

EVENT SAFE AUDIT (ESA) LICENSE TERMS AND CONDITIONS

1. **Defined terms and interpretation**
 - 1.1 In these terms and conditions, unless otherwise specified, the defined terms are set out in the Key Terms section of the Letter of Certification.
 - 1.2 In the construction of these terms and conditions, unless the context requires otherwise:
 - (a) **Headings:** headings appear as a matter of convenience and do not affect the construction of these terms and conditions;
 - (b) **Includes:** the words "include", "including" or "includes" must always be read as being followed by the phrase "without limitation";
 - (c) **Negative Obligations:** a reference to a prohibition against the Licensee doing anything includes a reference to not permitting, suffering or causing that thing to be done;
 - (d) **Singular, Plural and Gender:** the singular includes the plural and vice versa, and words importing one gender include the other genders;
 - (e) **Statutes and Regulations:** a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.
2. **Grant of Licence**
 - 1.1 The Licensor grants to the Licensee a non-exclusive, non-transferable royalty free licence to use and reproduce the Certification Mark in the Territory on the Licensee's Materials, subject to these Terms and Conditions.
 - 1.2 The Licensee accepts the grant.
3. **Ownership of the Certification Mark and Goodwill**
 - 2.1 The Licensee acknowledges that the Licensor is the exclusive owner of the Certification Mark and that the Licensee does not have any right, title or interest in or to the Certification Mark other than as may be granted or confirmed to it under these terms and conditions.
 - 2.2 All goodwill resulting from the use by the Licensee of the Certification Mark, whether before or during the term of these terms and conditions, will be for the benefit of the Licensor. The Licensee agrees to execute such documents as the Licensor may reasonably require in order to obtain the full benefit of the goodwill.
 - 2.3 The Licensee must, if required by the Licensor, include on all Material the Certification Mark appears, a statement in a form to be notified by the Licensor to the Licensee from time to time.
4. **Duties of the Parties**
 - 3.1 The Licensee must only use the Certification Mark in accordance with these terms and conditions and in relation to the Event and not on or in relation to any other events, goods or services which might be reasonably regarded as not being commercially relevant to the Event.
- 3.2 The Licensor must pay all renewal fees due in respect of the Certification Mark and the Licensee will provide all necessary assistance in maintaining the Certification Mark registrations.
- 3.3 The Licensee must not knowingly do or permit anything to be done in its use of the Certification Mark which could jeopardise the validity or goodwill of the Certification Mark.
- 3.4 The Licensee must not use the Certification Mark as part of any corporate business name or style of the Licensee.
5. **Conditions of use**
 - 4.1 The Licensee shall comply with the following conditions of use:
 - (a) the Certification Mark may only be used by the Licensee in respect of the Event and in accordance with the style guide provided to the Licensee;
 - (b) the Licensee is not permitted to alter the Certification Mark in any manner;
 - (c) the Licensee must immediately refrain from using the Certified Mark in a manner which is inconsistent with these terms and conditions and any other instructions for use issued by the Licensor;
 - (d) the Licensee must immediately rectify any incorrect or misleading use of the Certification Mark notified to the Licensee by the Licensor
6. **Infringement**
 - 5.1 The Licensee must promptly give notice in writing to the Licensor (providing full particulars) if it becomes aware of any infringement or suspected infringement by any third party of the Certification Mark. The Licensor will within 30 days in its absolute discretion determine what action it will take in respect of such matter. If the Licensor either decides not to take or takes no action within 30 days of receipt of notification the Licensee may, with the consent of the Licensor (not to be unreasonably withheld) take whatever action it determines and will have sole control of any such action and will conduct any such action at its own cost and for its own benefit. If either party takes action in relation to alleged infringement, they will, however, keep the other informed of the progress of any action taken and will have regard to any suggestions or comments the other may make in relation thereto.
 - 5.2 Each party must promptly give notice in writing to the other if any claims are made or threatened against that party that the use of the Certification Mark infringes the rights of a third party. In such a case, the parties will consult as soon as possible to decide what steps will be taken to defend such claims.
7. **Assignment and Sub-Licensing**
 - 6.1 The Licensee may not assign or sub-license any of its rights under these terms and conditions
 - 6.2 without the prior written consent of the Licensor.

- 6.3 The Licensee will be responsible to the Licensor for the acts and omissions of its permitted sub-companies and sub-contractors as if they were those of the Licensee itself.
- 8. Indemnity**
The Licensee indemnifies (and will keep indemnified) the Licensor, its directors, agents and employees against, all claims, demands, proceedings, losses (including consequential losses), charges, costs or expenses (including any fees and other costs of lawyers and other advisors of the Licensor) which may be brought against or suffered or incurred by the Licensor arising directly or indirectly from a breach of these terms and conditions by the Licensee.
- 9. Term and Termination**
8.1 These terms and conditions will commence on the Commencement Date and will remain in force for 12 months (**Initial Term**).
8.2 These terms and conditions may be extended for further periods of 12 months (**Renewal Term**) upon the successful completion of an annual audit or full re-audit in accordance with the ESA Agreement prior to the end of the Initial Term or current Renewal Term.
8.3 These terms and conditions will terminate immediately upon the happening of any of the following events:
(a) the Licensor withdraws the Licensee's certification pursuant to the ESA Agreement; or
(b) the Licensee cancels its certification pursuant to the ESA Agreement.
(c) the insolvency or bankruptcy of the Licensee;
(d) the Licensee challenging the Licensor's ownership, rights or title in or to the Certification Mark or any associated goodwill;
(e) there is a change of control in the Licensee;
(f) failure to comply with any provision of these terms and conditions which continues for at least 30 days after the Licensor has given written notice of the breach.
8.4 On termination of these terms and conditions:
(a) any and all rights acquired by the Licensee will except as set out in these terms and conditions automatically and without the need for any further act or deed vest in the Licensor; and
(b) the Licensee agrees to cease immediately all use of the Certification Mark.
- 10. Preservation of Rights**
The exercise by the Licensor of any express right set out in these terms and conditions (the **Express Rights**) will be without prejudice to any other rights, powers or remedies available to the Licensor under these terms and conditions, at law or in equity including any rights, powers or remedies which would be available to the Licensor if the Express Rights were not set out in these terms and conditions.
- 11. Notices**
9.1 Any notice given under these terms and conditions must be in writing and may be delivered in person, by courier service, or email (provided that the sender receives by email from the recipient, in the form of a return email or automatic confirmation message, confirmation of transmission to the intended recipient) to the address for that party as indicated at the front of these terms and conditions or to such other address for notices notified by that party by notice in writing to the other party from time to time.
9.2 For the purposes of these terms and conditions, any notice transmitted or delivered after 5.00pm on a business Day, or at any time on a non-Business Day, will be deemed received at 9.00am on the next Business Day.
- 12. General**
10.1 Nothing in these terms and conditions will be construed to place the parties in the relationship of partners or joint venturers or principal and agent.
10.2 None of the provisions of these terms and conditions will be considered to be waived by either party except when such waiver is given in writing. No delay or omission of either party in exercising any right, power, privilege or remedy under these terms and conditions will operate to impair such right, power, privilege or remedy or be construed as a waiver thereof.
10.3 These terms and conditions together with the ESA Agreement constitute the entire agreement between the parties in connection with its subject matter and supersede all previous agreements or understandings between the parties in connection with its subject matter.
10.4 No variations or modifications to these terms and conditions will be effective unless made in writing and signed by or on behalf of both parties.
10.5 The Licensee will at its cost execute and deliver any documents and do all things as may reasonably be required by the Licensor to obtain the full benefit of these terms and conditions according to its intent.
10.6 These terms and conditions will be governed by and construed in all respects in accordance with the laws of New Zealand and the parties agree to the non-exclusive jurisdiction of the courts of New Zealand.
10.7 Notwithstanding the expiration or termination these terms and conditions, the provisions of this clause and clauses 3, 8, and 11 will survive the expiry or termination of these terms and conditions and the parties will perform and observe their respective obligations and discharge their respective liabilities under those provisions of these terms and conditions, which are deemed to remain in full force and effect.