

## **ELMS Application Subscription Terms and Conditions**

(Version 29.06.16)

In addition to these terms, the ELMS Application Terms of Use shall apply to any user of the ELMS Application. A copy of the ELMS Application Terms of Use can be found at [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk).

Please print and retain a copy of these terms for your records. A copy may also be found on our website at [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk).

### **You and we hereby agree as follows:**

#### **1. THESE TERMS**

- 1.1 **What these terms cover.** These are the terms and conditions on which you purchase a subscription to the ELMS Application from us. The term “**ELMS Application**” refers to the software applications and platforms which allow information and statistics for and about persons involved in the aviation industry to be uploaded, viewed, analysed and updated, and access to the ELMS Application is available from the website [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk) (or such other website as we may inform you of).
- 1.2 **Why you should read them.** Please read these terms carefully before you submit your order to us. The term **order** in these terms refers to the order made by you for the purchase of a subscription to the ELMS Application via our website [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk). These terms tell you who we are, how we will provide access to the ELMS Application to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you have any queries about these terms, then please contact us at [info@elmsaviation.co.uk](mailto:info@elmsaviation.co.uk).
- 1.3 **In purchasing the ELMS Application, you warrant to us that you are buying it for use in your business or occupation** (for example you require the ELMS Application for your work and/or you are going to be predominantly using the ELMS Application for your work records (e.g. keeping an electronic record of the work you have carried out) and/or to make contact with other industry associates). You agree that the ELMS Application is a tool to assist you and it shall not replace your keeping of certificates, qualifications and other documentation.
- 1.4 **As you are purchasing the ELMS Application for your business/occupation use**, you will be deemed to be purchasing the subscription for the use of the ELMS Application by one natural person who:
- (a) if you are purchasing the ELMS Application and are in business for your own account (for example you are a sole trader rather than a limited entity), shall be you; or
  - (b) if you are purchasing the ELMS Application as an entity with its own legal personality (for example a limited company), has been duly authorised by you to use the ELMS Application (your “**Duly Authorised Representative**”). Only one natural person can be your Duly Authorised Representative and once appointed by you, the appointment cannot be transferred. You agree that you are and shall remain fully liable for all

actions of your Duly Authorised Representative in connection with the ELMS Application and his use of the same.

You or (where applicable) your Duly Authorised Representative shall be the person who enters your/his (as the case may be) personal details into the ELMS Application and uses the ELMS Application including creating and/or modifying and updating your/his (as the case may be) profile on the ELMS Application pursuant to this subscription. This profile is referred to in these terms as an “**Individual User Profile**” and it is and remains the personal property of you or (where applicable) your Duly Authorised Representative in his personal capacity. Where applicable, as much of the information provided by your Duly Authorised Representative shall constitute personal data, it is important that you obtain his consent to us using, processing and transferring the same and identify us as a data controller to him. If you are the person creating the Individual User Profile (because you are purchasing the ELMS Application and your occupation or business is for your own account as described in (a) above), then you agree to us using, processing and transferring your personal data and us being a data controller. More information can be found about personal data in clause 10 of these terms.

## **2. INFORMATION ABOUT US AND HOW TO CONTACT US**

- 2.1 **Who we are.** We are ELMS Aviation Limited a company registered in England and Wales. Our company registration number is 09436348 and our registered office is at C/O Francis Clark LLP, North Quay House, Sutton Harbour, Plymouth, PL4 0RA (the terms “**we**”, “**our**” and “**us**” shall also be used to refer to ELMS Aviation Limited). Our registered VAT number is GB209 4374 08.
- 2.2 **How to contact us.** You can contact us by writing to us at [info@elmsaviation.co.uk](mailto:info@elmsaviation.co.uk) or ELMS Aviation Limited, Unit 1, Exeter International Office Park, Clyst Honiton, Exeter, Devon. EX2 5HL.
- 2.3 **How we may contact you.** If we have to contact you we may do so by telephone or by writing to you at the email address or postal address you provided to us in your order. However our preferred and primary means of contact shall be email unless you indicate to us otherwise.
- 2.4 **"Writing" includes emails.** When we use the words "writing" or "written" in these terms, this includes emails.
- 2.5 The term “**you**” in these terms and conditions is used to refer to you as our customer as the person placing the order and paying for the subscription. You confirm and warrant that (where applicable in the case of you not being a natural person, for example a limited company) the person placing the order with us is a duly authorised representative of you with full authority to enter into these terms with us and agree to and bind you to the same.
- 2.6 The term “**ELMS Application Terms of Use**” refers to the terms and conditions of use of the ELMS Application which all users of the ELMS Application must agree with and comply with.

We can provide a copy if requested or alternatively, please see our website [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk) where a copy is available.

### **3. OUR CONTRACT WITH YOU**

3.1 **Details of the prices for a subscription to the ELMS Application can be found on our website** [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk) and you are advised to look at these before proceeding with the order process.

3.2 **How we will accept your order.** Our acceptance of your order will take place when we receive confirmation that your payment for the Price of the subscription to the ELMS Application has been processed and accepted. The **Price** shall be the total price (including VAT where the same is applicable at then prevailing rate) as set out in the order for a one year subscription (commencing on the date that we receive confirmation that your payment for the Price has been processed and accepted (the "**Commencement Date**") and expiring on the first anniversary of the Commencement Date) for (as the case may be) you/your Duly Authorised Representative (and no other person) to have a non-exclusive licence to be a user of, and have access to, the ELMS Application subject to these terms and the ELMS Application Terms of Use. You shall receive an email from us confirming that the Price has been paid and that the subscription has commenced (although the ELMS Application may be accessible prior to receipt of this email). You may be offered the opportunity to purchase more than a one year subscription when placing your order, in which case the email we send to you confirming the Price has been paid shall detail this and confirm the date that the subscription shall expire. In the event that there is a manifest error in the Price we shall inform you of this as soon as is reasonably practicable and you agree that you shall then pay the balance or where there has been an overpayment we shall refund you.

3.3 **If we cannot accept your order.** If we are unable to accept your order, we will inform you of this and will not charge you the Price or if payment has already been accepted shall refund you. The order might not be accepted because of unexpected limits on our resources which we could not reasonably plan for, because a credit reference we have obtained for you does not meet our minimum requirements, or because we have identified an error in the price or description of the ELMS Application. Additionally, we have the right, having accepted your order, to subsequently reject the same at our absolute discretion within 10 days of the Commencement Date and in such cases where the Price has been paid shall refund the same.

3.4 **Your order number.** If we assign an order number to your order it will help us if you can tell us the order number whenever you contact us about your order.

3.5 **If you do not have a VAT number** in some circumstances we shall require additional commercial evidence from you and this shall be requested during the order process. By continuing with the order and purchasing the subscription, you agree that you shall provide the required information and that it shall be true, complete, accurate and up to date.

3.6 **We may vary these terms** from time to time and shall notify you of any changes. If you have any queries relating to the changes, then we will be happy to discuss the same with you.

#### 4. THE ELMS APPLICATION

- 4.1 **The ELMS Application may vary slightly from its description.** The images of the ELMS Application on our website or other marketing material are for illustrative purposes only. Although we have made every effort to display it and its capabilities correctly, we cannot guarantee that every feature will be exactly as displayed.
- 4.2 You agree that you shall, and (where applicable) shall procure that your Duly Authorised Representative shall, use the ELMS Application in accordance with the ELMS Application Terms of Use.
- 4.3 Without limiting the ELMS Application Terms of Use in any way, you agree that:
- (a) you shall not introduce, or cause to be introduced, and (where applicable) shall procure that your Duly Authorised Representative does not introduce or cause to be introduced, any virus or similar thing to the ELMS Application or any other software or programme we supply and shall at all times use the ELMS Application or any other software or programme we supply in a prudent and reasonable manner, having regard to the other users of the system and us;
  - (b) the system and/or any device or equipment that you and/or your Duly Authorised Representative accesses the ELMS Application from shall be suitable and capable of permitting such access securely, effectively and efficiently;
  - (c) you shall not, and (where applicable) shall procure that your Duly Authorised Representative does not, copy or reproduce or modify or cause to be copied or reproduced or modified or seek to copy or reproduce or modify the ELMS Application (or any of the software, programmes or systems we supply) and/or any of the rights therein or associated with the ELMS Application (including the software coding) and you acknowledge that all intellectual property rights and any other proprietary rights within the ELMS Applications and the other software, programmes or systems we supply belongs to CERTA360 Limited (our parent company) and its licensors and if you are in breach of this clause, both CERTA360 Limited and/or us shall have the right to enforce this clause;
  - (d) except as expressly stated herein, these terms do not grant you any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the ELMS Application and/or any other service we provide and/or our documentation and/or our software; and
  - (e) you shall only use, and (where applicable) shall procure that your Duly Authorised Representative only uses, the ELMS Application for the purpose for which it is intended by us.
- 4.4 **All information you and (where applicable) your Duly Authorised Representative provides to us and/or inputs onto the ELMS Application shall be true, accurate and up to date** and in the event such information needs updating you and/or (where applicable) your

Duly Authorised Representative shall update it immediately. If you provide, or (where applicable) if your Duly Authorised Representative provides, information that it not true, accurate and up to date and we incur any liabilities and/or are subject to any claims and/or actions as a result of this you agree to indemnify us, and keep us indemnified, in respect of any such liabilities and/or any claims and/or actions (including any costs, expenses, fines and fees relating to such liabilities and/or claims and/or actions).

## **5. OUR RIGHTS TO MAKE CHANGES**

5.1 You are purchasing a subscription for the ELMS Application as it exists at the Commencement Date. You acknowledge that changes, updates and developments may be made to the ELMS Application during the course of your subscription.

5.2 We may also make changes to the ELMS Application during the course of your subscription:

- (a) to reflect changes in relevant laws and regulatory requirements for example in order to comply with data protection legislation or Civil Aviation Authority guidelines and/or directions; and
- (b) to implement minor technical adjustments and improvements, for example to address a security threat.

## **6. PROVIDING THE ELMS APPLICATION**

6.1 **As the ELMS Application is an ongoing service provided under a subscription purchased by you**, we shall will supply the services to you until the subscription expires or the agreement is terminated by either you or us. When you renew your subscription with us, new terms and conditions will apply to this renewal and you will need to read those and agree to those at that time.

6.2 **We are not responsible for delays outside our control.** We shall have no liability to you under these terms if we are prevented from or delayed in performing our obligations under these terms, or from carrying on our business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that we notify you of such an event and its expected duration.

6.3 You shall:

6.3.1 provide us with:

- all necessary co-operation in relation to these terms; and
- all necessary access to such information as may be required by us,

in order to provide the ELMS Application, including but not limited to your data, security access information and configuration services;

- 6.3.2 comply with all applicable laws and regulations with respect to your activities under these terms;
- 6.3.3 carry out all of your responsibilities set out in these terms in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 6.3.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for the all parties to perform their obligations under these terms;
- 6.3.5 ensure that your network and systems comply with the relevant specifications provided by us from time to time; and
- 6.3.6 be solely responsible for procuring and maintaining your network connections and telecommunications links from its systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.
- 6.4 **If you do not allow us access to provide the ELMS Application and/or (where applicable) your Duly Authorised Representative does not allow us access to provide the ELMS Application** for example the equipment or connection that being used is not compatible with allowing access to the ELMS Application, then we are not liable for any failure for or delay to you and/or (where applicable) your Duly Authorised Representative having access to the ELMS Application.
- 6.5 **What will happen if you do not give required information to us.** If you do not, and/or (where applicable) your Duly Authorised Representative does not, give us this information or it is incomplete or incorrect information, we may either end the contract or you agree that the ELMS Application may not have the functionality anticipated as if we had all the required information.
- 6.6 We shall use reasonable endeavours to make the ELMS Application available 24 hours a day, seven days a week, except for:
- planned maintenance carried out during the maintenance window of 10.00 pm to 4.00 am UK local time (such maintenance will be notified to you on our website [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk)); and
  - unscheduled maintenance performed outside Normal Business Hours, provided that we have used reasonable endeavours to give you at least 6 Normal Business Hours' notice in advance. Notice for this purpose shall be given on our website [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk).
- 6.7 We shall provide you with our standard customer support services during Normal Business Hours in accordance with our support services policy in effect at the time that the ELMS Application is provided. We may amend the support services policy at our sole and absolute discretion from time to time.

In clause 6.6 and clause 6.7, **Normal Business Hours** shall mean 9.00 am to 5.00 pm local UK time, each Business Day (a Business Day being a day when the banks in England are open for normal non-automated business and which is not a Saturday or a Sunday).

6.8 **Your rights if we suspend the supply of the ELMS Application.** If the ELMS Application is not going to be available for more a consecutive period of more than 72 hours your sole remedy against us shall be a refund for any period of non-availability commencing after that consecutive period of 72 hours and expiring immediately upon the ELMS Application becoming available for use.

6.9 We undertake that the ELMS Application shall be supplied with reasonable skill and care.

6.10 The undertaking at clause 6.9 shall not apply to the extent of any non-conformance which is caused by use of the ELMS Application contrary to our instructions, or modification or alteration of the ELMS Application by any party other than us or our duly authorised contractors or agents. If the provision of the ELMS Application does not conform with the foregoing undertaking, we will, at our expense, use reasonable endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 6.9. Notwithstanding the foregoing, we:

6.10.1 do not warrant that your use of the ELMS Application will be uninterrupted or error-free; or that ELMS Application and/or the information obtained by you through the ELMS Application will meet your requirements; and

6.10.2 are 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 you acknowledge that the provision of the ELMS Application may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## 7. OUR RIGHTS TO END THE CONTRACT

7.1 Without affecting any other right or remedy available to us, we may terminate these terms with immediate effect by giving written notice to you if:

- (a) you and/or (where applicable) your Duly Authorised Representative breaches any term of the ELMS Application Terms of Use;
- (b) you fail to pay any amount due under these terms on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- (c) you commit a material breach of any other term of these terms which breach is irremediable or (if such breach is remediable) you fail to remedy that breach within a period of 7 days after being notified in writing to do so;

- (d) you repeatedly breaches any of the terms of these terms in such a manner as to reasonably justify the opinion that your conduct is inconsistent with it having the intention or ability to give effect to the terms of these terms;
- (e) you suspend, or threatens to suspend, payment of your debts or are unable to pay your debts as they fall due or admit inability to pay your debts or are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986;
- (f) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of you;
- (h) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over you;
- (i) the holder of a qualifying floating charge over the assets of you has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7.1(d) to clause 7.1(k) (inclusive);
- (m) you suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of your business; or
- (n) there is a change of control of you.

7.2 On termination of these terms for any reason:

- (a) all licences granted under these terms shall immediately and automatically terminate;
- (b) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- (c) you acknowledge, and (where applicable) on behalf of the Duly Authorised Representative acknowledge, that we shall put a copy of any data provided to us by you and/or the Duly Authorised Representative (including the Duly Authorised Representative's Individual User Profile) in our possession beyond normal use and you agree, and (where applicable) shall procure that your Duly Authorised Representative agrees, that such data may be retrieved by us if required by law or



any regulatory (or similar) body. We provide no warranty that we shall be able to retrieve such data in any case;

- (d) (as the case may be) either:
  - (i) where your occupation or business is for your own account, you shall be able to access your Individual User Profile via a different account and/or subscription at any time and/or access your Individual User Profile in **Restricted Mode** being a restricted mode of the ELMS Application so that your access is limited to a read only format, capable of viewing historic entries on your Individual User Profile but not, for the avoidance of any doubt, permitting or otherwise allowing new data to be added or current and/or historic data to be modified; or
  - (ii) where you are a limited entity and have a Duly Authorised Representative the Individual User Profile shall remain the personal property of the Duly Authorised Representative and you agree that the Duly Authorised Representative shall be free to access his Individual User Profile via a different account and/or subscription at any time and/or access his Individual User Profile in **Restricted Mode** being a restricted mode of the ELMS Application so that his access is limited to a read only format, capable of viewing historic entries on his Individual User Profile but not, for the avoidance of any doubt, permitting or otherwise allowing new data to be added or current and/or historic data to be modified;
- (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of these terms which existed at or before the date of termination shall not be affected or prejudiced; and
- (f) any clause which expressly or by implication survives termination will do so.

## **8. PRICE AND PAYMENT**

8.1 **When you must pay and how you must pay.** The payment page will confirm the methods that we accept for payment. The Price is due immediately. If you decide at the payment stage that you do not wish to proceed with the order then simply exit the process, if you do this please note your registration details will remain on the ELMS Application and your information may be used by us (in accordance with our privacy policy) and you consent to this.

8.2 **What to do if you think an invoice is wrong.** If you think an invoice is wrong please contact us promptly to let us know and we will not charge you interest until we have resolved the issue.

## **9. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU**

9.1 **This clause sets out the entire financial liability of us** (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you:

- (a) arising under or in connection with these terms;
- (b) in respect of any use made by you and/or (where applicable) your Duly Authorised Representative of the ELMS Application and the documentation which relates to the same and or any part of it and them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms

9.2 Except as expressly and specifically provided in this agreement:

- (a) you assume sole responsibility for results obtained from the use of the ELMS Application, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the ELMS Application or any actions taken by the us at your direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the ELMS Application and all relevant documentation are provided to you on "as is" basis.

9.3 Nothing in this agreement excludes the liability of us:

- (a) for death or personal injury caused by our negligence; or
- (b) for fraud or fraudulent misrepresentation of us or our representatives.

9.4 Subject to clause 9.2 and clause 9.3:

- (a) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these terms shall be limited to the Price or £5,000 whichever is the greater sum.

## 10. DATA AND ITS USE

10.1 **How we will use your personal information.** We will use the personal information and information which may be categorised as Sensitive Personal Information (see the definition below) that you and/or (where applicable) your Duly Authorised Representative provides to us (and you each consent to us using the same):

- (a) to supply the ELMS Application;

- (b) to process payment (including providing details to the company we engage to process payments);
- (c) if you agreed to this during the order process, to inform you about similar products that we provide, but you may stop receiving these at any time by contacting us; and
- (d) as otherwise set out in these terms.

**Sensitive Personal Data** means personal data consisting of information about your/your Duly Authorised Representative's racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health or condition, sexual life, or commission of or proceedings for any offence committed or alleged to have been committed by you/your Duly Authorised Representative.

- 10.2 **We may pass personal information to credit reference agencies.** Where we extend credit to you for the ELMS Application we may pass personal information to credit reference agencies and they may keep a record of any search that they do.
- 10.3 **We will only give your personal information (including Sensitive Personal Data) to third parties where the law either requires or allows us to do so, if a regulatory body (for example the Civil Aviation Authority) requires us to or if you and/or (where applicable) your Duly Authorised Representative have consented to it (see below).** We are a data controller and if there are any queries regarding this, then please contact us at the address given above or by email ([info@elmsaviation.co.uk](mailto:info@elmsaviation.co.uk)). Please also see our privacy policy, cookies policy and website terms of use which are available on our website at [www.elmsaviation.co.uk](http://www.elmsaviation.co.uk) and are by virtue of this reference incorporated into these terms (details about subject access requests can be found in the privacy policy). Consent to our processing of data can be withdrawn at any time, please contact us at [info@elmsaviation.co.uk](mailto:info@elmsaviation.co.uk) if you wish to do this.
- 10.4 The ELMS Application is designed for information sharing and you are referred to the ELMS Application Terms of Use in this regard. **You consent, and (where applicable) shall procure that your Duly Authorised Representative consents, to us processing, transferring and using your/his personal data (including any Sensitive Personal Data) as required by us for the purpose of allowing the ELMS Application to operate, in order to permit us to carry out audits of your/his use of the ELMS Application and where you/he have/has accepted (or had accepted) an introduction from another user of the ELMS Application to us passing that other user such information and that other user being able to view, process and use your/his personal data (including any Sensitive Personal Data) in their use of the ELMS Application** (provided always that any party viewing, processing or using another's personal data does so in accordance with the relevant data protection legislation and our instructions). Where applicable, if we request the same, you shall provide to us on demand a copy of the consent you have obtained from your Duly Authorised Representative for the use of his personal data (including Sensitive Personal Data) as envisaged by this clause and you agree to indemnify us, and keep us indemnified against any claims made against us or actions taken against us (including all costs, expenses and other sums) arising from, or as a result of, any breach by you of this clause.

- 10.5 You agree, and (where applicable) shall procure the agreement of your Duly Authorised Representative that when viewing or otherwise using or processing personal data (including Sensitive Personal Data) about another user of the ELMS Application, you and (where applicable) your Duly Authorised Representative do so in accordance with our instructions and data protection legislation, within secure computer systems and environments and acknowledging that we are the data controller and you agree, and (where applicable) shall procure the agreement of your Duly Authorised Representative, not to process and/or transfer the personal data of any other user outside of the European Economic Area without our prior and expressly written consent.
- 10.6 **Individual User Profile:** The ELMS Application will require you/your Duly Authorised Representative (as applicable) to create an Individual User Profile. At the end of the subscription term or if the subscription is otherwise terminated, and in the event that no further subscription is taken out, the access to the ELMS Application shall be terminated by us, save that where no further subscription is taken out, you/the Duly Authorised Representative shall be able to access the ELMS Application in Restricted Mode.
- 10.7 In relation to data that is entered onto the ELMS Application, we shall follow our archiving procedures as set out in our back-up policy as amended from time to time at our sole discretion. A copy of our back-up policy can be provided upon request. In the event of any loss or damage to your data and/or (where applicable) the data of your Duly Authorised Representative, your sole and exclusive remedy shall be for us to use reasonable commercial endeavours to restore the lost or damaged data from the latest back-up of such data maintained by us in accordance with the archiving procedure described in our back-up policy. We shall not be responsible for any loss, destruction, alteration or disclosure of your data by any third party (except those third parties sub-contracted by us to perform services related to data maintenance and back-up).

## 11. OTHER IMPORTANT TERMS

- 11.1 **We may transfer this agreement to someone else.** We may transfer our rights and obligations under these terms to another organisation. You may not.
- 11.2 **Nobody else has any rights under this contract (except CERTA360 Limited as set out in clause 4.3).** This contract is between you and us. No other person shall have any rights to enforce any of its terms, except as explained in clause 4.3 in relation to CERTA360 Limited which own the intellectual property rights.
- 11.3 **If a court finds part of this contract illegal, the rest will continue in force.** If any provision (or part of a provision) of these terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 11.4 **Where a refund is due** from us to you, then please contact us at the address given above (at clause 2.2) or at [finance@elmsaviation.co.uk](mailto:finance@elmsaviation.co.uk). Refunds will be made by within a reasonable

time frame and will be made by the method you used for payment. Without prejudicing any other term of these terms, we may deduct from a refund an amount for the period which the ELMS Application was supplied.

- 11.5 **Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the products, we can still require you to make the payment at a later date.
- 11.6 **These terms are confidential** and you shall not disclose the content of these terms or any discussions between us to any third party unless required by law to do so. If we provide you with any confidential or proprietary information (including without limitation information about the ELMS Application, its software, functions and capabilities) then you agree to keep the same confidential and not disclose it to any third party unless required to by law.
- 11.7 **Which laws apply to this contract and where you may bring legal proceedings.** These terms are governed by English law are subject to the exclusive jurisdiction of the courts of England and Wales.