Haselton Baker Risk Group, LLC

Terms of Use

These Terms of Use ("**Terms**") shall govern the relationship between Haselton Baker Risk Group, LLC, its agents, employees, and/or representatives, located in Chico, California ("Company") and **You, your company,** its agents, employees, and/or other representatives ("Customer"). (Company and Customer shall hereinafter collectively be referred to as the "Parties").

Whereas, Company is dedicated to using the latest advancements in research and technology to develop its own innovative software and applications relating to building-specific risk assessments;

Whereas, Company provides consultation services and can assist Customer with risk assessments of specific buildings, predictions of recovery time of a building, the vulnerability of a building, *inter alia,* using its knowledge, software, applications and expertise ("Services");

Whereas, Customer desires for Company to provide such Services to Customer via customized reporting, protocols and processes and understands and agrees that such data and information is deemed Confidential Information;

Whereas, these Terms are further based on the Master Services Agreement ("Agreement") executed between the Parties (which is attached hereto as Exhibit A and incorporated herein) and on any access provided to Customer to Company's software, applications, and data collected from such software and applications (collectively "Software").

Therefore, in light of the above, the Parties agree to following:

1. SERVICES AND SUPPORT

1.1 Company shall provide to Customer access to Company's Software and Services pursuant to the Agreement to apply and use for the internal business purposes of Customer only.

1.2 Subject to the terms hereof, the Parties shall work together to ensure a proper set up of Customer's requests and needs, and the Parties shall provide reasonable support services in accordance with the standard practice to onboard Customer.

1.3 From time to time, Company may provide or produce new, different, or updated versions of the Software which may be developed or changed during the Agreement term. Customer acknowledges that Company's changes or updates to any versions of Company's Software or Software is solely in Company's discretion and Customer has no right to demand changes to the Agreement based on any new update or upgraded Software or other new software applications, unless explicitly agreed to by the Parties in writing.

2. CONFIDENTIALITY.

2.1 *Confidential Information*" shall mean any information, data, disclosed by either party, pursuant to this Terms and the Agreement, that is in written, printed, graphic, electronic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature, or under the circumstances should in good faith be considered to be confidential, including but not limited to trade secrets of a party. Without limiting the generality of the foregoing, Confidential Information shall include proprietary information of Company, including any and all data, Building Evaluation (as defined herein), reports, documents, lists, spreadsheets, PDFs

provided by the Parties relating to a specific building, property or otherwise, arising out of this Terms, the Agreement, any related Task Order Form or the Services, or access to Software provided to Customer.

2.2   "*Customer Data*" shall mean any non-public data, information or other material provided, uploaded, or submitted by Customer to Company or in the course of using Company's Services or Software. Customer, not Company, shall have sole responsibility for the accuracy,quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use Customer Data.

2.3   Customer understands that Company shall maintain Customer Data for purposes of providing Services to Customer. After Customer's Term has expired, Customer Data may be archived, based on Company's sole discretion, for a minimum of six months and may be retrieved only upon Customer's license reactivation and/or renewal. Customer agreesand acknowledges that Customer Data may be deleted and Customer's access to the Software may be blocked if Customer's account is delinquent for more than 30 days or has been terminated for more than 1 year.

2.4   A party who receives Confidential Information or Customer Data (the "Receiving Party") from the party disclosing such Confidential Information or Customer Data (the "Disclosing Party") understands and agrees to take reasonable precautions to protect the Confidential Information and Customer Data, and to not use or divulge, directly or indirectly, the Confidential Information or Customer Data to any third person.

2.5   The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by its prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Receiving Party may disclose Confidential Information as required by law or court order; provided that, Receiving Party provides Disclosing Party with prompt written notice thereof and uses its best efforts to limit disclosure.

2.6   Any abuse of the Confidential Information disclosed or any violation of the allowed use of these terms by Company shall be considered a material breach of the Agreement and the Terms, and shall subject the breaching party to be responsible for any damages, costs, and/or fees incurred, including any indemnification obligations arising thereto.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1   Customer hereby agrees that it will not attempt to, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, knowledge, designs, reporting techniques, or algorithms relevant to the Software or any software, documentation or data related to Company's Software. Customer further agrees not to modify, translate, or create derivative works based on Services, Confidential Information, or Software for the purpose of applying it to anything beyond the terms as set forth between the Parties.

3.2   "*Building Evaluation*" is defined as a single building at a given location site and includes

multiple total analysis models with the model numbers being set forth and limited to what is expressly requested by Customer in writing and provided by Company to Customer.

Customer agrees not to use any Building Evaluation produced by Company, or use any Confidential Information, and apply it to estimate what the analysis results may be for other buildings that have not been evaluated by Company. However, Company hereby grants Customer the right to retain use of any specific Building Evaluation and Building Evaluation Reports in perpetuity so long as such use is by Customer only and in compliance with the Terms herein.

3.3   Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable use and access to the Confidential Information and/or Services during the applicable Term pursuant to the Terms herein only. Customer may not transfer or sublicense this right and will not permit the disclosure of such information to any third parties, other than: 1) Customer's authorized employees and personnel acting on its behalf, and 2) Customer's clients and Customer's clients' authorized employees and personnel. Customer shall be responsible for ensuring Customer's clients understand, acknowledge and comply with the Terms herein. Use beyond these Terms by Customer or Customer's clients shall be be deemed a material breach by Company, resulting in Customer being liable for any and all damages incurred by Company, including, but not limited to loss of income, costs, fees, expert fees, and legal fees if deemed necessary.

3.4   Customer understands that any Confidential Information and/or Services provided act as an informative guide only. The information, reports, or evaluations provided are to assist Customer in the decision-making process and to solely provide building-specific information to Customer for information purposes only. Any software outputs or reports do not constitute an engineering evaluation and is not intended to replace the judgment of a qualified engineer or any other design professional. Customer assumes full responsibility, liability and risks resulting from the use of the information provided.

3.5   Customer is responsible for all of Customer Data provided to Company for evaluation and reporting. Customer represents and warrants that Customer (i) will ensure any use of the Software, Services, and Confidential Information is in compliance with all applicable local, state, national and foreign laws, treaties and regulations, including those related to data privacy, such as the California Consumer Privacy Act of 2018 ("CCPA") or General Data Protection Regulation ("GDPR"), international communications,export laws and the transmission of technical or personal data laws), and (ii) Customer will not use the Software, Services, or Confidential Information in a manner that violates any third party intellectual property, contractual or other proprietary rights.

4. PROPRIETARY RIGHTS; INTELLECTUAL PROPERTY.

4.1   If Customer incorporates a Company product, process or machine into a Customer product or a product in which Customer has an interest, Company is hereby granted and shall have a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such as part of or in connection with such product, process or machine.

4.2   If Company seeks to apply for, obtain, or transfer rights in an invention, copyrights,

patents, trademarks, or other intellectual property rights and requires Customer's assistance, waiver, or permission in order to receive such rights, Customer agrees to assign and convey to Company the sole and exclusive rights, title and interest needed to assist Company, or its designee in every proper way, to secure Company's rights relating thereto, in any and all countries.

4.3   The Parties agree and understand that Company owns all right, title, and interest in and to any and all copyrights, trademark rights, patent rights, database rights, intellectual property and all other rights in and to Software and Confidential Information, including any improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder. This shall include any reports, drafts, forms, terms, outputs, and Confidential Information that are provided to Customer. Customer agrees that any results based on Customer Data and/or any Confidential Information is owned and is the property of Company and Company may share any data or information results provided per Company's discretion.

4.4   Customer shall own all right, title and interest in and to any Customer Data or intellectual property provided by Customer to Company that is expressly owned by Customer. Company reserves all rights, title and interests in and to: (a) the Software and any software provided by Company, including all improvements, enhancements or modifications thereto; (b) any additional software designs, applications, inventions or other technology developed in connection with the Software; (c) all reports, Building Evaluations,and Confidential Information produced or provided by Company, and (d) all intellectual property rights related to and arising out of any of the foregoing.

5. PAYMENT OF FEES

5.1   Customer agrees to timely pay Company for any and all fees, costs, and/or cost for services incurred and set forth in an applicable Invoice . If Services or otherwise requires the payment of additional fees or costs, Customer shall be billed for such usage and Customer agrees to pay the additional fees in a timely manner. Company reserves the right to change the Fees or applicable Rates and to institute new Fees or Rates at the end of a Term and shall give notice to Customer prior to applying the new Rates or changes to Rates/Fees. If Customer believes that Company has billed Customer incorrectly, Customer must give notice to Company no later than ten business days after receiving the Invoice in order for Company to make an adjustment or credit and all inquiries should be directed to Company's customer support. Failure to give notice relating to an invoice within the ten business days shall be deemed a waiver of Customer's rights to object to such invoice.

5.2   Full payment for invoices issued to Customer must be received by Company no later than sixty (60) calendar days after the Invoice is sent. Unpaid amounts are subject to reasonable or agreed upon interest accrued on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including but not limited to, attorney's fees and costs.

6. TERM

6.1   The term of the Agreement shall be defined within the Agreement and shall automatically renew for additional successive terms as set forth therein ("Renewal Term") unless either party notifies the other party of its intention not to renew no later than thirty (30) days prior to the expiration of the

initial Invoice Term or then-current Renewal Term, as applicable.

6.2   In addition to any other remedies it may have, either party may also terminate this Agreement, with or without cause, so long as thirty (30) days written notice is received (or without notice in the case of untimely nonpayment). Customer agrees that if an early termination is noticed, Customer shall still be obligated to pay in full for any minimum obligations as set forth in the Agreement and Company agrees to complete any pending projects made prior to notice of termination.

6.3   All sections of this Agreement which by their nature should survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, ownership, warranty disclaimers, and limitations of liability.

7. Solicitation of Employees, Consultants and Other Parties:

Customer agrees that during the term of the Agreement, and for a period of twenty-four (24) months immediately following the termination of the Agreement with the Company for any reason, whether with or without cause, Customer shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees or consultants to terminate their relationship with the Company, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the Company, either for myself or for any other person or entity. Further, during the term or at any time following termination of the Agreement with the Company for any reason, with or without cause, Customer shall not use any Confidential Information of the Company to attempt to negatively influence any of the Company's clients or customers from purchasing Company products or services or to solicit or influence or attempt to influence any client, customer or other person either directly or indirectly, to direct his or its purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Company.

8. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain its Software in a manner which minimizes errors and interruptions in Company's provision of Services to Customer in a professional and workmanlike manner. Application may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Company does not warrant that Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained or provided to Customer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SOFTWARE, SERVICES, AND ANY OTHER APPLICATION OR SERVICES ARE PROVIDED TO CUSTOMER "AS IS" AND COMPANY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND CLAIMS OF NON-INFRINGEMENT.

9. INDEMNITY

Each Party agrees to indemnify, defend, and hold harmless the other Party against any actual or threatened: (a) third-party claim; (b) third-party legal action; or (c) administrative agency action or proceeding ("Claim") to the extent arising from or related to any misuse or alleged misuse of the Confidential Information, Services, Software, or Software, or the combination therefore with the goods or services provided by third-parties or otherwise. The Parties will indemnify, defend, and hold harmless the Indemnified Parties against, any Claim to the extent arising from or related to any abuse of or unauthorized use of the Services, Software, or Software in violation of this Agreement or applicable law. The Parties' indemnification obligations above are conditioned on: (a) the Indemnified Parties giving the Indemnifying Party prompt written notice of the Claim; (b) the Indemnifying Party being given full control over the defense and settlement of the Claim (as long as the settlement does not impose any liabilities on the Indemnified Parties); and (c) the Indemnified Parties providing reasonable assistance inconnection with the defense and settlement of the Claim.

10.   LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, THE PARTIES AND THEIR AGENTS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND THE PARTIES' REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT IN 3 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. MISCELLANEOUS

This is a complete statement of the mutual understanding of the Parties, Any and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result ofthis Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. The Parties agree that any dispute arising under this Agreement shall be finally settled in accordance with the Arbitration Rules of the Judicial Arbitration and Mediation Service, Inc. ("JAMS") by an arbitrator appointed in accordance with such Rules. The arbitration shall take place in Chico, California, USA. With respect to all disputes arising in relation to this Agreement, but not subject to the preceding arbitration provision, the Parties consent to exclusive jurisdiction and venue in the state and Federal courts located in San Francisco, California. The prevailing party in any action or proceeding to enforce this Agreement will be entitled to recover reasonable costs and attorneys' fees. This Agreement shall be governed by the laws of

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the State of California without regard to its conflict of law provisions.

Company shall not be liable for lack of performance due to force majeure events, which shall include events that make it significantly more difficult or impossible for Company to perform the Services or provide the use of the Software, including but not limited to, strikes, lockouts, lockdowns, official orders, failure of, or problems associated with, communication networks and gateways of other operators, *inter alia.* Parties can suspend their obligations for the time that the force majeure event will endure. If this period last longer than three months, each of the parties reserves the right to annul the contract, without the obligation to compensate the other party for damages incurred.