

## ELMS Solution Data Use Statement (“Data Statement”)

We (“**ELMS Aviation Limited**”) want you to be clear about how data entered onto the ELMS Solution about you (either by you or by another person) is used.

Please read this Data Statement carefully as it applies to all users of the ELMS Solution. The Data Statement may be varied by us from time to time and therefore it is recommended that you refer to our website [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk) regularly to see the most recent version of the Data Statement. (This is version Dec.20). Continued use of the ELMS Solution shall constitute agreement to the Data Statement. Please also see our privacy policy (found at [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk)) for details of our use of information gathered from your use of our website.

### 1. Background

*Current Subscription:* as you will be aware, when actively using the ELMS Solution, you shall be doing so by way of a subscription that either you, or someone else, has purchased to allow you access to the ELMS Solution. We have terms in place with the organisation/person who has purchased the subscription (the “**Subscription Holder**”) and as part of that we have measures in place regulating how we store and process your Data (as defined below). You should speak to the Subscription Holder if you have any queries or concerns about the use of the ELMS Solution and keeping data on it.

*No Subscription:* In the event you cease to have a relationship with a Subscription Holder (so you no longer have access to the ELMS Solution via the Subscription Holder’s subscription), the ELMS Solution may permit you to reactivate (and access) your Data on the ELMS Solution once another subscription is purchased or issued by another Subscription Holder. When you do not have a relationship with a Subscription Holder, we will continue to store your Data subject to the Termination section below and in consideration of this you agree to the terms set out in Appendix 2.

*General:* We shall explain below how we (and our sub-contractors (which may include other companies in the CERTA360 Limited group) referred to collectively as our “**sub-contractors**”) process data (including personal data which may include special categories of personal data) about you inputted by you and/or on your behalf onto the ELMS Solution (“**Data**”). Your Data is held in your own account and it is your responsibility to keep your password for your account confidential. You are responsible for ensuring that your Data is up to date, accurate and complete and within applicable regulations and law and that original certificates and qualifications are retained at all times. The expressions process and processing in the Data Statement have the meaning given in the General Data Protection Regulation (EU) 2016/679 (the “**GDPR**”)

### 2. Data Use (this section describes the purposes of the processing we do of your Data)

*Data Storage:* When Data is inputted onto the ELMS Solution, we are being instructed to store your Data and deal with your Data in accordance with instructions from time to time. In these circumstances, the processing will consist of your Data being used so it can be stored and held at data centres, and allowing procedural activities, for example back-ups of the Data, to be undertaken. Accordingly, we and our sub-contractors shall make use of your Data for this purpose so that the ELMS Solution can be operated and maintained and used by you and other users of the ELMS Solution.

*Your Access:* when you log into your account, you are instructing us and/or our sub-contractors to permit you access to your Data and facilitate your activities and processing your Data for this purpose.

*Specific Access for Support and Assistance:* From time to time, we may be instructed directly by you and/or the Subscription Holder (or its representatives) to actually view and/or access your Data (a “**Support Request**”). A Support Request will typically be made where there is a query arising in connection with the ELMS Solution and its functionality and your Data. Where a Support Request is issued, you instruct us to access your Data and/or permit our sub-contractors to access the same in order to assist you. We and/or our subcontractors will only access your Data for the purpose we are instructed upon. An example of a Support Request could be a request for technical support.

*Password/Username Support:* Where you have forgotten your password, the ELMS Solution will allow you to have a prompt sent to your registered email address so that a new password can be set. In the event you have forgotten your username, then you will need make a Support Request and ELMS’ System Support will, following identity verification, be able to confirm the username.

*Introductions:* Subject to any restriction imposed by the Subscription Holder, Introductions allow you to determine what other users of the ELMS Solution can see, learn and, where applicable, what information they can use and retain about you. The User Guides contain details about the different types of introductions – High 5 and Handshakes (collectively referred to as “**Introductions**”), so these need to be read and understood. Where you initiate and/or accept an Introduction, you are instructing us to permit and facilitate the other user of the ELMS Solution (who either accepts or initiates the Introduction) having access to, and being able to process your Data. The extent of this use will depend on the type of Introduction. Subscription Holders can limit Introductions and the Subscription Holder will usually have a Handshake with you whilst you have access to the ELMS Solution via its subscription. It is your responsibility to terminate any Introductions (see notes on Records and Extracted Data below).

*Records:* When your relationship with a Subscription Holder terminates (and you are no longer permitted to access the ELMS Solution pursuant to that subscription) and/or a Handshake with an organisational user terminates (in each case called a “**Termination Point**”), we may store a Record for each such Subscription Holder and/or organisational user. You shall direct any queries regarding the keeping of a Record to the applicable Subscription Holder or organisational user. We may be asked to keep more than one Record.

“**Record**” means a record held on the ELMS Solution for a Subscription Holder or an organisational user with whom you have had a “Handshake”, providing details from your account and your Data (including work undertaken for that Subscription Holder/organisational user) until the Termination Point with that Subscription Holder/organisational user.

*Law/Legal Claims:* If we are required by law and/or a regulatory body to provide your Data and/or retain your Data and/or retrieve your Data, then (provided we are able to) we will do so. We may process Data in connection with the establishment, exercise or defence of legal claims.

### 3. Basis for Processing

When there is a subscription, we are processing your Data under our agreement with the Subscription Holder and also following your instructions as you access and use the ELMS Solution. When you do not have a relationship with a Subscription Holder (and no active access to the ELMS Solution), we are processing and in particular storing your Data in order to fulfil any obligations we have to any Subscription Holders and/or organisational users to maintain a Record and also to allow the opportunity to re-activate your account.

In so far as your Data does not constitute “a special category of data”, then (whether or not there is a subscription) there are three main legal bases upon which we process your Data:

- we have a legitimate interest (which is not overridden by your interests or fundamental rights and freedoms) in undertaking the processing, which is the carrying on of our business as the provider of the ELMS Solution (we may also have a legitimate interest (which is not overridden by your interests or fundamental rights and freedoms) in processing your Data in connection with the establishment, exercise or defence of legal claims); and/or
- the processing is necessary for the performance of a contract to which you are a party or in order to take steps (at your request) prior to you entering into a contract; and/or
- the processing may be necessary for compliance with a legal obligation to which we are subject.

In the event that one of these legal bases ceases to apply, then we shall rely upon the other(s). We may also have another legal basis upon which we process your Data, you may have provided us with consent for the processing.

The ELMS Solution allows you to enter some details which are classed as “special categories of personal data” by the GDPR (“**Special Data**”) if required by the Subscription Holder. In order to process such Special Data, we may rely on the following bases:

- you have provided your explicit consent to the processing; and/or
- the processing is necessary for the purposes of carrying out obligations and exercising specific rights of you in the field of employment and there are appropriate safeguards in place to protect your fundamental rights and interests; and/or
- the processing is necessary for reasons of substantial public interest and there are appropriate safeguards in place to protect your fundamental rights and interests; and/or
- the processing relates to Data which you have manifestly made public; and/or
- the processing is necessary for the establishment, exercise or defence of legal claims.

### 4. Exercise of Rights

The GDPR provides you with a number of rights (detailed in Appendix 1) in connection with your Data on the ELMS Solution. If you wish to exercise any of these, you should consider who the most appropriate person is to contact; for example, it will usually be appropriate:

- (a) when there is a subscription in place, to make any request to the Subscription Holder.
- (b) if the request is in connection with a Record, to make the request to the Subscription Holder/organisational holder who holds that Record; and
- (c) if the request concerns your Data when there is no subscription and it is not in connection with a Record, to make the request to us.

For the purposes of data protection legislation, we are a data controller and if you wish to exercise any of your rights contained in the GDPR with us in relation to your Data, such request it should be made to our Data Protection Officer at our contact address (as set out in section 6) or via email to [dpo@elmsaviation.co.uk](mailto:dpo@elmsaviation.co.uk) or if relevant due to your location, please contact our representative in the European Union at [eu.rep@elmsaviation.co.uk](mailto:eu.rep@elmsaviation.co.uk). We may need to liaise with a Subscription Holder/organisational holder about any request and you agree to this.

### 5. Termination of relationship with Subscription Holder

If you cease to have access to the ELMS Solution via a Subscription Holder or it otherwise terminates its relationship with us, then your account will enter a restricted mode (with very limited functionality and as described in the User Guides) until:

- (a) you/another Subscription Holder take out a subscription which permits you full access to it; or

- (b) you (or someone authorised by you) instructs us to delete and/or put your Data\* beyond normal use; or
- (c) a period of at least 12 months (or such other date we have agreed with the Subscription Holder) following the date when you no longer had access to the ELMS Solution through the Subscription Holder has elapsed, at which point we may delete your Data\* or put your Data\* beyond normal use (unless our agreement with another Subscription Holder requires we hold it for longer and/or if we have a good reason for keeping it longer (for example a legal claim)).

Where there is no further subscription after 12 months from the date the last subscription ceased to allow you access, your account shall no longer be accessible by you.

\*Data will only be deleted/put beyond use in so far as it does not form part of a Record. For the avoidance of any doubt, we store Records at the request of the Subscription Holder/organisational user (and we have a legitimate interest in processing this information at their request as part of our business in providing the ELMS Solution and also a contractual obligation to do so) and all queries relating to a Record should be directed to the relevant Subscription Holder/organisational user.

## 6. Other

**Worldwide Access:** where an Introduction exists between you and another user of the ELMS Solution (including the Subscription Holder), that other user may access your Data (and process the same) from any part of the world and we and/or our sub-contractors shall facilitate this (processing your Data accordingly). Similarly, where you wish to access and use your Data and/or update your Data from any part of the world, we and/or our sub-contractors shall facilitate this (processing your Data accordingly). You should be mindful of the Introductions you make and the locations from which you/others access the ELMS Solution; Data may be transferred to a country outside of the EEA or to an international organisation where: (a) there is not an adequacy decision on the level of protection afforded to your Data by the European Commission; or (b) there are not appropriate safeguards and conditions for enforceability and legal remedy as described in Article 46 of the GDPR.

**Automated decision making (including profiling):** Subscription Holders and/or organisational users may use the ELMS Solution as a tool for processing your Data on the ELMS Solution in this way, queries regarding the logic involved and the significance and consequences of such processing should be directed to the relevant Subscription Holder and/or organisational user.

**Accessing Another User's Data:** before accessing/using another user's data, please speak with the Subscription Holder about any contractual obligations that may need to be complied with. In all cases, you shall comply with all relevant data protection legislation when accessing/using other user's data.

**Recipients of Data:** us and our sub-contractors and service providers (who, unless we state otherwise, where they reside outside the EEA are in a location where an adequacy decision has been issued), the Subscription Holder(s), and subject to Introductions, others users of the ELMS Solution.

**Data not entered by you:** from time to time, Data may be entered on your behalf onto the ELMS Solution (so it will not have been directly obtained from you). In such circumstances, the Data shall have been provided by the Subscription Holder and/or the relevant organisational user whose contact details and information you will already have. Data entered by someone else is Data and this Data Statement shall apply to the same so that the conditions of Article 14 of the GDPR are met.

**Data Protection Officer:** we have appointed a data protection officer (the "DPO") who can be contacted by email at [dpo@elmsaviation.co.uk](mailto:dpo@elmsaviation.co.uk) or if you would prefer to write to our DPO, then please use the contact address(s) below and mark the envelope clearly for her attention. If you are in the European Union, then please note we have appointed a representative based in Malta and they can be contacted at [eu.rep@elmsaviation.co.uk](mailto:eu.rep@elmsaviation.co.uk) for all matters relating to data processing in the European Union/EEA.

**Contract:** You are providing your Data as part of a contractual arrangement for the supply and use of the ELMS Solution, but you are not obliged by us to enter Data. If Data is not entered, the ELMS Solution shall not function as anticipated.

**Liability:** We do not accept any liability for how another user of the ELMS Solution uses your Data (please chose your Introductions carefully).

**Extracted Data:** The Subscription Holder and other users of the ELMS Solution who have access to your Data (because of an Introduction) may also extract and retain Data ("**Extracted Data**") whilst the relationship (subscription/Introduction) exists. You and we record our understanding that in such circumstances the user who has extracted the Extracted Data will be the data controller of the Extracted Data and we have no liability in connection with the same and its use. You shall direct any queries about Extracted Data to the user who extracted it.

**Technical and Organisational Measures:** we take appropriate technical and organisational measures to protect your Data.

**Cookies:** the ELMS Solution uses cookies, for more details please see our website ([www.elmsaviation.co.uk](http://www.elmsaviation.co.uk)) for our cookies policy.

**Contact:** Contact address: ELMS Aviation Limited, First Floor, Unit 1, Exeter International Office Park, Clyst Honiton, Exeter, Devon, EX5 2HL. Statutory information: ELMS Aviation Limited (registered in England and Wales with company number:

09436348) and with its registered address at C/O Francis Clark LLP North Quay House, Sutton Harbour, Plymouth, United Kingdom, PL4 0RA. If you are in the European Union, then please note we have appointed a representative based in Malta and they can be contacted at [eu.rep@elmsaviation.co.uk](mailto:eu.rep@elmsaviation.co.uk) for all matters relating to data processing in the European Union/EEA.

## Appendix 1

You understand that some rights are only exercisable in certain circumstances and for some rights processing may be necessary for a particular reason (meaning the right cannot be exercised).

- The right of access.
  - The right to obtain confirmation from the controller of whether or not Data is being processed and, where Data is being processed, the following information: the purpose of the processing; the categories of Data concerned; the recipients to whom the Data has been or will be disclosed (in particular recipients in third countries or international organisations); where possible the envisaged period for which the Data will be stored, or, if not possible, the criteria used to determine that period; the existence of the right to request from the controller rectification or erasure of Data or restriction of processing of Data or to object to such processing; the right to lodge a complaint with the supervisory authority; where Data is not collected from you, any available information about the source; and the existence (if any) of automated decision making, including profiling and meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for you.
  - Where Data are transferred to a third country or international organisation, you have the right to be informed of the appropriate safeguards (if any) pursuant to Article 46 of the GDPR relating to the transfer.
  - The right if requested to be provided with a copy of the Data being processed by the controller (for any further copies, a reasonable fee based on administrative costs may be requested). Where the request is made by electronic means, the Data shall unless otherwise requested be provided to by electronic means.
- The right to rectification.
  - The right to obtain from the controller without undue delay, the rectification of inaccurate Data, which may include (depending on the purposes of the processing) the right to have incomplete Data completed (including by means of a supplementary statement).
- The right to erasure.
  - Where any of the following apply, you have the right to obtain from the controller the right to erasure of Data without undue delay and the controller shall have the obligation to erase Data without undue delay where:
    - the Data are no longer necessary for the purposes for which they are collected or otherwise processed (please refer to the earlier sections for details of the purposes for which Data is collected and the duration it is retained).
    - you withdraw consent where this has been given as a ground for processing and no other legal ground for processing exists.
    - you object to processing pursuant to Article 21(1) of the GDPR and there are no overriding legitimate grounds for the processing, or you object to the processing under Article 21(2) of the GDPR.
    - The Data have been unlawfully processed.
    - The Data have to be erased for compliance with a legal obligation to which the controller is subject.
    - The Data have been collected in relation to the offer of information society services referred to in Article 8(1) of the GDPR.
  - The right to erasure shall not apply to the extent that any processing is necessary:
    - For the exercising of freedom of expression and information.
    - For compliance with a legal obligation which requires us to process the Data or there is task that we need to carry out in the public interest or in the exercise of official authority.
    - The Data requires processing in the area of public health for reasons of public interest.
    - For archiving reasons in the public interest, scientific or historical research purposes or for statistical purposes in accordance with Article 89(1) in so far as the exercise of the right to erasure will render impossible or seriously impair the achievement of the objectives of that processing; or
    - For the establishment, exercise or defence of legal claims.
- The right to restriction of processing.
  - You may request the restriction of processing by the controller when one of the following applies:
    - The accuracy of the Data is contested by you, so processing is restricted for a period to enable the controller to verify the accuracy of the Data.
    - The processing is unlawful, and you oppose the erasure of the Data and instead request restricted use.
    - The controller no longer requires the Data for its purposes, but they are required by you for the establishment, exercise or defence of a legal claim.
    - You have objected to processing pursuant to Article 21(1) pending the verification of whether the legitimate grounds of the controller override those of you.
- The right to data portability.
  - You have the right to receive your Data in a structured and commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance where:
    - The processing is based on point (a) of Article 6(1) of the GDPR or point (a) of Article 9(2) of the GDPR or in a contract pursuant to point (b) of Article 6(1) of the GDPR; and
    - The processing is carried out by automated means.
  - If technically feasible You shall have the right to have this Data transmitted from one controller to another controller.
- The right to object.

- You have the right to object, on grounds relating to your situation, at any time to the processing of your Data which is based on point (e) or point (f) of Article 6 (1) of the GDPR, including profiling based on these provisions.
- Where Your Data is used for direct marketing purposes, you have the right to object to any processing of your Data for such marketing, which includes profiling to the extent its related to such direct marketing.
- The right not to be subject to a decision based solely on automated processing.
  - You have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning you or similarly significantly affects you.
  - If the decision is necessary for the entering into a contract between you and the controller, is authorised in law, or is based on your explicit consent then this right shall not apply.
- The right to withdraw consent.
  - Where any processing is based on point (a) of Article 6 of the GDPR or point (a) of Article 9(2) of the GDPR, then you may withdraw consent at any time without affecting the lawfulness of the processing based on consent before its withdrawal.
- The right to lodge a complaint to a supervisory authority (this should be lodged with the supervisory authority, the Information Commissioner's Office). Contact details for the Information Commissioner's Office can be found at <https://ico.org.uk/concerns/>. For data subjects in the Europe Union and/or for the processing We carry out in the European Union, the relevant supervisory authority is the Information and Data Protection Commissioner (Malta). Contact details can be found here: <https://idpc.org.mt/contact/>, the postal address is: Floor 2, Airways House, Triq Il-Kbira, Tas-Sliema SLM 1549, MALTA or telephone +356 2328 7100.

## Appendix 2

In consideration of ELMS Aviation Limited agreeing that when I do not have a relationship with a Subscription Holder, it will continue to store my Data (subject to the Termination section of this Data Statement), I agree and undertake as follows:

1. If I process any personal data on the ELMS Solution I shall do so in accordance with data protection legislation; and
2. I shall not access, store, distribute or transmit:
  - (a) any viruses onto the ELMS Solution; and/or
  - (b) any material onto the ELMS Solution that:
    - is unlawful, harmful, threatening, defamatory, infringing, obscene, racially offensive, ethnically offensive, or harassing; or
    - facilitates illegal activity; or
    - depicts sexually explicit images; or
    - promotes unlawful violence; or
    - is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; or
    - in a manner that is otherwise illegal or cause damage or injury to any persons or property; and
3. I shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between us:
  - (c) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the ELMS Solution in any form or media or by any means; or
  - (d) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the ELMS Solution; or
  - (e) access all or any part of the ELMS Solution in order to build a product or service which competes with the ELMS Solution; or
  - (f) use the ELMS Solution to provide services to third parties; or
  - (g) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the ELMS Solution available to any third party; or
  - (h) attempt to obtain, or assist third parties in obtaining, access to the ELMS Solution; and
4. That these obligations shall continue even when I no longer have Data stored on the ELMS Solution.