

Licence Terms

Definitions

In these Terms the following words shall have the following meanings unless otherwise expressly stated:

“Affected Party”	has the meaning attributed to it in Clause 14.2;
“Agreement”	means the licence agreement entered into between SnagR and the Licensee or between the Agent and the Licensee (as applicable).
“Defaulting Party”	has the meaning attributed to it in Clause 12.1.1;
“Defect”	has the meaning attributed to it in Clause 7.1;
“Documentation”	means in respect of SnagR, the user documentation in respect of the Software made available to the Licensee by SnagR (whether the documentation is made available via the Website or otherwise) and in respect of the Licensee, the documentation supplied and/or provided by the Licensee to SnagR;
“End User Licence Agreement”	means the agreement for the use of the Software (as amended by SnagR from time to time);
“Exhibit”	means the exhibits attached to the Agreement;
“Force Majeure”	means any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under these Terms including without limitation: fire; flood; lightning; failure of supplies of: electricity, internet, power, fuel, transport, equipment, raw materials or other goods or services; viruses; and issues relating to a service provider;
“Insolvent Party”	has the meaning attributed to it in Clause 12.1.2;
“Intellectual Property Rights”	patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

“Licence”	means the licence to use the Software.
“Licensee”	means the party who has entered into an Agreement with SnagR or the Agent (as the case may be);
“Agent”	means a legal entity that has been authorised by SnagR to provide software support services (including without limitation, a partner, agent or authorised reseller);
“Software”	means the software tool used in capturing and monitoring defects and inspections for development, construction, commissioning and safety;
“SnagR”	means SnagR Software Limited, company number 06712136, whose registered address is at 43 Pool Lane, Brocton, Stafford, ST17 0TY;
“SnagR Materials”	means any documentation, software, data and other materials, in each case, which are owned by SnagR and provided by SnagR or by SnagR’s third parties to the Licensee pursuant to this Agreement;
“Third Party Software”	means any software other than the Software;
“Terms”	means these licence terms;
“Unaffected Party”	has the meaning attributed to it in Clause 14.2;
“Update Issue”	has the meaning attributed to it in Clause 5.2;
“Updates”	means updates, patches or upgrades to the Software made available by SnagR, but only where any of the aforementioned are made available by SnagR after the acceptance of the Software pursuant to Clause 5; and
“Working Day”	means a normal working day in the region where support is provided by SnagR to the but excluding any public holidays.

1. **Interpretation**

- 1.1. The headings contained in these Terms are for reference only and shall not affect its interpretation.
- 1.2. Words indicating the singular shall include the plural and vice versa.
- 1.3. The words and phrases “includes”, “including” or “in particular” (as well as any similar words or expressions) shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible. Furthermore (except where already stated) such words shall be deemed to be immediately followed by the words “without limitation”.
- 1.4. References to any statute or statutory provision shall include (i) any subordinate

legislation made under it, and (ii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

1.5. To the extent of any conflict or ambiguity between any of the provisions of these Terms the following decreasing order of precedence will apply:

1.5.1. these Terms;

1.5.2. any terms contained in an Exhibit to the Agreement;

1.5.3. the other terms and conditions of the Agreement; and

1.5.4. the End User Licence Agreement

2. Scope

2.1. These Terms govern the Licensee's access to and use of the Software.

2.2. These Terms are incorporated into any Agreement entered into between SnagR and the Licensee, or between the Agent and the Licensee (as applicable).

2.3. The terms and conditions in these Terms supersede the terms in any Agreement or those terms on any purchase order or other document which may be issued by Licensee which shall have no effect. No oral or written information or advice given by SnagR or its agents, Agents, or employees shall create a warranty or increase the scope of a warranty provided herein.

3. Grant of Licence

3.1. The Licensee is granted for the duration specified within the Agreement, a time limited, non-exclusive, non-transferrable, licence to use the Software, for the Licensee's internal use within its organisation for the purposes of the Project (for the avoidance of doubt and subject to the provisions of clause 3.2, this does not permit the Licensee to allow any third party including without limitation any of its group companies or joint ventures to use the Software).

3.2. The Licensee acknowledges that nothing in these Terms allows the Licensee to use the Software, Documentation or SnagR Materials on behalf of any third party provided always that the Licensee may allow the Software to be used by the Licensee's contractors and consultants for the Project(s).

4. License Restrictions

4.1. Except as expressly set out in this Terms or as permitted by law, the Licensee undertakes:

4.1.1. not to copy the Software or Documentation except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of using the Software as required for the Licensee's business, back-up or operational security;

4.1.2. not to rent, lease, sub-licence, loan, translate, merge, adapt, vary or modify the source code or object code of the Software;

4.1.3. not to loan, translate, merge, adapt, vary or modify the Documentation

except where it is incidental to normal use of the Software or where it is necessary for the purpose of using the Software as required for the Licensee's business, back-up or operational security;

4.1.4. not to make coding alterations to, the whole or any part of the Software, nor permit the Software or any part of it to become incorporated in any other programs except where it is incidental to normal use of the Software or where it is necessary for the purpose of using the Software as required for the Licensee's business, back-up or operational security and approved in writing by SnagR; and

4.1.5. 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 things except to the extent that (by virtue of applicable law) 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 the Licensee during such activities:

4.1.5.1. is used only for the purpose of achieving inter-operability of the Software with another software program; and

4.1.5.2. is not unnecessarily disclosed or communicated to any third party without SnagR's prior written consent; and

4.1.5.3. is not used to create any software which is similar to the Software.

4.2. In relation to any Third Party Software, the Licensee:

4.2.1. shall accept and comply with any Third Party Software terms and conditions that are provided by the Third Party Software provider; and

4.2.2. accepts that SnagR shall have no liability to the Licensee in relation to any Third Party Software that is incorporated into the Software and/or works with the Software.

5. Updates

5.1. SnagR shall provide Updates to the Licensee from time to time. Any Updates will be licensed to the Licensee by SnagR subject to the same restrictions that the Licensee must observe in relation to the Software.

5.2. If there is any non-compliance between the Updates and the respective Documentation for the Software or Updates (as applicable), then the Licensee will communicate this non-compliance (the "**Update Issue**") by email to SnagR within 5 Working Days of receiving the respective Update.

5.3. If there is an Update Issue, then SnagR shall within 10 Working Days of receiving the emailed notification from the Licensee pursuant to Clause 5.2, use reasonable efforts to remedy the Update Issue with the Software.

5.4. Following the completion of the activities by SnagR pursuant to Clause 5.3, the provisions of Clause 5.2 will apply again, with the 5 Working Days period applying from the date that SnagR makes the Licensee aware that the Update Issue has

been remedied, and if an Update Issue is still present, then the Licensee can elect to either:

- 5.4.1. invoke the notification provisions of Clause 5.2 (in accordance with the respective timescales stated in that Clause) and remedial actions pursuant to 5.3 again; or
 - 5.4.2. cease using the Update and roll back to the previous version of the Software that it had accepted provided that SnagR shall continue to make reasonable efforts to provide modifications to the Software in order to rectify the Update Issue (n.b. this is not always possible where changes have been implemented to the database structure).
- 5.5. The Licensee accepts that it must implement and use the latest Update (unless there is an Update Issue with it) made available by SnagR, and the Licensee accepts that SnagR will not be liable for any issues to the extent that they could have been avoided by the Licensee using the latest Update.

6. Licensee's Obligations

- 6.1. The Licensee agrees:
- 7.1.1. to use reasonable skill and care in undertaking its obligations;
 - 7.1.2. not to undertake any act or omission which would result in SnagR being in breach of any law, regulation or code of conduct;
 - 7.1.3. to use Software on devices using one of the latest two versions of device operating systems or as published on the Website;
 - 7.1.4. that the Software is a tool to assist with project management and mobile data collection, but its use does not remove or reduce the need for any results from the Software to be investigated before deciding upon any course of action;
 - 7.1.5. that if there are issues with the data which is provided by the Licensee for use with the Software, then the output from the Software will be incorrect;
 - 7.1.6. that it will undertake all firewall and configuration settings in respect of its computers to allow such equipment to communicate with the Software;
 - 7.1.7. that all users of the Software are bound by the conditions of the End User Licence Agreement; and
 - 7.1.8. to inform SnagR before any upgrades and/or changes in hardware or operating systems are made (the "**Changes**"), and to follow all reasonable instructions provided by SnagR to the Licensee, in relation to such Changes.

7. Acceptance of Software

- 7.1. Within 5 Working Days of the Software (including any Updates available at the prevailing time) being made available by SnagR to the Licensee, (the "**Test Period**") the Licensee shall test whether the Software operates in accordance with the Documentation. If there is any noncompliance with such functionality (such

non-compliance being a “**Defect**”), then the issue must be reported by the Licensee by email or verbally to SnagR within the Test Period and the Software must not be used by the Licensee for live operational use (unless otherwise notified to SnagR).

- 7.2. If there is a Defect, then SnagR shall, within 10 Working Days of receiving the emailed or verbal notification from the Licensee pursuant to Clause 7.1, use commercially reasonable efforts to remedy the Defect with the Software.
- 7.3. Following the completion of the activities by SnagR pursuant to Clause 7.2, the provisions of Clause 7.1 will apply again, with the Test Period starting on the date that SnagR makes the Licensee aware that the Defect has been remedied, and if a Defect is still present, then the Licensee can elect to either:
 - 7.3.1. invoke the notification provisions of Clause 7.1 and remedial actions pursuant to Clause 7.2 again; or
 - 7.3.2. terminate the Agreement for convenience, in which case SnagR shall (or in the case of an Agreement between the Agent and Licensee, the Licensee shall), within 10 Working Days of receipt of such notice, refund the Licence fees paid by the Licensee under the Fee Arrangements. The Licensee's rights under this Clause 7.3.2 will only apply if the Software has not been used in live operational use by the Licensee without notifying SnagR.
- 7.4. The Licensee shall be deemed to have accepted the Software if:
 - 7.4.1. a request for remedying any Defect is not made within the Test Period;
 - 7.4.2. the Licensee commences live operational use of the Software without notifying SnagR;
 - 7.4.3. it notifies SnagR that the Software is accepted; or
 - 7.4.4. no further Defect is reported by the Licensee upon expiry of 5 Working Days from the day after the date of completion of the training for the Software under the Agreement.

8. SnagR Obligations

- 8.1. SnagR agrees:
 - 8.1.1. to implement reasonable security arrangements to safeguard its systems;
 - 8.1.2. to undertake a daily backup of the data which the Licensee uploads to SnagR's server for use with the Software; and
 - 8.1.3. to use reasonable endeavours to advise the Licensee on the use of SnagR's application programming interface tool to support the data exchange between the Software with the software programs of the Licensee where the Licensee expresses the desire to do this.

9. Warranty and Warranty Disclaimer

- 9.1. SnagR warrants that the Software will materially comply with its published

specifications. If SnagR breaches this warranty, it will (at SnagR's option) repair the Defect or replace the Software within a reasonable time period or refund the fees for the period in which the Software did not materially conform to its specifications.

- 9.2. SNAGR DOES NOT GUARANTEE THAT THE SOFTWARE WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT SNAGR WILL CORRECT ANY OR ALL DEFECTS.
- 9.3. TO THE EXTENT PERMITTED BY LAW, THE WARRANTY IN CLAUSE 9.1 IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE GIVEN BY SNAGR IN RELATION TO THE SOFTWARE.

10. Limitation of Liability

- 10.1. Neither Party shall be liable for the following:
 - 10.1.1. any indirect, incidental, exemplary, special or consequential damages;
 - 10.1.2. loss or corruption of data;
 - 10.1.3. loss of revenues, profits, goodwill or anticipated sales or savings;
 - 10.1.4. procurement of substitute goods and/or services; or
 - 10.1.5. interruption to business or wasted administrative time.
- 10.2. The exclusions in clause 10.1 apply even if either Party has been advised of the possibility of such damages but do not apply in relation to the Licensee's liability for a breach by Licensee of SnagR's Intellectual Property Rights.
- 10.3. SnagR will not be liable for any issues, costs or expenses associated with the Licensee undertaking any software and/or data restoration which is not in accordance with the Documentation.
- 10.4. To the extent allowed by law, the maximum liability of SnagR (which includes, collectively, its affiliates, officers, directors, employees, agents, suppliers and licensors) and any Agent to Licensee shall not exceed the fees paid or by Licensee to SnagR or any Agent for the 12 months before the last event that gave rise to Licensee's claim.
- 10.5. The limitation of liability in clause 10.4 applies whether the claims are in contract, tort (including negligence), or otherwise.
- 10.6. Except for Licensee breach of SnagR's Intellectual Property Rights or for non-payment of fees, neither party may bring a claim under these Terms more than 18 months after the event that creates the action or claim.
- 10.7. The Parties agree that the limitations and exclusions of liability contained in these Terms are reasonable in view of the nature and extent of the obligations accepted by each Party pursuant to these Terms,
- 10.8. Nothing in these Terms seeks to limit either party's liability for personal injury

caused by its negligence, fraud or any other liability which cannot be excluded as a matter of law.

11. Intellectual Property Rights

- 11.1. All Intellectual Property Rights in the Software and Documentation shall remain vested in SnagR and/or its third party licensors.
- 11.2. Nothing in these Terms shall have the effect of assigning to the Licensee any Intellectual Property Rights owned by SnagR or its third party licensors.

12. Term and Termination

- 12.1. The Agreement may be terminated by a party for cause immediately upon the occurrence of and in accordance with the following:
 - 12.1.1. either Party may terminate the Agreement immediately upon notice in writing to the other Party (the **Defaulting Party**) in the event that the Defaulting Party commits a material breach of these Terms or as provided in these Terms. However, where such breach is capable of being remedied, then such termination may only be exercised if the Defaulting Party fails to remedy such breach within 7 days of receipt of written notice from the non-Defaulting Party, with such notice: (1) identifying the breach in question; (2) requesting it to be remedied; and (3) specifying that the non-Defaulting Party will terminate the Agreement if the breach is not remedied within the respective time period;
 - 12.1.2. either Party may terminate the Agreement immediately upon notice in writing to the other Party (the **Insolvent Party**) in the event that the Insolvent Party shall present a petition or have a bona fide petition 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 purposes 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 undertakings or assets appointed, or shall be deemed by virtue of the relevant statutory provisions under the applicable law to be unable to pay its debts.
- 12.2. The termination of the Agreement shall be without prejudice to the rights and remedies of either Party which have accrued up to the date of termination.

13. Consequences of Termination

- 13.1. Upon termination of the Agreement all licences granted by SnagR and its licensors to the Licensee will immediately terminate.
- 13.2. Within 10 Working Days of termination of the Agreement:
 - 13.2.1. the Licensee shall, where possible, return to SnagR all of the Software, Updates and Documentation in its possession at the date of termination and within 20 days of the date of termination of the Agreement, the Licensee will provide written certification to SnagR that where possible, it has returned all such materials, and destroyed all copies of all such materials on its systems; and

- 13.2.2. SnagR shall allow the Licensee a transfer window of 10 days to export all data in the Software using the software and SnagR. Upon such transfer, SnagR shall erase all of the Licensee's data from its systems and within 20 days of the date of termination of the Agreement, SnagR will provide written certification to the Licensee that where possible, it has erased all such data on its systems.

14. General Provisions

Severability

- 14.1. If at any time any part of these Terms or a provision of these Terms becomes void or unenforceable under any applicable law it shall be deemed to be deleted (to the minimum extent necessary) from these Terms and the remaining provisions of these Terms shall continue unaffected.

Force Majeure

- 14.2. If either Party (the "**Affected Party**") is prevented from complying with its obligations due to Force Majeure, it shall not be in breach of these Terms or otherwise liable to the other Party (the "**Unaffected Party**") by reason of any delay in performance or non-performance of any of its obligations due to such events.
- 14.3. If such Force Majeure persists for a continued period of 30 days then the Unaffected Party shall be entitled whilst the Force Majeure persists, to terminate the Agreement immediately upon notice to the Affected Party.

Law and Jurisdiction

- 14.4. These Terms and any dispute or claim arising in connection with them shall be governed by the laws of England and be subject to the non-exclusive jurisdiction of the English Courts to which the Parties irrevocably submit.

Successors Bound

- 14.5. These Terms shall be binding on the permitted assigns and successors in title of SnagR and assigns and successors in title of the Licensee.