

## PLEASE READ THESE LICENCE TERMS CAREFULLY

This Subscription Agreement is a legal agreement between (1) you ('**Licensee**', 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 company number 04866191 and the address of whose registered office is 4th Floor, 12 Bridewell Place, London EC4V 6AP, United Kingdom ('**NASC**') for:

those subscription services that are specified in the Invoice and that are to be purchased from NASC by the Licensee for the purposes of its business operations under this Agreement and pursuant to the EULA via the NASC ePortal or any other website notified to the Licensee by NASC from time to time, as more particularly described in the Documentation (together 'the **Services**').

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in this Agreement:

**Authorised User:** a person whom the Licensee has authorised to use the Services in order for it to exercise the Licence

**Business Day:** a day other than: a Saturday, Sunday or public holiday in England when banks in London are closed for business

**CADS:** 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

**EULA:** the written agreement between the Licensor and the Licensee entitled *Warranty Disclaimer and Software and Documentation Licence Agreement*

**Documentation:** the documentation made available to the Licensee by the Licensor online via the NASC ePortal or such other web address notified by the Licensor to the Licensee from time to time which sets out a description of the Services and the user instructions for the Services

**Effective Date:** (a) the date on which NASC notifies the Licensee that it may exercise the Licence; or (b) in the absence of such notification, the later of the

following dates: (i) the date of the Invoice, and (ii) the date on which the Invoice is paid in full

**Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Licensee or an Authorised User (but not the Licensor) relating to security of network and information systems and security breach and incident reporting requirements, which may include the Network and Information Systems Regulations 2018 (SI 506/2018)

**Invoice:** as defined in Clause 6.2

**Licence:** as defined in Clause 2.1

**Licensee Data:** the data input by or on behalf of the Licensee for the purpose of using (or facilitating the use) of any of the Services

**Licensor:** NASC and CADS jointly

**NASC ePortal:** as defined in the EULA

**NASC Website:** the website of NASC whose URL is <https://nasc.org.uk> or such other URL as it may notify to the Licensee

**Normal Business Hours:** 09:30 to 17:00 local UK time, each Business Day

**Software:** the online software provided by the Licensor as part of the Services

**Subscription Fees:** the subscription fees payable by the Licensee to NASC for the User Subscription

**Subscription Term:** the period from and including the Effective Date to (a) the expiry date specified in the Invoice or (b) the date of premature termination pursuant to Clause 8


**Support Services Policy:** the Licensor's policy for providing support in relation to the Services (as made available at the NASC ePortal and/or the NASC Website and/or such other website address as may be notified to the Licensee from time to time) which NASC may amend in its sole discretion from time to time

**User Subscription:** the user subscription purchased by the Licensee by its payment of the Invoice which entitles it to access and use the Services and the Documentation in accordance with this Agreement

**Virus:** any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability

of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns; and a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as it may be amended or updated from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.6 This Agreement shall bind, and enure to the benefit of, each party and its successors-in-title and permitted assigns.
- 1.7 The word 'including' is to be construed as meaning 'including (without limitation)'.  

- 1.8 This Agreement imports Clauses 8, 9, 10, 12, 14, 17 and 18 of the EULA as if set out herein, and to be construed within the context of this Agreement.

## 2. USER SUBSCRIPTION

- 2.1 Subject to the Licensee purchasing the User Subscription and to the other terms and conditions of this Agreement, NASC hereby grants to the Licensee a non-exclusive, non-transferable, revocable right, without the right to grant sublicences, to use the Services and the Documentation during the Subscription Term solely for the Licensee's internal business operations (**'Licence'**).

- 2.2 The Licensee shall not during the course of its use of any of the Services: introduce or permit the introduction of, any Virus or Vulnerability into NASC's network and information systems; or access, store, distribute or transmit (i) any Viruses, or (ii) any material that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (f) is otherwise illegal or causes damage or injury to any person or property;

and NASC 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.

- 2.3 The Licensee shall prevent any access to or use of any Service by any person who is not an Authorised User and, in the event of any such access or use, shall immediately notify NASC.
- 2.4 The rights provided under this Clause 2 are granted to the Licensee only, and shall not be considered granted to any subsidiary or holding company of the Licensee.

### **3. SERVICES**

- 3.1 NASC shall, during the Subscription Term, provide the Services and make available the Documentation to the Licensee on and subject to the terms of this Agreement.
- 3.2 NASC shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance which NASC shall endeavour to perform outside Normal Business Hours; and
  - (b) unscheduled maintenance (which NASC shall endeavour to keep to a minimum and to perform outside Normal Business Hours where possible).
- 3.3 NASC will as part of the Services provide the Licensee with support services during Normal Business Hours in accordance with the Support Services Policy. NASC may amend the Support Services Policy in its sole and absolute discretion from time to time.

#### 4. NASC'S OBLIGATIONS

- 4.1 NASC warrants that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 4.2 The warranty at Clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of any Service contrary to NASC's instructions, or modification or alteration of any Service by any party other than NASC or its duly authorised contractors or agents. If any Service does not conform with the foregoing undertaking, NASC will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or to provide the Licensee with an alternative means of accomplishing the desired performance. Such use constitutes the Licensee's sole and exclusive remedy for any breach of the warranty set out in Clause 4.1.
- 4.3 NASC
- (a) does not warrant that:
    - (i) the Licensee's use of any Service will be uninterrupted or error-free;
    - (ii) that the Services, Documentation and/or the information obtained by the Licensee through the Services will meet the Licensee's requirements;
    - (iii) the Software or the Services will be free from Vulnerabilities or Viruses;
    - (iv) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements; and
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Licensee acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.4 This Agreement shall not prevent NASC from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are identical or similar to those provided under this Agreement.
- 4.5 To the extent that any Licensee Data includes or comprises personal data within the meaning of applicable data protection legislation that are processed by NASC, NASC warrants that such processing shall be conducted in accordance with its Privacy Policy whose text is available at the NASC Website and/or such other website address as may be notified to the Licensee from time, as such document may be amended by NASC in its sole discretion from time to time.

4.6 NASC may at its sole discretion follow such back-up and disaster-recovery procedures as are in its opinion appropriate for the provision of the Services, but for the avoidance of doubt the Licensee expressly acknowledges that the Services exclude any facility for restoring or recovering any Licensee Data, and that (without prejudice to the generality of Clause 8 of the EULA) NASC shall not, subject only to its warranty in Clause 4.5, be responsible for any loss, destruction, alteration, disclosure or damage of or to any Licensee Data.

## 5. LICENSEE'S OBLIGATIONS

5.1 The Licensee shall:

- (a) provide the Licensor with:
  - (i) all necessary co-operation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be required by the Licensor;in order to provide the Services, including Licensee Data, security access information and configuration services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities hereunder;
- (c) carry out all other Licensee responsibilities set out herein in a timely and efficient manner. In the event of any delay in the Licensee's provision of such assistance as agreed by the parties, the Licensor may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for the failure by any Authorised User so to do;
- (e) obtain and maintain all licences, consents, and permissions necessary for NASC, its contractors and agents to perform their obligations hereunder, including the Services;
- (f) ensure that its network and systems comply with the specification of the Services from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Licensor's data centres, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Licensee's network connections or telecommunications links or caused by the internet.

5.2 The Licensee shall own all right, title and interest in and to all of the Licensee Data that are not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Licensee Data.

## **6. CHARGES AND PAYMENT**

6.1 The Licensee shall pay the Subscription Fees to the Licensor for the User Subscription in accordance with this Clause 6.

6.2 NASC shall render a written invoice to the Licensee for the Subscription Fees in respect of the Subscription Term, which will specify the Services (**'Invoice'**); and the Licensee shall pay the Invoice within 30 days after its date.

6.3 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in pounds sterling;
- (b) are non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Invoice at the appropriate rate.

## **7. INDEMNITY**

The Licensee shall at all times both during and after the Subscription Term defend, indemnify and hold harmless NASC against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Licensee's use of the Services and/or Documentation.

## **8. TERM AND TERMINATION**

8.1 This Agreement shall, unless otherwise terminated as provided in this Clause 8, commence on the Effective Date and continue until the expiry of the Subscription Term.

8.2 Without affecting any other right or remedy available to it, NASC may terminate this Agreement with immediate effect by giving notice to the Licensee if:

- (a) the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or undergoes any event of insolvency or suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (b) the Licensee's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy;
- (c) the Licensor becomes entitled to terminate the EULA; or

- (d) the Licensee breaches any of its obligations or warranties in this Agreement or threatens to do so.

8.3 This Agreement shall terminate automatically if the EULA is terminated.

8.4 On termination of this Agreement:

- (a) all licences granted hereunder shall immediately terminate and the Licensee shall immediately: cease all use of the Services and/or the Documentation; delete or remove the Software from all computer equipment in its possession and destroy or return to NASC (at its option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to NASC that it has done so;
- (b) NASC may destroy or otherwise dispose of any of the Licensee Data in its possession unless it receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Licensee of the then most recent back-up of the Licensee Data. NASC shall use reasonable commercial endeavours to deliver the said back-up to the Licensee within 30 days of its receipt of such a written request, provided that the Licensee has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) under this Agreement and the EULA. The Licensee shall pay all reasonable expenses incurred by the Licensor in returning or disposing of Licensee Data;
- (c) 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 Agreement which existed at or before the date of termination, shall not be affected or prejudiced; and
- (d) the following clauses shall survive termination: Clauses 1, 7 and 8.4.