

**NATIONAL ACCESS AND SCAFFOLDING CONFEDERATION LIMITED
and COMPUTER AND DESIGN SERVICES LIMITED
Warranty Disclaimer and Software and Documentation Licence Agreement:
NASC ePortal**

IMPORTANT NOTICE:

PLEASE READ CAREFULLY BEFORE USING THE SOFTWARE:

This Agreement ("**EULA**", including all its parts) is a legal agreement between (1) you ("**Licensee**" or "**you**", whose name, postal and email addresses you have provided or confirmed to us) and (2) **NATIONAL ACCESS AND SCAFFOLDING CONFEDERATION LIMITED** a private company limited by guarantee incorporated in England and Wales under number 04866191 and the address of whose registered office is 4th Floor, 12 Bridewell Place, London, EC4V 6AP ("**NASC**") and **COMPUTER AND DESIGN SERVICES LIMITED** a private limited company incorporated in England and Wales under number 01161218 and the address of whose registered office is Arrowsmith Court, Station Approach, Broadstone Dorset BH18 8AX ("**CADS**") (together "**Licensor**", "**us**" or "**we**") in respect of:

- The collection of software applications ("**Software**") and associated guidance documentation ("**Documentation**") that are listed and specified from time to time on the portal that has been designed and developed by and for us whose URL is <https://eportal.nasc.org.uk> and to be accessed via a web browser ("the **NASC ePortal**").

The EULA merely licenses you to use the Software and Documentation; we do not sell the Software or Documentation to you. It is available to you only on a temporary basis through a subscription with recurring payments monthly or annually as set out in the written subscription agreement entered into between you and NASC (the "**Subscription Agreement**"). We remain the sole and exclusive owner of the Software and Documentation at all times. This Licence should be read in conjunction with the Subscription Agreement.

IMPORTANT NOTICE TO ALL USERS:

- BY ACCESSING THE NASC ePORTAL ON ANY DEVICE AND USING ALL OR ANY PART(S) OF THE SOFTWARE OR THE DOCUMENTATION YOU AUTOMATICALLY AGREE TO THE TERMS OF THIS EULA AND TO PROCURE THAT ANYONE USING YOUR SUBSCRIPTION IS AUTHORISED TO DO SO AND COMPLIES WITH ITS TERMS IN FULL. THE DATE ON WHICH YOU DO SO IS '**THE EFFECTIVE DATE**'.
- THE TERMS OF THIS EULA INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 8 OF PART II BELOW.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, WE DO NOT LICENSE THE USE OF THE SOFTWARE AND DOCUMENTATION TO YOU AND YOU MUST NOT USE OR ATTEMPT TO USE THE SOFTWARE OR THE DOCUMENTATION.

YOU SHOULD PRINT AND RETAIN A COPY OF THIS EULA FOR YOUR FUTURE REFERENCE AND IT IS YOUR RESPONSIBILITY TO MAKE ITS TERMS KNOWN TO ANYONE USING YOUR SUBSCRIPTION.

PART I. DISCLAIMER

WARNING: YOU ARE STRONGLY ADVISED TO READ THIS DISCLAIMER

Subject only to the Limited Warranty in Part II Clause 6 of this EULA, the Software and Documentation are provided on an "as is" basis and are intended to be for information only, and any reliance upon the Software and/or Documentation is entirely at your own risk. Neither the Software nor the Documentation constitutes legal, technical or any other type of advice or opinion on or in respect of any legal or other obligation or requirement, including but not limited to matters of health and safety.

Diagrams in and/or generated by the Software and/or Documentation are for illustrative purposes only. They are not technical drawings and may omit components or features that are required in practice.

Elements of the Documentation may go further than the minimum needed to comply with Health and Safety legislation.

Whilst efforts have been made to ensure that the Software and Documentation are accurate, the Licensor does not accept any responsibility for any associated errors, omissions or misleading statements. Except as specified in the Limitation of Liability section at Part II Clause 8 of this EULA, and to the maximum extent lawfully permitted, the Licensor hereby jointly and severally excludes all liability in connection with the Software and/or Documentation, and with any reliance that you may choose at your sole discretion to place on any of them. All implied warranties and conditions in connection therewith are excluded to the maximum extent permitted by law.

You should always seek advice specific to your circumstances from an appropriate professional or a competent person with appropriate knowledge, training and experience. Neither the Software nor the Documentation is a substitute for such advice or for on-site assessment and, to the extent necessary, bespoke design by calculation.

PART II. SOFTWARE AND DOCUMENTATION LICENCE AGREEMENT

1. THE LICENCE

a) In consideration of you agreeing to abide by the terms of this EULA, the Licensor hereby grants to you from the Effective Date and for the duration of this EULA a non-exclusive, non-transferable revocable licence (without the right to grant sub-licences) to **“Use”** (as defined below) the Software and Documentation on your compatible computer system (**“System”**), subject to the terms and conditions hereof (**“Licence”**).

b) The Licence shall (unless or until this EULA is terminated in accordance with Clause 11) continue during the Subscription Term, as defined in the Subscription Agreement.

c) You may:

(i) access the NASC ePortal using a compatible device with a web browser supported by the Portal and your unique serial number and identifier from your Subscription Agreement;

(ii) use a web browser that is part of a computer installation which is multi-user or networked provided that it cannot be accessed by persons other than the Licensee’s employees and only one connection to the NASC ePortal can be used at any one time (no concurrent use); and

(iii) use the Software on the System strictly in accordance with the terms of this Licence.

d) Nothing in this EULA shall confer on any third party any right to enforce any term hereof under the Contracts (Rights of Third Parties) Act 1999.

e) The Licensor shall be entitled to amend this EULA having posted no less than 28 days' prior notice thereof on the NASC ePortal and unless the Licensee objects in writing within 15 days thereof then the amendments will be deemed to be accepted by the Licensee.

f) The Licensee will ensure that only users authorised by it (**‘Authorised Users’**) are allowed to access and use the Software and Documentation. The Licensee is responsible for the acts and omissions of Authorised Users and all obligations of this Licence shall apply in full to them.

2. USE OF SOFTWARE

The Licensee shall Use the Software on the System at each and every location in accordance with the following:

(a) for the purposes of the Licence **“Use”** of the Software shall mean:

- (i) to access the NASC ePortal and/or use the Software or Documentation on the ePortal in accordance with the terms of this EULA;
 - (ii) to use the Software on the ePortal to process data or instructions uploaded by an Authorised User;
 - (iii) to download from the ePortal a pdf file produced by the Software.
- (b) The Licence shall not include any rights to use or access the source code of the Software or to download any of the Documentation.
- (c) The Licensee is solely responsible for all the information that is uploaded to the NASC ePortal to make use of the Licence and in particular for its accuracy for the purpose intended, quality, integrity, legality reliability and appropriateness.
- (d) The Licensee shall not during the course of its exercise of the Licence: introduce or permit the introduction of, any Virus or Vulnerability (as defined in the Subscription Agreement) into the NASC ePortal, or access, store, distribute or transmit any Viruses, or any material that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or is otherwise illegal or causes damage or injury to any person or property; and the Licensor reserves the right, without liability or prejudice to its other rights hereunder, to disable the Licensee's access to any material that breaches any provision of this clause.

3. FEES

(a) In consideration of the grant of the Licence, the Licensee agrees to pay to NASC the Subscription Fees as set out in the Subscription Agreement and other charges payable by virtue of the provisions of this Licence and acknowledges that from time to time the Licensor may make available on the NASC ePortal upgraded versions of the Software and Documentation and new or additional software applications and documents. In its absolute discretion NASC will determine if such an upgrade or new or additional applications and documents requires an increase in the Subscription Fee. The Licensee shall be entitled to use the upgraded Software and any additional Documentation only after it has paid any such increase that has been notified to it.

(b) The Licensee agrees that NASC may pass details of each Subscription (and any subsequent increase thereto) to CADS to be kept in its records system.

4. SOFTWARE ENHANCEMENT AND OTHER SERVICES

NASC may charge for other Software services requested by the Licensee which are not specifically covered by this Licence.

5. MAINTENANCE AND SUPPORT AGREEMENT

(a) Any obligations the Licensor may have to provide any maintenance and or support services are set out in the Subscription Agreement.

(b) The Licensor reserves the right to collect and process non-personal or anonymous data from the Licensee in order to improve the functionality and capability of the Software. The Licensee agrees that the Licensor owns all rights in and is free to use any such non-personal data in any way it deems fit for development, diagnostic, corrective purposes as well as marketing or any other purpose.

(c) The Licensee acknowledges that the Software may be unavailable via a web browser or include latency from time to time due to causes beyond the reasonable control of the Licensor and that access to the Software is dependent on the Licensee's internet connection to the Licensor's server as well as the Licensee's use of hardware and software.

(d) The Software may include or depend upon third party components and software algorithms which may be subject to changes by such third parties and the Licensor is entitled to modify the Software to

address such changes provided that it does not materially affect the substantial functions of the Software.

(e) The Software includes the use of Google Maps features and the use of these features is subject at all times to the then current versions of :

(1) Google Maps/Google Earth Additional Terms of Service which are available at https://maps.google.com/help/terms_maps.html;

and

(2) Google Privacy Policy available at <https://www.google.com/policies/privacy/>.

(f) The Software may be changed from time to time as deemed necessary by the Licensor due to applicable law or regulation or to meet changes in general technical specifications or the protection of the system security.

6. LIMITED WARRANTY

(a) The Licensor warrants that the Software available on the NASC ePortal is reasonably (at the time it is uploaded) free from defects in design, materials and workmanship under normal use and service for a period of twelve months from the date of first installation of the Software ("**Warranty Period**").

(b) If a material defect in the Software occurs during the Warranty Period and we are notified of the same in writing with a documented example of such defect or error we will seek to correct that defect within a reasonable period.

(c) This warranty does not apply if the defect or fault in the Software (i) results from you having sought to amend the Software or (ii) results from you having used the Software in contravention of any term of this Licence or (iii) arises due to changes in the way that you access the NASC ePortal.

(d) Should you require a replacement Unique Serial Number or Identifier for whatever reason then the Licensor reserves the right to make such charges for the supply of a replacement as it deems in its sole discretion applicable.

7. LICENSEE'S UNDERTAKINGS AND WARRANTIES

The Licensee hereby undertakes and warrants to the Licensor on its own behalf and on behalf of all Authorised Users:

(a) (except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Subscription Agreement or this EULA) not to: copy, reproduce, translate, modify, duplicate, adapt, vary, enhance or create derivative works from any Software and/or Documentation (except that it may from time to time quote excerpts from the Documentation to justify or explain a particular scaffold design in which case the source of such an excerpt must be attributed); de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; sell, lease, rent, assign, distribute, display, disclose, exploit, license, sub-license, communicate, frame, mirror, republish, transmit, make available (other than to Authorised Users) or otherwise deal in any form or media or by any means with any Software or Documentation, or variations, modifications, copies, releases, versions or enhancements thereof; have any Software or other programme written or developed for itself based on any proprietary and/or confidential information supplied to it by the Licensor otherwise than in accordance with the provisions of this EULA; use any Software and/or Documentation to provide services to third parties; attempt to obtain, or assist third parties in obtaining, access to the Software and/or Documentation; access all or any part of the Services and Documentation in order to build a product or service which competes with any Service and/or the Documentation; permit more than one concurrent user of the Software at any one time; or authorise any person to do any of the foregoing;

(b) to supervise and control Use of the Software in accordance with the terms of this EULA;

- (c) to ensure that all Authorised Users have received appropriate training in and are competent to use the Software and appreciate and understand the underlying principles on which the Software is based;
- (d) not to copy or reproduce any of the Documentation in whole or part except that it may from time to time quote excerpts from the Documentation to justify or explain a particular scaffold design in which case the source of such an excerpt must be attributed;
- (e) to include the NASC logo on any printed output from the Software and not to amend or in any other way change a pdf that has been generated by the Software;
- (f) not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and/or source code) in any form to any person other than the Licensee's Authorised Users without prior written consent from the Licensor;
- (g) that the System has an internet connection of suitable speed and bandwidth for accessing the NASC ePortal and using an up-to-date supported Web browser that is listed on <https://eportal-login.nasc.org.uk/Help/Faq>, that will change from time to time, and that will check the User's browser capabilities and display a message if the browser is out-of-date or lacking capabilities;
- (h) that the Software shall be used only in accordance with the provisions of this Licence and in accordance with the laws and regulations (including in particular but not limited to data protection laws) applicable to such use.

8. LIMITATION OF LIABILITY

WARNING: you are strongly advised to read this clause.

- (a) You acknowledge that the Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements. You assume sole responsibility for results obtained from the use of the Software and the Documentation, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided by us to you hereunder, or any actions taken by us at your direction. All Software and Documentation are provided to the Licensee on an "as is" basis.
- (b) We only supply the Software and Documentation for use by you and for internal use by your business, and you agree not to use the Software or Documentation for any re-sale purposes.
- (c) Subject to Clause 8(e) we shall not under any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising under or in connection with this EULA and/or the Subscription Agreement for:
 - (i) loss of profits, sales, business, or revenue;
 - (ii) business interruption;
 - (iii) loss of anticipated savings;
 - (iv) loss or corruption of data or information;
 - (v) loss of business opportunity, goodwill or reputation; or
 - (vi) any indirect or consequential loss or damage.
- (d) Subject to Clause 8(e) our maximum aggregate liability under or in connection with this EULA and the Subscription Agreement (whether in contract, tort (including negligence), breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this EULA and/or the Subscription Agreement) shall be limited to a

sum equivalent to the total Subscription Fees paid for the User Subscription in respect of which your claim is made.

- (e) Nothing in this EULA shall limit or exclude our liability for:
 - (i) death or personal injury resulting from our negligence;
 - (ii) fraud or fraudulent misrepresentation; or
 - (iii) any other liability that cannot be excluded or limited by English law.
- (f) This EULA and the Subscription Agreement set out the full extent of our obligations and liabilities in respect of the supply of the Software and Documentation. Except as expressly stated therein, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this EULA and/or the Subscription Agreement, whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.
- (g) The Licensor shall have no liability to the Licensee under this EULA or the Subscription Agreement if it is prevented from or delayed in performing any of its obligations, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Licensor or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, epidemics, pandemics or other public health emergencies, or default of licensors or sub-contractors, provided that the Licensee is notified of such an event and its expected duration.

9. INTELLECTUAL PROPERTY RIGHTS

- (a) You acknowledge that: as between the parties the Licensor is the sole and exclusive owner of the copyright and other intellectual property rights ('**IPRs**') throughout the world in the Software and the Documentation; rights in the Software and Documentation are licensed (not sold) to you; and you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this EULA.
- (b) You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.
- (c) The integrity of the Software is protected by technical protection measures ('**TPMs**') so that the IPRs in the Software and Documentation are not misappropriated. You must not attempt in any way to remove or circumvent any such TPM, or to apply, manufacture for sale, hire, import, distribute, sell nor let, offer, advertise or expose for sale or hire, or have in your possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of any such TPM.
- (d) The NASC ePortal includes Documentation which can be displayed, and you acknowledge that the copyright therein is held by us just as if it was printed and published and that any use or reference to that displayed Documentation will be on the same basis in respect of copyright as if it were printed Documentation.

10. CONFIDENTIAL INFORMATION

- (a) All information, data, drawings, specifications, documents, software listings, source or object code which the Licensor may have imparted and may from time to time impart to the Licensee pursuant to this EULA and/or the Subscription Agreement relating to the Software and the Documentation are, save only to the extent that it has entered the public domain through no default of the Licensee (together '**Information**') proprietary and confidential.

- (b) The Licensee hereby agrees that, during and after the term of this EULA, it shall (i) keep all Information secret and confidential, (ii) use all Information solely in accordance with the provisions of this EULA, (iii) not disclose any Information, whether directly or indirectly, to any third party without the Licensor's prior written consent or as required by law (in which case it shall notify the Licensor thereof with as much advance notice as possible) and (iv) return or delete all Information (at the Licensor's option) on termination hereof.

11. TERMINATION

- (a) The Licensor may by notice to the Licensee terminate this EULA (i) on no less than 30 days' notice or (ii) by summary notice if any of the following events shall occur:
- (i) if the Licensee is in breach of any term, condition or provision of this EULA or the Subscription Agreement or any obligation to the Licensor required by law;
 - (ii) without prejudice to clause 11 (a) (i), if the Licensee fails to pay any sum due to the Licensor whether due under this Licence or the Subscription Agreement or otherwise;
 - (iii) if the Licensee, being a body corporate, shall present a petition or have a petition that is not discharged or stayed within 30 days presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purpose of a bona fide reconstruction or amalgamation); shall call a meeting of its creditors, or shall have a receiver of all or any of its undertaking, or assets appointed, or shall be deemed by virtue of section 123 of the Insolvency Act 1986 to be unable to pay its debts;
 - (iv) if the Licensor becomes entitled to terminate the Subscription Agreement; or
 - (v) if the Subscription Agreement terminates or expires.
- (b) The Licensee may terminate this EULA by giving to the Licensor no less than 90 days' notice.
- (c) On termination, the Licensee shall pay to the Licensor all costs and expenses, including legal and other fees incurred and all arrears of fees, charges or other payments arising in respect of the Software and the total amount of any Licence fees outstanding, under this EULA.
- (d) Any rights, remedies, obligations or liabilities of either party that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the EULA which existed at or before the date of termination, shall not be affected or prejudiced by the termination hereof.
- (e) The following clauses shall survive termination: 8, 9, 10, 11(c)-(f), 15 and 16.
- (f) The termination of this EULA shall cause the Subscription Agreement to terminate simultaneously.

12. WAIVER

Failure or neglect by the Licensor to enforce at any time any of the terms of this EULA shall not be deemed to be a waiver of any of its rights hereunder or in any way effect the validity of the whole or any part of this EULA or prejudice the Licensor's rights to take subsequent action.

13. HEADINGS

The headings of the terms and conditions herein contained are inserted for convenience or reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this EULA.

14. SEVERABILITY

In the event that any of these terms, conditions and provisions shall be determined by a judicial or regulatory authority of competent jurisdiction to be invalid, unlawful or unenforceable to any extent, such

term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

15. LAW

The parties hereby agree that this EULA shall be construed in accordance with the laws of England, and in connection with any dispute between them relating thereto they submit to the exclusive jurisdiction of the English courts.

16. NOTICES

All notices to be given under this EULA shall be in writing (which does not include email or other electronic messages) and shall be served on the Licensor at either address given above and on the Licensee at the postal address that it has provided to the Licensor unless advised otherwise in writing. Notices shall be effective when presented at such addresses or 48 hours after posting if mailed by ordinary first class post.

17. ASSIGNMENT

The Licensee shall not be entitled to assign this EULA or any of its rights or obligations hereunder. The Licensor may assign its rights and obligations under this EULA and the Licensee agrees promptly and unconditionally to enter into a novation of this EULA to achieve such an assignment by the Licensor if the Licensor so directs the Licensee.

18. ENTIRE AGREEMENT

Save only for the Subscription Agreement this EULA constitutes the entire agreement between the parties in relation of its subject matter and supersedes any prior agreements between them relating thereto and any such agreements shall cease to have further effect. It is also agreed that neither party has relied upon any representations or other statements in entering into this EULA other than those set out herein. No purported amendments to this EULA shall be effective unless in writing and signed by duly appointed representative of each party.

19. ACKNOWLEDGEMENT

You acknowledge that you and any entity that obtained the Software and on whose behalf it is used and any other user of this installation have read this EULA, understand it and agree to be bound by its terms and conditions.

20. MISCELLANEOUS

(a) Nothing in this EULA is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

(b) This EULA does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

(c) Except as expressly provided in this EULA, the rights and remedies provided hereunder are in addition to, and not exclusive of, any rights or remedies provided by law.