

End-User Licence Agreement

This End-User Licence Agreement is a legally binding agreement between you, the Licensee, and Thomas Telford Ltd, the Licensor, which governs your use of and access to the Solution. This EULA includes terms that limit your legal rights, and the Licensor's liability to you.

By accessing or using the Solution, whether under a free trial period or under a Sales Agreement, you hereby agree, without limitation or alteration, to all the terms and conditions set out or referenced below. However, if you do not agree to the terms and conditions set out in this EULA, you must not access or use the Solution. If you are accessing or using the Solution under a free trial period, you acknowledge and agree that your right to access and/or use the Solution beyond the end of your free trial period is contingent upon you entering into a Sales Agreement with the Licensor and that the Licensor may terminate your usage of the Solution at any time if you fail to enter into a Sales Agreement when requested to do so. If you are entering into this EULA on behalf of a company, you warrant that you are the duly authorised representative of that company and have permission to do so.

1. Definitions

"Content" means any content created or produced through use of the Solution, including the NEC4 contract and derivative works thereof.

"EULA" means this End-User Licence Agreement, including any amendments to this agreement.

"Licensee", "you" or "your" means you personally and the entity on whose behalf the Solution is accessed or used.

"Licensor" means Thomas Telford Ltd, a company registered in England and Wales with its principal place of business located at 1-7 Great George Street, Westminster, London, United Kingdom, SW1P 3AA with company registration number 02556636.

"Planned Maintenance" means scheduled maintenance work for preventative or routine maintenance, including tests and adjustments, as may be necessary for the Solution to be maintained in efficient working order in accordance with this Agreement and any documentation or specifications provided or made available by the Licensor.

"Sales Agreement" means an agreement entered into between an entity on whose behalf the Solution is accessed and the Licensor pursuant to which certain additional commercial terms and contractual obligations beyond those set out in the EULA are agreed in relation to the use of the Solution by or on behalf of such entity and each individual who accesses the Solution pursuant to a Sales Agreement shall be bound by such additional terms as if they formed part of this EULA.

"Solution" means the software and web application known as NEC Digital available at <https://neccontract.digital/>, including any associated media, printed materials, and online or electronic documentation provided pursuant to this EULA.

"Unscheduled Maintenance" means any unscheduled maintenance work, including emergency or critical maintenance work, tests and adjustments, as may be necessary for the Solution to be maintained in efficient working order in accordance with this Agreement.

2. Interpretation

2.1 In this EULA:-

- 2.1.1 any phrase introduced by or containing the terms "including", "include" and "in particular" or any similar expression shall be construed as illustrative only and shall not limit the sense of the words relating to these terms;

- 2.1.2 the headings are for convenience only and shall not affect the interpretation of this EULA;
- 2.1.3 a word importing one gender shall (where appropriate) include any other gender and a word importing the singular shall (where appropriate) include the plural and vice versa; and
- 2.1.4 any statute or statutory provision includes, except where otherwise stated, the statute or statutory provision as amended, consolidated or re-enacted from time to time and includes any subordinate legislation made under the statute or statutory provision (as so amended, consolidated or re-enacted) from time to time.

3. Grant of Licence

- 3.1 Subject to your compliance with the terms of this EULA, the Licensor hereby grants to you a revocable, limited, non-transferable (subject to clause 17.1), non-sublicensable, non-exclusive licence to access and use the Solution (including the Licensor's intellectual property incorporated therein), for your internal business purposes only provided that:
 - 3.1.1 if it is stated in the Sales Agreement that the licence is a full enterprise licence, on a shared computer or concurrently on different computers by the number of concurrent authorised users set out in the Sales Agreement; and
 - 3.1.2 if no Sales Agreement applies, the usage rights granted hereunder are "beta testing" rights and you acknowledge that: (i) the Solution is provided "as is" for the duration of your free trial period and that the Licensor makes no warranties and accepts no liability to you in relation with such use; and (ii) you shall have no right to make commercial use of the Solution and may use it for testing and evaluation purposes only.
- 3.2 Subject to you complying with clause 4, you are permitted to share contract data generated using the Solution with third parties but you and any third party who accesses contract data acknowledges that in order to review, amend and otherwise benefit from the details underlying the contract data, any such third party will require its own licence to use the Solution.

4. Licensee Limitation

- 4.1 The Licensee shall not (and shall procure that its affiliates, customers, employees, agents and contractors shall not):
 - 4.1.1 use the Solution for any illegal or unlawful purpose;
 - 4.1.2 interfere with or gain unauthorised access to any of the Licensor's computer systems, networks or data;
 - 4.1.3 create, store, transmit or distribute any malicious code, viruses, trojan horses, malware or other harmful or destructive programs or code; or
 - 4.1.4 interfere with or collect any part of the Solution by any automated means, including but not limited to database scraping or screen scraping.
- 4.2 Except as expressly set out in this EULA, or as permitted by applicable law (in which case the Licensee shall first notify the Licensor of its intention in writing), the Licensee shall (and shall procure that its affiliates, customers, employees, agents and contractors shall):
 - 4.2.1 not copy the Solution except where such copying is incidental to normal use of the Solution, or where it is necessary for the purpose of back-up or operational security;
 - 4.2.2 not resell, redistribute, rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Solution;

- 4.2.3 not make alterations to, or modifications of, the whole or any part of the Solution, nor permit the Solution or any part of it to be combined with, or become incorporated in, any other programs or cloud services (by integration or otherwise);
 - 4.2.4 not disassemble, decompile, reverse-engineer, modify or create derivative works based on the whole or any part of the Solution nor attempt to do any such thing;
 - 4.2.5 not access or use the Solution in order to develop, or cause to be developed, a product or service which competes with or has similar or equivalent content, hierarchies, know-how or methodologies to those embodied in the Solution (a "**Competing Product**"). The Licensee shall be deemed to have breached this clause 4.2.5 if it (or any of its affiliates, customers, employees, agents or contractors) develops a Competing Product, unless it can demonstrate with documentary evidence that such Competing Product was developed without any reference to the Solution;
 - 4.2.6 supervise and control use of the Solution and ensure that the Solution is used by your employees, contractors and representatives in accordance with the terms of this EULA; and
 - 4.2.7 not provide or otherwise make available the Solution 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 and contractors without prior written consent from the Licensor.
- 4.3 Licensee agrees that possession of the Content does not confer any right to use it unless the Licensee possesses a valid licence to the Solution in accordance with clause 3.1.1 or 3.1.2. Any use of the Content without a licence to the Solution shall be considered a material breach of this EULA by you and any third party you share Content with.

5. User Accounts

- 5.1 You must create an account to access the Solution. You agree to provide accurate, up-to-date, and complete information to the Licensor and to update such information as necessary from time to time.
- 5.2 Each user you authorise to use the Solution shall be responsible for implementing and maintaining appropriate security measures for their account (and you shall procure they do the same), which shall include but not be limited to: (a) maintaining the confidentiality of their username and password; (b) not sharing their login credentials with any third party; (c) using strong passwords and, where available, enabling two-factor authentication; and (d) taking reasonable steps to protect their account details from unauthorised access or disclosure.
- 5.3 You are fully responsible for all activities that occur under your account, whether authorised by you or not. You agree to immediately notify the Licensor of any suspected unauthorised use of your account or any other breach of security.
- 5.4 The Licensor may suspend or terminate your account at any time if: (a) you do not comply with your obligations under this EULA; or (b) you engage in any conduct that the Licensor deems inappropriate or harmful to itself or other users of the Solution.

6. Gratis Use and Access

- 6.1 Where the Licensee has been granted a free trial, subject to clause 4, the Licensor hereby grants the Licensee access to the Solution at no cost and without charge i.e., gratis access and use. At the end of the free trial period, in order to continue accessing the Solution, you shall enter into and pay the subscription fees as set out in the Sale Agreement.

7. Term and Termination

- 7.1 This EULA shall commence on the Subscription Start Date set out in the Order Form and continue for the Subscription Term set out in the Sales Agreement, unless terminated in accordance with the terms of this EULA.
- 7.2 Where no Sales Agreement applies, this EULA shall commence on the date the Licensor provides the Licensee with access credentials to the Solution, until terminated in accordance with the terms of this EULA.
- 7.3 In the event of termination:
- 7.3.1 all licences provided under this EULA shall immediately terminate;
 - 7.3.2 you agree to discontinue accessing or attempting to access the Solution;
 - 7.3.3 you agree to destroy all copies of the Content in whatever form they exist, including deleting all copies from any electronic memories; and
 - 7.3.4 the Licensor shall not be liable to refund any fees paid in advance by the Licensee.
- 7.4 Where clause 3.1.2 applies, this EULA may be terminated with immediate effect by the Licensor at any time at our sole discretion, including if the Licensee is in material breach of any of the terms of this EULA.
- 7.5 Either party may terminate this EULA upon providing thirty (30) days' written notice to the other party, including by electronic mail.
- 7.6 Either party may terminate this EULA with immediate effect if:
- 7.6.1 the other party is in material breach of this EULA and such material breach has not, if capable of remedy, been remedied within fifteen (15) days of receipt of notice from the non-breaching party requiring such remedy; or
 - 7.6.2 if the other party (a) becomes insolvent or is unable to pay its debts as they fall due; (b) enters into liquidation (other than in relation to a solvent restructuring); (c) has a receiver, administrator or similar officer appointed over any of its assets; (d) enters into any arrangement with its creditors; or (e) suffers any event in any jurisdiction which has a similar effect to any of the above.
- 7.7 Termination of this EULA shall be without prejudice to any provision which expressly or by implication is intended to survive termination or expiry, including clauses 9, 11, 14, 15, and 25.

8. Warranty

- 8.1 Each party represents and warrants that it has:
- 8.1.1 full right, title and authority to enter into this EULA;
 - 8.1.2 to the best of that party's knowledge the intellectual property licensed or otherwise provided by a party under this EULA does not infringe, violate or misappropriate any intellectual property rights of any third party and is free of any liens, encumbrances or other restrictions;
 - 8.1.3 it has obtained the necessary consents, approvals and authorisations to enter into this EULA;
 - 8.1.4 the execution and performance of this EULA does not violate any other agreement to which it is a party.

- 8.2 This EULA sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Solution. The Licensor does not warrant that the Solution will meet your requirements or that its operation will be uninterrupted or error-free. Except as expressly stated in this EULA, the Solution is provided "as is" and "as available", and all conditions, warranties, representations or other terms, express or implied, are hereby excluded. Any condition, warranty, representation or other term concerning the supply of the Solution, including which might otherwise be implied into, or incorporated in, this EULA whether by statute, common law or otherwise, including the implied warranties of merchantability, fitness for a particular purpose, or non-infringement, are hereby excluded to the fullest extent permitted by law.

9. Intellectual Property

- 9.1 You hereby acknowledge that:

9.1.1 all intellectual property rights (including any moral rights, derivative works and associated registrations or applications thereof) in the Solution (including all source code and object code of the Solution), documentation, designs and elements of the user interface of the Solution, belong throughout the world to the Licensor, and that rights in the Solution are licensed (not sold) to you, and that you have no intellectual property rights in, or to, the Solution other than the right to use the Solution in accordance with the terms of this EULA or with the Licensor's prior written consent; and

9.1.2 you have no right to use or access the source code or object code compiled in the Solution, or in any of the materials compiled or made available via the Solution (including any metadata).

- 9.2 To the extent that you provide the Licensor with any information, content, data or other materials in the course of using or accessing the Solution these shall remain your sole and exclusive intellectual property. You represent and warrant that you have all rights, title and interest in such materials and that they do not infringe the intellectual property rights of any third party.

- 9.3 If you generate, create or develop any "Customer Z clauses" (as that term is defined in the Solution), you shall have sole and exclusive intellectual property rights to such "Customer Z clauses".

- 9.4 To the extent that you submit a Customer Z clause to the Licensor for the purpose of the Licensor distributing the Customer Z clause through the Solution, you hereby grant the Licensor a non-exclusive, perpetual, sublicensable licence to use the Customer Z clause in the provision of the Solution provided always the Licensor does not allow access to your Customer Z clauses to any third party other than as permitted by you and otherwise complies with any additional protections set out in the Sales Agreement.

- 9.5 All trade marks, trade secrets, patents, service marks, trade names, logos, and other proprietary marks (together with all associated goodwill) ("**Marks**") used in connection with this EULA, together with all intellectual property rights therein, are and shall remain the sole and exclusive property of the Licensor. Nothing in this EULA shall be construed as granting any right, title, or interest in such Marks or intellectual property rights to such Marks to any other party.

10. Data

- 10.1 Under data protection legislation, the Licensor is required to provide you with certain information about who we are, how we process the personal data of those individuals who use the Solution and for what purposes and those individuals' rights in relation to their personal data and how to exercise them. This information is provided in our [privacy policy](#) and [cookie policy](#) and it is important that you read that information.

- 10.2 The data shared under this EULA shall be limited to feedback information, technical performance data, usage analytics and system logs, and no personal data or financial data shall be stored or processed under this EULA. Where data contains potentially identifying information, such data shall be anonymised and aggregated.
- 10.3 You acknowledge and agree that the Licensor may use your data for the purposes of research and analytics, product development and enhancement, developing new features and functions (including for other Licensor products and systems) and conducting performance analysis.
- 10.4 The Licensor shall use any data collected in accordance with this EULA for the purpose of providing the services, system upgrades, updates and maintenance, technical support, and compliance with legal obligations.
- 10.5 The Licensor is prohibited from: (a) using data for commercial purposes unrelated to the provision of services to you; (b) sharing data with third parties without your prior written consent; (c) attempting to re-identify anonymised data; (d) using data for marketing purposes unless expressly permitted.
- 10.6 Both parties shall implement appropriate technical and organisational security measures including: (a) encryption of data both in transit and at rest; (b) regular security audits and vulnerability assessments; (c) compliance with applicable security standards.
- 10.7 The Licensor maintains regular automated backups of all data with secure offsite storage and further details of backup and disaster recovery procedures are available upon reasonable written request.
- 10.8 Your data shall be retained for a reasonable period following termination or expiry of your licence to use the Solution. Upon expiry or termination of your licence to use the Solution you may request that we delete your data and Licensor shall do so and provide written certification of such deletion.

11. Limitation of Liability

- 11.1 Neither party shall be liable to the other party for any:
- 11.1.1 loss of profits, loss of income, loss of anticipated savings, wasted expenditure, loss or corruption of data or information, or loss of business opportunity, goodwill or reputation;
or
- 11.1.2 consequential, incidental, special, punitive or indirect damage,
- whether arising in contract, tort (including negligence) or otherwise. These limitations shall necessarily apply regardless of the primary purpose of any limited remedy and whether the damages arise out of or in connection with your use or access to the Solution.
- 11.2 Under no circumstances shall the Licensor's aggregate liability to the Licensee for any claims arising out of or in connection with this EULA exceed the greater of (i) £100; or (ii) the actual monetary amount paid by the Licensee to the Licensor under the Sales Agreement in the twelve (12) months preceding the date on which the cause of action arose.
- 11.3 Notwithstanding the above, nothing in this EULA shall limit or exclude either party's liability for:
- 11.3.1 death or personal injury resulting from negligence;
- 11.3.2 fraud or fraudulent misrepresentation;
- 11.3.3 breach of clause 4 or clause 9.2; or
- 11.3.4 any other liability that cannot be excluded or limited by applicable law.

- 11.4 You agree that you shall not hold any third party liable for the failure or under-performance of the Solution and that you shall only make any claim arising out of or in connection with such failure or under-performance against the Licensor.
- 11.5 The Licensee accepts that only the Licensor has liability under this EULA. The Licensee shall ensure that any claims are only brought against the Licensor (and none of its affiliates) and it shall indemnify the Licensor for any costs arising from any claim or action brought against the Licensor's affiliates arising out of or in connection with this EULA.

12. Indemnification

- 12.1 You hereby agree to indemnify and hold the Licensor (and its affiliates) harmless from and against all liabilities, damages, losses or expenses, including but not limited to reasonable attorney or other professional fees in any claim, demand, action or proceeding:
- 12.1.1 initiated by any third-party against the Licensor (and its affiliates), arising from any of your acts or omissions, including breaching this EULA or any applicable law; and
- 12.1.2 arising due to your breach of clause 11.4.

13. Provision of the Solution, Update, Support and Maintenance

- 13.1 The Licensor shall provide updates and maintenance from time to time at its discretion but has no obligation to support or maintain the Solution, or to provide any updates of the Solution.
- 13.2 The Licensor shall make available and provide access to the Solution and shall meet or exceed the Uptime Service Levels.
- 13.3 The Licensor shall provide at least a [99.5%] uptime service availability level ("**Uptime Service Level**") for the Solution.
- 13.4 The Uptime Service Levels do not apply to any unavailability of the Solution to the extent that it:
- 13.4.1 is caused by a force majeure event;
- 13.4.2 results from any breach of this Agreement or the EULA by the Licensee;
- 13.4.3 results from any Planned Maintenance; or
- 13.4.4 arises from the Licensor terminating or suspending the Licensee's right to access or use the Solution in accordance with this Agreement.
- 13.5 The Licensor shall provide at least forty-five (45) days' written notice to the Licensee before initiating any Planned Maintenance and shall use reasonable endeavours to give the Licensee as much notice as possible in advance of any Unscheduled Maintenance.
- 13.6 Each party's contact names and contact details which shall be used in respect of the maintenance and support are as set out in the Order Form, but may be varied from time to time in writing by each party on reasonable notice.

14. Confidentiality

- 14.1 Each party undertakes that it shall not at any time during and up to five years after the termination or expiry of the Sales Agreement [(or if none applies, its use of the Solution under this EULA)] disclose to any person any confidential information concerning the Sales Agreement, this EULA the Solution, intellectual property, financial and pricing information, business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2.

- 14.2 Each party may disclose the other party's confidential information:
- 14.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information solely for the purposes of exercising that party's rights or carrying out its obligations under or in connection with this EULA. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
 - 14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this EULA.

15. Audit

- 15.1 The Licensee shall allow the Licensor or the Licensor's authorised representatives or agents to have access to the Licensee's premises at all reasonable times in order to audit and take copies of the Licensee's records related to its compliance with the terms of this EULA.
- 15.2 Within thirty (30) days of a request from the Licensor and no more than once per year (unless the Licensor has reasonable grounds to suspect a breach of the terms of the Sales Agreement or this EULA), the Licensee shall provide a written certification of its compliance with the terms of this EULA (including its compliance with any usage restrictions or other licence obligations referenced in the applicable Sales Agreement) for the immediately preceding twelve (12) month period.
- 15.3 If the Licensee fails to certify in accordance with clause 15.2, or if the Licensor has a good faith belief that the Licensee's certification is inaccurate, the Licensor may audit the Licensee for the purpose of verifying the Licensee's compliance with the terms of this EULA.
- 15.4 Any such audit shall (i) require prior notice of at least thirty (30) days, (ii) be conducted during regular business hours, (iii) not unreasonably interfere with the audited party's business activities, (iv) be conducted no more than once per year, (v) be undertaken by Licensor or its third party contractors (provided that such third parties are bound by duties of confidentiality no less onerous than those set out in this EULA); and (vi) only cover the immediately preceding two (2) years. If an audit reveals an underpayment then the audited party shall immediately pay the difference in fees and if the audit reveals an underpayment or that there was a deliberate failure by the Licensee to correctly certify compliance then the Licensee shall pay the Licensor's reasonable costs of conducting the audit in addition to any other fees due.

16. Modifications

The Licensor may modify, amend, or update the terms and conditions of this EULA from time to time. The Licensor shall provide notice of any modifications to this EULA by one or more of the following methods: (a) email notification to the email address associated with your account; (b) prominent notice within the Solution's interface; (c) posting on the Licensor's website; or (d) other reasonable means of communication. Your continued access to and use of the Solution following the effective date of any modifications to this EULA shall constitute your binding acceptance of the revised terms. If you do not agree to the modified terms, your sole remedy is to discontinue use of the Solution and terminate the Sales Agreement in accordance with the termination provisions herein.

17. Assignment and Variation

- 17.1 The Licensee shall not transfer any rights or obligations under this Agreement without the prior written consent of the Licensor.

- 17.2 The Licensor may transfer its rights and obligations under this EULA to another person on providing notice to the Licensee.

18. Compliance with Law

With regard to activities carried out in relation to this EULA, each party shall, and you shall procure that your affiliates, customers, employees, agents and contractors shall, comply with applicable laws by which it is bound, that concern bribery, slavery, discrimination, privacy, facilitation of tax evasion and restrictions on the export of controlled technology. These laws include the Bribery Act 2010, the Modern Slavery Act 2015, the Equality Act 2010, the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018, the tax evasion facilitation offences under sections 45(1) and 46(1) of the Criminal Finances Act 2017 and the EU Dual-Use Regulation No 428/2009.

19. Notice

Any notice, report, approval or consent required under this EULA shall be in writing and deemed to have been duly given if delivered by recorded delivery to the respective addresses of the parties stated in the order form or as updated by the parties from time to time.

20. No Waiver

No delay or failure to exercise, on the part of either party, any privilege, power or rights under this EULA shall operate as a waiver of any of the terms and provisions of this EULA. Accordingly, no single or partial exercise of any right under this EULA shall preclude further exercise of any other right under this EULA.

21. Severability

If any provision of this EULA is held to be void or otherwise unenforceable by a court of competent jurisdiction from whose decision no appeal is made within the applicable time limit then the provision shall be omitted and the remaining provisions of this EULA shall continue in full force and effect.

22. Third Party Rights

A person who is not a party to this EULA shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this EULA, provided that such Act shall apply to any third party that has the benefit of the indemnity set out in clause 12.1 but this is notwithstanding that the parties shall be free to amend or modify the terms of this EULA without reference to any such third party beneficiaries.

23. Survival

Any provision of this EULA that expressly or by implication is intended to come into or continue in force on or after termination of this EULA shall remain in full force and effect.

24. Force Majeure

The Licensor shall not be liable for, or in breach of this EULA in relation to, any failure or delay in the performance of its obligations under this EULA which is caused by circumstances beyond its reasonable control.

25. Governing Law and Jurisdiction

- 25.1 Any dispute arising out of or in connection with this EULA, shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration (LCIA). The number of arbitrators shall be one and the seat of arbitration shall be London, England.

The language to be used in the arbitral proceedings shall be English and the governing law of the contract shall be the laws of England and Wales.

- 25.2 For the avoidance of doubt, either party may seek injunctive relief or other equitable remedies in any court of competent jurisdiction to prevent or restrain any actual or threatened breach of this EULA, misuse of confidential information, or infringement of intellectual property rights. Such proceedings may be commenced and prosecuted without prejudice to any party's right to seek arbitration of the underlying dispute in accordance with clause 25.1.
- 25.3 This EULA, its subject matter and its formation (and any non-contractual disputes or claims) are governed by the laws of England and Wales. Subject to clause 25.1, the parties both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.