



BAKER ENGINEERING AND RISK CONSULTANTS, INC.

3330 Oakwell Court, Suite 100, San Antonio, Texas 78218-3024 TEL: (210) 824-5960 FAX: (210) 824-5964

Software License Agreement

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THIS Software License Agreement is by and between Baker Engineering and Risk Consultants, Inc., a Texas corporation located at 3330 Oakwell Court, Ste 100, San Antonio, Texas 78218, (hereinafter "BakerRisk") and the endorser of the Software (hereinafter "Customer").

WHEREAS, BakerRisk has developed a certain Software and is willing to grant a license to such Software to Customer on the terms and conditions herein.

NOW, THEREFORE, in consideration of the following terms and conditions the parties agree as follows.

1 Definitions

- 1.1 **“Coalition”** shall mean the association of member companies, under separate agreement with BakerRisk, formed to facilitate the development of the Software.
- 1.2 **“Confidential and Proprietary Information”** shall mean all information belonging to BakerRisk or third parties that may be contained in the Software or identified in the Documentation that is disclosed or made available to Customer as a result of this Software License Agreement. Confidential and Proprietary Information does not include any of the following: (a) information which was available to the public by publication or otherwise was part of the public domain at the time of disclosure under this Software License Agreement; (b) information which legally becomes available to the public by publication or otherwise becomes a part of the public domain through no fault of Customer after such disclosure; (c) information which is or has been disclosed to any third party without the same or substantially the same obligations of limited Use and restricted disclosure as



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required by this Software License Agreement; (d) information which was already known prior to such disclosure; (e) information which is received from a third party without the same or substantially the same obligations of limited Use and restricted disclosure as required by this Software License Agreement.

- 1.3 **"Customer"** shall mean the ultimate consumer of the Software and Party to this Software License Agreement.
- 1.4 **"Software License Agreement"** shall mean, collectively, the terms and conditions set forth in the entirety of this document.
- 1.5 **"DIPPR Database"** shall mean DIPPR DATABASE which is the evaluated collection of physical property data, correlation coefficients, notes, references, and recommended property values that have been compiled together under the DIPPR® 801 projects in Microsoft Access format and included in SafeSite3G Software.
- 1.6 **"Documentation"** shall mean all documentation regarding and accompanying the Software including but not limited to, manuals, operating instructions and system design specifications.
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- 1.8 **"Operate"** shall mean to install, store, load, and execute the Software at a specified location. Operation, as used in this Software License Agreement, shall not include copying, modifying, distributing, or reverse-engineering the Software.
- 1.9 **"Party"** shall mean either BakerRisk or Customer.
- 1.10 **"Software"** shall mean the version of the BakerRisk computer program that is the subject of this Software License Agreement.
- 1.11 **"Term"** shall mean the duration of this Software License Agreement.

2 Grant of License

2.1 **License Grant.** BakerRisk hereby grants to Customer a nonexclusive, royalty-free license to operate one (1) copy of the Software in accordance with the terms and conditions of this Software License Agreement.

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- 3.4 **Customer Acknowledgement.** Customer acknowledges that violations of the provisions of this Section would cause irreparable harm to BakerRisk not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violations of such provisions.

4 Limitation of Liability, Warranty, and Indemnity

- 4.1 **Disclaimer of Warranties.** THIS SOFTWARE IS PROVIDED "AS IS." BAKERRISK



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5 Term and Termination

- 5.1 **Term.** The Term of this Software License Agreement is three (3), six (6), or twelve (12) months as selected in the license purchase process, so long as the Software is properly Operated, and subject to the termination provisions set forth below. The term can be extended through a request for renewal in three (3) month increments with a maximum of twelve (12) months in each renewal period.
- 5.2 **Right to Terminate.** Customer may terminate this license at any time. BakerRisk may terminate this license if Customer fails to comply with the terms and conditions of this Software License Agreement, including failure to make payments when due.
- 5.3 **Upon Termination.** Upon termination, Customer agrees to immediately cease Operation of the Software. Customer further agrees to destroy the Software and all related Documentation, together with all copies of the Software in any form. Customer shall provide to BakerRisk with written confirmation that such destruction has taken place and that Customer retains no Software or Documentation.
- 5.4 **Sections Surviving Termination.** It is understood and agreed upon by Customer and BakerRisk that Sections 3 and 4 shall survive termination of this Software License Agreement.

6 Relationship of the Parties

- 6.1 **No Agency.** Nothing contained in this Software License Agreement shall be construed as establishing the relationship of master and servant, principal and agent, partnership, or a joint venture between BakerRisk and Customer.
- 6.2 **Independent Contractor.** BakerRisk is and shall perform this Software License Agreement and all services, activities and operations thereunder and/or directly or indirectly in connection herewith as an independent contractor. As an independent contractor, BakerRisk is and shall at all times have and maintain complete control over and responsibility for all of its employees, agents, services, activities and operations. Neither BakerRisk nor anyone employed or utilized by BakerRisk shall represent, act, purport to act, or be deemed to be the agent, representative, employee or servant of any Customer.

7 General

- 7.1 **Force Majeure.** A delay in or failure of either BakerRisk or Customer to perform its obligations hereunder as described shall not constitute default under this Software License Agreement nor give rise to any claim for damage if and to the extent such delay or failure is caused by occurrences beyond the control of the party affected, including but not limited to: equipment, electricity, or telephone failure; acts of God; expropriation or confiscation of facilities or compliance with any order or request of any governmental authority or



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personnel purporting to act therefore which affects to a degree not presently existing the supply, availability or use of material or labor; acts of war or terrorism; pandemics; public disorders, rebellion, or sabotage; floods; riots; strikes, whether direct or indirect; or any cases within the control of the Party affected and which, by the exercise of reasonable diligence, said Party is unable to prevent, mitigate, or remove.

- 7.2 **Choice of Law.** The Parties hereto agree that it is their intention and they hereby covenant that this Software License Agreement and performance hereunder and all suits and special proceedings hereunder be construed in accordance with and under and pursuant to the laws of the State of Texas and that in any action, special proceeding, or other proceeding that may be brought arising out of, in connection with, or by reason of this Software License Agreement, the laws of the State of Texas shall be applicable and shall govern to the exclusion of the laws of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted. Further, it is stipulated and agreed by all parties that jurisdiction over any action, special proceeding or other proceeding arising out of, in connection with, or by reason of this Software License Agreement shall reside with a court of competent jurisdiction in Texas.
- 7.3 **Assignment.** Customer may not assign this Software License Agreement without the prior consent in writing from BakerRisk. Such consent shall not be unreasonably withheld. The provisions hereof shall extend to and be binding on the respective successors and assigns of both BakerRisk and Customer.
- 7.4 **Modifications.** No changes or modifications to any provision of this Software License Agreement shall be effective unless made in writing signed by all Parties.
- 7.5 **Entire Agreement.** This Software License Agreement constitutes the entire understanding between BakerRisk and Customer, and supersedes and cancels all prior negotiations, representations, understandings and agreements, whether oral or written, with regard to it.
- 7.6 **Waiver.** Failure to enforce any term of this Software License Agreement at any time for any period shall not be construed as a waiver of such rights. No waiver shall be valid against any Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
- 7.7 **Severability.** In the event any portions of this Software License Agreement shall subsequently be deemed to be legally invalid or unenforceable by an authorized judicial body, this Software License Agreement shall be ineffective only to the extent of such invalidity or unenforceability and such invalidity or unenforceability shall not affect the remaining portions of this Software License Agreement. BakerRisk and Customer agree to amend these articles so as to remedy any such invalidity or unenforceability or to delete such portions as may be deemed appropriate.
- 7.8 **Headings.** Section headings contained in this Software License Agreement are inserted for convenience and reference only and shall not in any way effect the interpretation of any of



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