, by its subcontractors or other providers. The

Licensor stores personal data during the execution of the Agreement and, in addition, for a seven-year period.

At any time, these persons have a right of access, rectification or erasure of their personal data, the right to restriction or object to its processing and the right to data portability. Any request can be sent by post to the Data Protection Officer, Cranfield University, College Road, Bedford, MK43 0AL, UK or by email to GDPR@Cranfield.ac.uk. A copy of an identity document must be attached to the request. Moreover, they can make a complaint to the competent authority if they consider that these rights have not been respected.

Licensor and Licensee Signatures and Contacts

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective on the day and year first written above.

Licensor - Cranfield University

Signature:

Name: Mr G M Say

Title: Chief Operating Officer

Date:

Licensee

Signature:

Name:

Title:

Date:

Licensee's Contact Staff Member

Name:

Email:

Tel:

Full Postal Address:

SCHEDULE

Software : ProSAir

Equipment :

Location :

Purpose of Use: Model the propagation of shock waves in air and resultant loading on structures