

1. Definitions

Agreement means the written contract between RINA and Client which incorporates in order of precedence: these terms and conditions and RINA’s proposal (if any), excluding any terms introduced by Client. The Agreement shall be affirmed by Client upon its first use of the Software by clicking the “I accept” button upon display of the terms and conditions. Future issues of terms and conditions may be provided with future updates of the Software and Client shall, again, be deemed to agree these by clicking the “I accept” button upon display of the updated terms and conditions.

Agreement Price means the total fees due and paid including Licence Fee(s) and Maintenance Services Fee(s).

Client means the party to whom RINA provides this licence.

Documentation means the operating manuals, user instructions, technical literature and similar materials relating to the use and application of the Software, supplied to Client by RINA.

RINA means the licensor of the Software: RINA Tech UK Limited Company No 07419599 with its registered office at RINA Building, Cleeve Road, Leatherhead, Surrey, KT22 7SA, England.

IPR means all patents, trademarks, trade/business names, copyright (including copyright in software), rights in designs, database rights, software rights, trade secrets, rights in know-how and confidential information and all intellectual property rights (whether or not registered), together with rights to apply for any of these globally.

Licence means the licence granted to Client by RINA.

Licence Fee means the fee payable for the Licence and Software Materials.

Maintenance Services shall mean technical support such as answering technical queries; providing advice in the use of the Software; resolving queries including data and data entry; Software support providing short-term solutions, wherever possible to Clients whilst permanent modifications are considered; any applicable updates to the Software including improvements to existing programs, addition of new facilities in the Software, problem fixing etc.

Security Solution means the physical security key and web access user name and password, supplied by RINA with the Software, limiting the number of concurrent users to the number of Licences purchased by Client.

Software means ERACS software or Arc Flash Hazard Calculator software or both.

Software Materials means the Software and the Documentation.

Specification is the specification set out in the Documentation.

2. The Licence

- 2.1 RINA grants to Client a non-exclusive, non-transferable licence to use the Software Materials subject to payment of the Licence Fee and Client’s acceptance of these terms and conditions.
- 2.2 Subject always to the other terms of this Agreement, Client may install the Software on an unlimited number of Client-owned individual computers and where a network version of the Software has been purchased, on a single network owned by Client. This is subject to the restriction that the number of concurrent users is restricted to such number that Client has purchased licences for. Such restriction on the number of concurrent users is controlled by a Security Solution delivered with the Software Materials, in either a single-user standalone version or a multi-user network version or web access version as appropriate.
- 2.3 The restriction on the number of concurrent users does not apply where Client is using the Software in its demonstration mode only i.e. without a Security Solution.
- 2.4 Client shall not permit any third party to use or have access to the Software Materials. Where the Software has been purchased by an educational establishment or has been supplied for evaluation/assessment purposes, Client shall not use the Software Materials to provide a service to a third party organisation or for commercial gain.
- 2.5 For the duration of the Licence, Client shall:
 - (i) effect and maintain adequate security measures to safeguard the Software Materials from access, use or copying by any unauthorised person; and
 - (ii) retain the Software Materials, all copies thereof and the Security Solution under Client’s control;
 - (iii) not alter or modify the whole or any part of the Software Materials or the Security Solution in any way whatsoever;
 - (iv) not permit the whole or any part of the Software to be combined with or become incorporated in any other programs;
 - (v) not access the source code nor reverse engineer the whole or any part of the Software.
- 2.6 Client may make a single copy of the Software Materials for operational security/back-up use. Such copy and the media on which it is stored shall be the property of RINA and Client shall ensure that it bears RINA’s proprietary notice. This Agreement shall apply to all copies as it applies to the Software Materials.

3. Price

- 3.1 The Agreement Price is exclusive of VAT, sales tax and all other duties and taxes, which shall be payable in addition by Client.

- 3.2 Upon notice to Client, RINA may vary the Agreement Price if following the date of its Proposal there is any change in applicable rates of exchange or tax applicable.

- 3.3 If withholding taxes are imposed by any authority in respect of payments due, Client shall deduct and pay such withholding taxes on a timely basis (unless RINA has previously provided Client with evidence satisfactory to the applicable authority that tax is not applicable to such payments). If withholding taxes are deducted, Client shall pay a grossed up amount to RINA such that the net amount, after deduction is equal to the amount that RINA would have received from Client had withholding not been applicable.

4. Payment

- 4.1 RINA shall invoice Client for the Licence Fee upon supply of the Licence. Unless otherwise stated, the initial 12 months’ Maintenance Services is included. In the event Client requires ongoing Maintenance Services, the fee for these shall be invoiced annually in advance. The Maintenance Services fee is not fixed.
- 4.2 Payment of invoices shall be made by Client in full, without deduction or set off, within 30 days of the date of invoice, in the currency invoiced.
- 4.3 In the event of late payment(s), RINA shall be entitled to:
 - (i) charge interest at the rate of 8% per annum calculated on a daily basis until payment is received in clear funds, and recover any administrative charges;
 - (ii) suspend Maintenance Services with no liability to Client as a result of such suspension. Client shall be liable to pay RINA’s costs of such suspension.

5. Delivery and Maintenance

- 5.1 RINA shall endeavour to achieve any agreed dates for performance or delivery, but all such dates are estimates only and RINA shall have no liability to Client in the event of failure to achieve such dates.
- 5.2 RINA shall despatch (a) a CD containing the Software Materials and (b) a Security Solution. Unless Client provides RINA with notice within 7 days of delivery of the Software Materials and Security Solution, Client shall be deemed to have accepted them.
- 5.3 Maintenance Services shall be carried out within RINA’s usual business hours (Monday to Friday, 9am to 5.15pm) and on RINA’s premises. Maintenance Services shall be via telephone, fax or email only. Any variation to this would be subject to RINA’s agreement and may incur additional fees.
- 5.4 Maintenance Services shall be subject to the terms of this Agreement and these terms shall prevail over any terms introduced by Licensee.

6. Title

- 6.1 The Software Materials, the Security Solution and all IPR in them shall remain the exclusive property of RINA.
- 6.2 Client shall notify RINA immediately if it becomes aware of any unauthorised use of the whole or any part of the Software Materials or the Security Solution by any person.
- 6.3 Client shall permit RINA to check the use of the Software Materials and Security Solution at all reasonable times and for that purpose RINA shall be entitled to enter any of Client’s premises.

7. Warranty

- 7.1 RINA warrants that for a period beginning on the date of Client’s receipt of the Software and ending 90 days thereafter: (i) the media on which the Software is furnished shall be free of material defects under normal use; and (ii) the Software shall substantially conform to the Specification. However, Client is responsible for satisfying itself that the Software meets its requirements.
- 7.2 Client’s sole and exclusive remedy and the entire liability of RINA under this clause 7 shall be, at RINA’s option, repair, replacement or refund of the Licence Fee.
- 7.3 RINA does not warrant that the Software is error free or that Client shall be able to operate the Software without problems or interruptions.
- 7.4 The warranties do not apply if the Software (a) is licensed for beta, evaluation, testing or demonstration purposes for which RINA does not receive a license fee; (b) has been altered, except by RINA; (c) has not been installed, operated, repaired, or maintained in accordance with the Documentation; or (d) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident.

8. Liability

- 8.1 **Save as set out in clause 7.1, to the extent permissible at law, all warranties, conditions, guarantees or representations as to satisfactory quality, performance, merchantability, fitness for a particular purpose or otherwise, whether express or implied by statute or otherwise, oral or in writing are hereby excluded.**
- 8.2 **RINA shall in no circumstances be liable for: (i) any indirect, special or consequential loss; (ii) loss of profits; (iii) loss of business; (iv) loss of product; (v) loss of use; (vi) loss of contract; (vii) loss of goodwill; (viii) punitive and/or exemplary damages; even if such loss was or should have been in Client’s contemplation upon entering the Agreement.**
- 8.3 **Notwithstanding anything else contained herein, RINA does not exclude any liability for (a) death or personal injury resulting from its negligence; (b) fraudulent misrepresentation.**

- 8.4 RINA's liability, whether in breach of contract or in tort (including, without limitation, negligence) shall not exceed in the aggregate 120% of the Agreement Price.**
- 8.5 Client is advised to insure against any losses excluded or limited by clause 8.**
- 8.6 RINA shall not be liable for any claim or court proceedings which are brought against it more than 12 months after the event which is the subject of those proceedings.**
- 9. IPR Indemnity**
- 9.1 If Client is threatened with any action alleging that the normal use or possession of the Software Materials infringes the IPR of any third party then (provided Client promptly informs and fully cooperates with RINA and, where RINA so requests, allows RINA to defend and have the sole control of any action and any settlement negotiations on Client's behalf, does not prejudice RINA's defence of such claim and gives all reasonable assistance) RINA shall indemnify Client against any award of damages and costs against Client arising from such action up to a maximum of £1million. This shall not apply in the event the claim arises as a result of the use of the Software Materials in combination with any software not supplied or approved in writing by RINA. Further, RINA shall have the right at its option and own expense to:
- (i) modify all or part of the Software Materials so that they do not infringe;
 - (ii) replace all or part of the Software Materials to avoid infringement; or
 - (iii) procure the right for Client to continue its use of the Software Materials.
- The foregoing states the entire liability of RINA to Client in respect of the infringement of the IPR of any third party.
- 9.2 RINA shall have no liability in respect of claims for infringement or alleged infringement of any third party IPR in the event Client breaches any of its obligations under this Agreement.
- 10. Term and Termination**
- 10.1 This Agreement shall be entered into and the Licence shall commence upon Client's first use of the Software and shall, subject to Clause 10.2, continue until terminated in accordance with this Agreement.
- 10.2 Where the Licence is granted on a time limited basis, the Licence shall automatically terminate when the time limit is reached.
- 10.3 Client may terminate the Licence and this Agreement at any time by giving notice to RINA.
- 10.4 RINA may terminate the Licence and this Agreement immediately upon giving notice if Client:
- (i) commits a breach of the Agreement, that is capable of remedy, and fails to remedy the breach within 30 days of receipt of notice requesting remedy;
 - (ii) commits a material breach of the Agreement;
 - (iii) is repeatedly in breach of the Agreement;
 - (iv) commits any act or omission which contravenes any relevant laws;
 - (v) permanently discontinues the use of the Software Materials; or
 - (vi) is the subject of a bankruptcy order, becomes insolvent, makes any arrangement or composition with or assignment for the benefit of creditors, goes into either voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, a receiver or administrator is appointed over their assets or any similar event.
- 10.5 In any event of termination, Client shall immediately return the Software Materials and all copies of the whole or any part thereof or, if requested by RINA, destroy the same (in the case of the Software by erasing them from the magnetic media on which they are stored) and certify in writing to RINA that they have been destroyed. In any event, upon termination, Client shall immediately return the Security Solution to RINA.
- 10.6 Upon any termination, no part or full refund of the Licence Fee nor any fee associated with an unexpired period of Maintenance Services shall be due; all sums due to RINA shall be payable immediately.
- 10.7 Any termination of the Licence or this Agreement shall not affect any accrued rights or liabilities of either party nor shall it affect any provision hereof which is intended to continue in force following termination.
- 11. Export and Import Consents**
- In the event RINA is unable to obtain an export licence to enable the Software Materials to be exported outside the UK, RINA shall not be liable for any failure to perform the Agreement. Client shall obtain all consents necessary for the import of the Software Materials to the country of destination.
- 12. Force Majeure**
- RINA shall not be liable to Client for failure to perform any of its obligations under the Licence or Agreement to the extent that such failure is a result of circumstances beyond its reasonable control.
- 13. Confidentiality**
- Each party shall keep strictly confidential all information disclosed or otherwise discovered regarding the other and its products, software and know-how except any part of such disclosed information or data which (i) is in or comes into the public domain without breach of this Agreement; (ii) the party under obligation can show (a) was in its possession or known to it prior to receipt from the other party; (b) was independently developed by or for it without use of such information; (c) was obtained by it or made available from a source other than the disclosing party without breach of any confidentiality obligations; or (d) is disclosed by it with the prior written approval of the disclosing party.
- 14. Assignment and Subcontracting**
- Client shall not assign, sub-licence or otherwise transfer the Licence or any right or obligation of the Agreement whether in whole or in part, without the consent in writing of RINA. RINA shall have the right to subcontract all or part of the Maintenance Services.
- 15. Non Solicitation**
- While this Agreement is in force and for a period of 12 months after completion or termination, Client shall not, directly or indirectly, seek to employ or otherwise engage the services of any RINA employees, who have been involved in the Agreement or performance of the Maintenance Services.
- 16. Entire Agreement**
- Except for any applicable valid agreements for services between the parties, this Agreement contains the whole agreement between the parties and supersedes any previous agreements, communications and representations. No oral representations made by RINA or its employees are binding. Neither party has relied upon any representation or collateral warranty which is not set out in the Agreement. All other terms and conditions are expressly excluded except those prohibited by statute. This Agreement shall prevail over any terms and conditions sought to be imposed by Client.
- This Agreement may only be amended, modified or waived by written agreement of the parties.
- 17. Waiver**
- No waiver by of any breach of any provision of the Agreement shall be held to be a waiver of any other or subsequent breach and the failure of a party to enforce any provision shall not be a waiver of any right subsequently to enforce any other provision.
- 18. Severability**
- If any of the words or provisions of these conditions is deemed invalid, illegal or unenforceable for any reason, then the Agreement shall be read as if the relevant words or provisions had to that extent been deleted and the validity of the remaining provisions shall not be affected.
- 19. Notices**
- Any notice required to be given by either party under this Agreement shall be deemed to have been given if in writing and sent by post to the other party's registered address or any other formally notified address of the other party. Notices shall be deemed served 48 hours after posting.
- 20. Rights of Third Parties**
- No person who is not a party to the Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Agreement.
- 21. Governing Law and Jurisdiction**
- This Agreement shall be governed, construed and shall take effect in accordance with the laws of England, and all disputes arising in relation thereto shall be subject to the exclusive jurisdiction of the English Courts to which Client and RINA irrevocably submit.