

PLEASE READ CAREFULLY BEFORE ACCESSING AND/OR USING THE SOFTWARE

This licence agreement (**Licence**) is a legal agreement between you (**you**) and National House-Building Council of NHBC House, Davy Avenue, Knowlhill, Milton Keynes, Buckinghamshire MK5 8FP (**Licensor, us or we**) for your use of the Technology Assisted Inspection trial tool (**Software**).

We licence use of the Software to you on the basis of this Licence. We do not sell the Software to you. We remain the owners of, or have the right to licence, the Software (as applicable) at all times.

You should print and retain a copy of this Licence for future reference.

1. Grant and scope of Licence

1.1 In consideration of the sum of £1.00 (receipt of which you expressly acknowledge) and you agreeing to abide by the terms of this Licence, we grant to you a non-exclusive, non-transferable licence to use the Software on the terms of this Licence.

1.2 You may:

- a) use the Software for the purpose of you submitting photographs to us of areas of construction (at a site where we provide inspection services in connection with our provision of cover under our Buildmark, Buildmark Choice or any similar product from time to time (such cover to be provided at our absolute discretion)) that we do not normally get the opportunity to inspect (for the purposes of our key stage inspections) and for you submitting photographs of rectified issues previously recorded as a reportable item (**Purpose**); and
- b) only use the Software on only one computer or mobile device at any one time.

1.3 You agree that:

- a) any login and password details provided to you from time to time in connection with the Software are personal to you and you shall not transfer such login or password details to any third party without our prior written consent; and
- b) any and all photographs you submit using the Software (for the Purpose) will be complete, accurate and representative of the area of construction that we have requested you submit to us and, if we so request, you shall provide any further information that we may request from you from time to time relating to the Purpose.

2. Restrictions

2.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- a) not to copy the Software;
- b) not to rent, lease, sub-licence, loan, translate, merge, adapt, vary or modify the Software;
- c) not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
 - i. is used only for the purpose of achieving inter-operability of the Software with another software program; and
 - ii. is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
 - iii. is not used to create any software which is substantially similar to the Software;
- e) to supervise and control use of the Software and ensure that the Software is used by your employees in accordance with the terms of this Licence;
- 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 source code), in any form to any person other than your employees without prior written consent from us; and

g) to comply with all applicable technology control or export laws and regulations.

3. Intellectual property rights

3.1 You acknowledge that all intellectual property rights in the Software anywhere in the world belong to, are vested in or granted by a licence to us (as applicable), that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software other than the right to use it in accordance with the terms of this Licence.

3.2 You acknowledge that you have no right to have access to the Software in source code form.

4. Limitation of liability

4.1 You acknowledge that the Software has not been developed to meet your individual requirements, including any particular cybersecurity requirements you might be subject to under law or otherwise, and that it is therefore your responsibility to ensure that the facilities and functions of the Software meet your requirements.

4.2 We only supply the Software for the purpose set out in Condition 1.2 a) and you agree not to use the Software for any other purpose (including re-sale purposes).

4.3 We shall not in any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:

- a) loss of profits, sales, business, or revenue;
- b) business interruption;
- c) loss of anticipated savings;
- d) loss or corruption of data or information;
- e) loss of business opportunity, goodwill or reputation;

where any of the losses set out in Condition 4.3 a) to Condition 4.3 e) (inclusive) are direct or indirect; or

- f) any special, indirect or consequential loss, damage, charges or expenses.

4.4 Other than the losses set out in Condition 4.3 (for which we are not liable), our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to £1,000. This maximum cap does not apply to Condition 4.5.

4.5 Nothing in this Licence shall limit or exclude our liability for:

- a) death or personal injury resulting from our negligence;
- b) fraud or fraudulent misrepresentation;
- c) any other liability that cannot be excluded or limited by English law.

4.6 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Software. Except as expressly stated in this Licence (if applicable), 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 that might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

5. Termination

5.1 We may terminate this Licence immediately by written notice to you if you commit a material or

persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.

5.2 On termination for any reason:

- a) all rights granted to you under this Licence shall cease;
- b) you must immediately cease all activities authorised by this Licence; and
- c) you must immediately and permanently delete or remove the Software from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

6. Communications between us

6.1 We may update the terms of this Licence at any time on notice to you in accordance with this Condition 6. Your continued use of the Software following the deemed receipt and service of the notice under Condition 6.3 shall constitute your acceptance to the terms of this Licence, as varied. If you do not wish to accept the terms of the Licence (as varied) you must immediately stop using and accessing the Software on the deemed receipt and service of the notice.

6.2 If we have to contact you, we will do so by electronic means (which may include email) or by pre-paid post to your principal place of business.

6.3 Note that any notice:

- a) given by us to you will be deemed received and properly served 24 hours after it is first posted on our website, 24 hours after an email is sent, or three days after the date of posting of any letter; and
- b) given by you to us will be deemed received and properly served 24 hours after an email is sent, or three days after the date of posting of any letter.

6.4 In proving the service of any notice, it will be sufficient to prove, in the case of posting on our website, that the website was generally accessible to the public for a period of 24 hours after the first posting of the notice; in the case of a letter, that such letter was properly addressed, stamped and placed in the post to the address of the recipient given for these purposes; and, in the case of an email, that such email was sent to the email address of the recipient given for these purposes.

7. Events outside of our control

7.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in Condition 7.2.

7.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.

7.3 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:

- a) our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
- b) we will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event Outside Our Control.

8. How we may use your personal information

8.1 Under data protection legislation, we are required to provide you with certain information about who we are, how we process the personal data of those individuals who use the Software and for what purposes and those individuals' rights in relation to their personal data and how to exercise them. This information is provided at www.nhbc.co.uk/Legal/PrivacyPolicy/ and it is important that you

read that information.

9. Other important terms

- 9.1 We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.
- 9.2 You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.
- 9.3 This Licence constitutes the entire agreement between us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Licence. You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Licence.
- 9.4 If we fail to insist that you perform any of your obligations under this Licence, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing signed by us, and that will not mean that we will automatically waive any later default by you.
- 9.5 Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 9.6 This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.