

**IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE ENTERING INTO THIS AGREEMENT. THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND BOLUGA LIMITED.**

**BY REGISTERING FOR A “USER ACCOUNT” (AS DEFINED BELOW), YOU WILL HAVE SIGNALLED YOUR AGREEMENT TO THE TERMS OF THIS AGREEMENT.**

**IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY NOT REGISTER FOR A USER ACCOUNT AND YOU MUST NOT PROCEED.**

**BOLUGA LIMITED WILL BE DEEMED TO HAVE ACCEPTED THIS AGREEMENT ONCE YOU HAVE REGISTERED FOR A USER ACCOUNT.**

**THIS AGREEMENT** is dated on the date the Customer has registered for a User Account

## PARTIES

- 1 **BOLUGA LIMITED** incorporated and registered in England and Wales with company number 7628398 whose registered office is at Crest House, Middle Wallop, Stockbridge, Hampshire, SO20 8EG, UK, (the “Supplier”); and
- 2 the person who has purchased the Services (as defined below) (the “Customer”).

## BACKGROUND

- A) The Supplier distributes a mobile software application compatible with iOS and Android smartphone devices which it makes available to users on a **pay as you go or subscription** basis for the purpose of allowing Gas Safe Registered Engineers to create Gas Safety Certificates and Electricians to send PAT Certificates, send them to their clients and store them in a cloud-based database.
- B) The Customer wishes to use the Software in its business operations.
- C) The Supplier has agreed to provide and the Customer wishes to use the Software subject to the terms and conditions of this agreement.

## AGREED TERMS

### 1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Authorised Users:** the employees, agents and independent contractors of the Customer for whom Job Fees have been paid in respect of whom Licence Keys have been provided and to whom access has been provided to use the Services and the Documentation, as further described in clause 2.2. Including free trial users.

**Business Day:** any day which is not a Saturday, Sunday or public holiday in the UK.

**Change of Control:** the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or is Confidential Information pursuant to clause 11.5.

**Customer Data:** the data inputted by the Customer, Authorised Users or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Documentation:** the description of, and user instructions relevant to, the Services as made available to the Customer by the Supplier online via the ESC Website or such other web address notified by the Supplier to the Customer from time to time.

**Effective Date:** the date of this agreement.

**ESC :** Abbreviation of Easy Safety Cert

**ESC Cloud Database:** the cloud based repository of Customer Data.

**ESC Website:** [www.easysafetycert.co.uk](http://www.easysafetycert.co.uk).

**Free Trial :** A free trial consisting of either three free Jobs available to Gas Safe Registered Engineers or a 14 day free trial for Electricians once the Subscription Term commences

**Gas Safety Certificate:** a report issued by a Gas Safe Registered Engineer to inform that a particular gas appliance or gas fitting is working safely and meets the correct safety standards.

**Gas Safe Registered Engineer:** a gas safe engineer who is listed on the Register.

**Jobs:** the number of Gas Safety Certificates Authorised Users are capable of creating via the Software during the Subscription Term to be stored in the ESC Cloud Database.

**Job Fees:** the fees payable for Jobs, as set out on the ESC Website. Job Fees are purchased on a pay as you go basis.

**Licence Keys:** the unique codes issued by the Supplier in respect of each Authorised User and Smartphone enabling access to and use of the Services.

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Register:** has the meaning given in clause 7.5.

**Services:** the services provided by the Supplier to the Customer via the Software and the ESC Cloud Database, as more particularly described in the Documentation.

**Smartphone :** a mobile phone offering advanced capabilities with PC-like functionality and/or a tablet device

**Software:** the Easy Safety Certificate mobile application provided by the Supplier as part of the Services.

**Subscription:** the annual subscription paid to by Electricians to use ESC PAT Certificate

**Subscription Term:** has the meaning given in clause (being the Subscription Term when the customer starts a free trial or purchases Job Fees. The subscription term continues whilst the User Account is active).

**Suppliers Privacy Policy:** the Supplier's privacy policy as made available at the ESC Website or such other website address as may be notified to the Customer from time to time.

**Support Services Policy:** the Supplier's policy for providing support in relation to the Services as made available at the ESC Website or such other website address as may be notified to the Customer from time to time.

**User Account :** the user account created by the Customer pursuant to clause 9 which entitle Authorised Users to access and use the Services, Documentation and Software in accordance with this agreement

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 Words in the singular shall include the plural and vice versa.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to writing or written includes faxes and email.
- 1.6 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## 2 USER ACCOUNT

- 2.1 Subject to the Customer purchasing a User Account in accordance with clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations and shall issue access to the Services and Documents to each Authorised User.

- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- 2.2.1 each Authorised User shall have and keep secure a password in relation to its use of the Services and the Documentation and shall keep its password confidential; and
  - 2.2.2 it shall maintain a written, up to date list of current Authorised Users and provide such list within 5 Business Days of the Supplier's written request at any time.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 2.3.2 facilitates illegal activity;
  - 2.3.3 depicts sexually explicit images;
  - 2.3.4 promotes unlawful violence;
  - 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 2.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.4 The Customer shall not:
- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
    - 2.4.1.1 and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - 2.4.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 2.4.3 use the Services and/or Documentation to provide services to third parties; or
  - 2.4.4 subject to clause 19.1 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party, or
  - 2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### 3 **JOBS**

- 3.1 The Customer may purchase Jobs or Subscription by paying the Job Fees or annual Subscription to the Supplier during the Subscription Term
- 3.2 A Customer may only pay for Jobs or the Subscription in advance using a valid credit or debit card via the ESC Website and all such purchases shall be subject to clauses 9.6.

### 4 **SERVICES**

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for instances of the performance of unscheduled maintenance when the Supplier shall use reasonable endeavours to give the Customer at least 5 Business Days' notice in advance.
- 4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the supplier's support services policy as set out in the ESC Website in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.

### 5 **CUSTOMER DATA**

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in the ESC Cloud Database. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to the upkeep of the ESC Cloud Database).
- 5.3 The Supplier shall, in providing the Services, comply with its privacy policy relating to the privacy and security of the Customer Data available on the ESC Website or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 5.4 By agreeing to these Terms and Conditions the Customer agrees to the Suppliers Privacy Policy.
- 5.5 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
  - 5.5.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement;
  - 5.5.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
  - 5.5.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

- 5.5.4 the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
- 5.5.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## 6 **THIRD PARTY PROVIDERS**

The Customer acknowledges that the Services may enable or assist it to purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 7 **SUPPLIER'S OBLIGATIONS**

- 7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7. 1 shall not apply to the extent of any non-conformity which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct or circumvent any such non-conformity promptly. This constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:
  - 7.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
  - 7.2.2 is 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 the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 7.5 The Supplier shall check that each Authorised User is, if applicable, Gas Safe Registered Engineer on the Gas Safe Register (the "**Register**"):
  - 7.5.1 upon the Customer's creation of a User Account;
  - 7.5.2 following each request from the Customer to add an Authorised User;
  - 7.5.3 following the purchase of Job Fees; and
  - 7.5.4 potentially, in any given calendar month, when such checks may be made on Authorised Users on a random basis by the Supplier

and if no evidence can be found of any Authorised User on the Register, then this agreement shall be terminated immediately and any Job Fees already paid in advance to the Supplier in respect of the Subscription Term as applicable, shall not be refundable. If the Authorised User has signed up to use the Subscription then a check of the Gas Safe Register will not be required.

## 8 CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

8.1.1 provide the Supplier with:

8.1.1.1 all necessary co-operation in relation to this agreement; and

8.1.1.2 all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

8.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement and, in such regard, warrants that it is a Gas Safe Registered Engineer and bears all responsibility for maintaining copies of Gas Safe registered certificates generated via use of the Services in accordance with statutory requirements;

8.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may agree to adjust any agreed timetable or delivery schedule as reasonably necessary;

8.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this Agreement;

8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

8.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

8.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 9 CHARGES AND PAYMENT

9.1 The Customer shall pay the Job Fees to the Supplier for the User Account in accordance with this clause 9.

9.2 Job Fees shall become payable to the Supplier once the Free Trial has ended if the Customer wishes to perform additional Jobs using the Services and Software provided by the Supplier.

9.3 The Customer shall provide to the Supplier valid, up-to-date and complete credit or debit card details and, if the Customer provides its credit or debit card details to the Supplier, the Customer hereby authorises the Supplier to use such credit or debit card for the purchase of Job Fees.

9.4 All amounts and fees stated or referred to in this agreement:

9.4.1 shall be payable in pounds sterling;

9.4.2 are, subject to clause 13.4.2, non-cancellable and non-refundable;

9.4.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.5 The Supplier shall be entitled to increase the Job Fees upon 30 days' prior notice to the Customer and any price displayed on the ESC Website in respect of the same shall be deemed to have been amended accordingly.

## 10 PROPRIETARY RIGHTS

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software, Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or the Documentation.

10.2 The Supplier confirms that it has all the rights in relation to the Software, Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## 11 CONFIDENTIALITY

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

11.1.2 was in the other party's lawful possession before the disclosure;

11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 This clause 11 shall survive termination of this agreement, however arising.

## 12 INDEMNITY

12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's breach of this Agreement, provided that:



- 12.1.1 the Customer is given prompt notice of any such claim;
- 12.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 12.1.3 the Customer is given sole authority to defend or settle the claim.

### 13 **LIMITATION OF LIABILITY**

13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- 13.1.1 arising under or in connection with this agreement;
- 13.1.2 in respect of any use made by the Customer of the Software, Services and Documentation or any part of them; and
- 13.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement:

- 13.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services (including, for the avoidance of doubt, any data in relation to a client of the Customer that is provided to the Supplier by the Customer), or any actions taken by the Supplier at the Customer's direction;
- 13.2.2 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
- 13.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

13.3 Nothing in this agreement excludes the liability of the Supplier:

- 13.3.1 for death or personal injury caused by the Supplier's negligence; or
- 13.3.2 for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.3:

- 13.4.1 the Supplier 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
- 13.4.2 the Supplier's 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 this agreement shall be limited to the total aggregate sum of the Job Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.

### 14 **TERM AND TERMINATION**

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue indefinitely, unless:

14.1.1 either party notifies the other party of termination, in writing, at least 30 days, in which case this agreement shall terminate upon the date given; or

14.1.2 otherwise terminated in accordance with the provisions of this agreement;

The Subscription Term is the period from the Effective Date until terminated

14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:

14.2.1 the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

14.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

14.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

14.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

14.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

14.2.6 the other party ceases, or threatens to cease, to trade; or

14.2.7 there is a Change of Control of the other party within the meaning of section 840 of the Income and Corporation Taxes Act 1988; or

14.2.8 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3 On termination of this agreement for any reason:

14.3.1 all licences granted under this agreement shall immediately terminate;

14.3.2 subject to clause 14.3.3, each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies thereof) belonging to the other party;

14.3.3 the Customer is required to ensure that it downloads all Customer Data in the ESC Cloud Database within 14 days of the effective date of termination of this agreement, otherwise the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 30 days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data.

14.3.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15 **FORCE MAJEURE**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its 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 the Customer is notified of such an event and its expected duration.

16 **WAIVER**

16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

17 **SEVERANCE**

17.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2 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.

18 **ENTIRE AGREEMENT**

18.1 This agreement, any documents referred to in it and the ESC Website terms of use, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

18.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

19 **ASSIGNMENT**

19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20 **NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 21 **THIRD PARTY RIGHTS**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 22 **NOTICES**

22.1 Any notice required to be given under this agreement shall be in writing. All notices shall be deemed to be properly served if they have been sent by e-mail to the address provided the Customer upon purchase of the Software (in the case of notice given to the Customer by the Supplier) or to [info@easysafetycert.co.uk](mailto:info@easysafetycert.co.uk) (in the case of notice given to the Supplier by the Customer).

22.2 Any notice shall be deemed to be properly served on confirmation of transmission of the e-mail to the e-mail addresses set out above.

## 23 **GOVERNING LAW AND JURISDICTION**

23.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

23.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## 24 **FREE TRIAL**

24.1 A Free Trial is available to the Customer and it's Authorised Users

24.2 The Free Trial consists of full access to the Software, Services, Documentation, Support Services.

24.3 The Free Trial allows the Customer to send three Jobs for free or a 14 day trial depending on the service requested by the Customer

24.4 Once the Free Trial is completed the Authorised User has 30 days to purchase Job Fees. If Job Fees are not purchased within 30 days the User Account may be terminated.

24.5 If the Customer purchases Job Fees access to the User Account will continue

24.4 If the Customer does not purchase Job Fees then it is the Customers responsibility to download all certificates and any data they wish to keep before the User Account is de-activated

24.6 All other terms in this contract apply to Customers and Authorised Users using the Free Trial from the Effective Date

24.7 The Free Trial is subject to clause 7 and 14

24.8 One Free Trial is available to each Customer

24.9 The Customer may terminate their User Account at any time by emailing [info@easysafetycert.co.uk](mailto:info@easysafetycert.co.uk)