

# ACE WIZARD Assessment Firm & Assessors Terms of Use

Welcome to ACE Wizard, an online air conditioning inspection and F-Gas log book designed especially for energy assessors, air conditioning firms and their clients. These Terms of Use are intended to explain our obligations as a service provider and Your obligations as a customer and as a Linked Engineer to an Assessment Firm. Please read them carefully.

These Terms are binding on any use of the Service and apply to You and Your Linked Engineers from the time that ACE Wizard provides You with access to the Service.

The ACE Wizard Service will evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of the ACE Wizard Service. ACE Wizard reserves the right to change these terms at any time, effective upon the posting of modified terms and ACE Wizard will make every effort to communicate these changes to You via email or notification via the Website. It is likely the terms of service will change over time. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Website.

By registering to use the Service you acknowledge that You have read and understood these Terms and have the authority to act on behalf of any person for whom You are using the Service. You are deemed to have agreed to these Terms on behalf of any entity for whom you use the Service for or provide the service to.

These Terms were last updated on 24 May 2018. If You registered to use the Service on or after 24 May 2018, these changes are effective immediately. If You registered to use the Service prior to the 24<sup>th</sup> May, these changes are effective beginning on 1 July 2018.

## 1. Definitions

### "Agreement"

means these Terms of Service.

### "Access Fee"

means the monthly fee (excluding any taxes and duties) payable by the Assessment Firm in accordance with the Fee Schedule.

### "Project Fee"

means the fee per project created in ACE Wizard (excluding any taxes and duties) payable by the Assessment Firm in accordance with the Fee Schedule.

### "Confidential Information"

includes all information exchanged between the parties to this Agreement and the End Client, whether in writing, electronically or orally, including the Service

but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

**"Data"**

means any data inputted by You or with Your authority into the System on the behalf of Your End Client to enable the End Client to access the Client Service, or means any data inputted by the End Client whilst using the Client Service.

**"Fee Schedule"**

means the information relating to subscriptions and billing set out in the Fee Schedule or shown on the ACE Wizard subscriptions and pricing pages on the [Website](#), or any other page(s) on the Website notified by ACE Wizard, which may be updated or amended by ACE Wizard from time to time.

**"Intellectual Property Right"**

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

**"Service"**

means the online assessment system made available (as may be changed or updated from time to time by ACE Wizard) via the Website by the Assessment Firm including any Linked Engineers to create energy reports which are accessible by the End Client through the Client Service.

**"Client Service"**

means the ACE Wizard PDF report and the ACE Wizard online service available (as may be changed or updated from time to time by ACE Wizard) to the End Client.

**"System"**

means the Internet site at the domain <https://www.acewizard.co/.uk> or any other site operated by ACE Wizard including sub-domains.

**"ACE Wizard"**

means ACE Wizard Limited which is a privately owned limited company registered in the United Kingdom.

### **"Assessment Firm"**

means the company who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

### **"Linked Engineer"**

means any person or entity, other than the Assessment Firm, Employed or Contracted that uses the Service with the authorisation of the Assessment Firm from time to time to create, update, review projects and issue reports on behalf of the Assessment Firm.

### **"Child Assessment Firm"**

means a person or entity who's registered to use the Service but who's account and Linked Engineers are managed and maintained by an Assessment Firm. The Assessment Firm is deemed to be the "Parent Assessment Firm"

### **"You"**

means the Assessment Firm, and where the context permits, a Linked Engineer. "Your" has a corresponding meaning.

### **"End Client"**

means the building owner / equipment owner who has commissioned the energy report and who is able to access to the Client Service for a time limited period.

## **2. Use of Software**

ACE Wizard grants You the right to access and use the Service via the Website with the particular user roles available to You according to Your subscription and access type. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement between the Assessment Firm and the Linked Engineers, or any other applicable laws:

1. the Assessment Firm determines who is a Linked Engineer and what level of user role access to the relevant organisation and Service that Linked Engineer has within the boundaries of the System;
2. the Assessment Firm is responsible for all Linked Engineers' use of the Service and is responsible to ensure all Linked Engineers adhere to the terms of use of the Service for the Assessment Firm / Child Assessment Firm.
3. ACE Wizard manages each Linked Engineer's level of access to the relevant Assessment Firm / Child Assessment Firm and Service at all times and can revoke or change a Linked Engineer's access, or level of access, at any time and for any

- reason, in which case that person or entity will cease to be a Linked Engineer or shall have a different level of access, as the case may be;
4. The Assessment firm grants ACE Wizard the rights to provide the Client Service to the End Client beyond any default End Client access periods set out in the Fee Schedule.
  5. The Assessment firm accepts the Data entered as part of the Service is the End Clients Data and as such accept the End Client may without seeking further authority of the Assessment firm may request ongoing access to their data directly via the System

### **3. Your Obligations**

#### **1. Payment obligations:**

An invoice for the Access Fee and Project Fees will be issued each month or annually in accordance with the details set out in the Fee Schedule. ACE Wizard will continue invoicing You in accordance with the Fee Schedule until this Agreement is terminated in accordance with clause 8.

All ACE Wizard invoices will be sent to You, or to a Billing Contact whose details are provided by You, by email. Payment of all amounts specified in an invoice must be paid in accordance with the Fee Schedule. You are responsible for payment of all taxes and duties in addition to the Access Fee & Project Fees.

#### **2. General obligations:**

1. You must only use the Service and Website for Your own lawful business purposes, in accordance with these Terms and any notice sent by ACE Wizard or condition posted on the Website. You may use the Service and Website on behalf of others or in order to provide services to others but if You do so you must ensure that You are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You.
2. You must not try to rebrand or pass off the System including any outputs as your own without prior consent from ACE Wizard other than those functions provided by default in the System which are detailed in the Fee Schedule
3. You or your Linked Engineers must not under any circumstances use a single project in the System to create multiple site reports for the same or different End Client in an external system. Every project in the external system which you have exported the data from the System must have a corresponding project record in the System. Where You or your Linked Engineer has been found to be using a single project in the System to create more than one report in an external system the agreement will be terminated in accordance with clause 8

### 3. Access conditions:

1. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify ACE Wizard of any unauthorized use of Your passwords or any other breach of security and ACE Wizard will reset Your password and You must take all other actions that ACE Wizard reasonably deems necessary to maintain or enhance the security of ACE Wizard's computing systems and networks and Your access to the Services.

### 4. As a condition of these Terms, when accessing and using the Services, You must:

1. not attempt to undermine the security or integrity of ACE Wizard's computing systems or networks;
2. not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;
3. not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;
4. not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
5. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.
6. not use, or misuse, the Services in any way which may reduce the Project Fees due to ACE Wizard in accordance to Your Fee Schedule;

### 5. As a condition of using the Services, You must ensure;

1. You and all Linked Engineers are qualified with at least one recognised assessment body and attend the required on-going training and professional development courses to maintain the relevant professional qualifications.
2. ensure the standard of reporting by You and your Linked Engineers is maintained and will not damage the ACE Wizard brand for reporting excellence.
3. You or your Linked Engineers understand how to use the System and have been trained by an approved ACE Wizard trainer and where deemed fit by ACE Wizard provide additional training at Your cost to bring an assessor up to ACE Wizards required standards.
4. it is the responsibility of the Assessment Firm to ensure when on site the Linked Engineer knows what is required to carry out an inspection and capture

the additional data on site to enable the energy report to be more informative for the End Client.

#### 6. Usage Limitations:

Use of the Service may be subject to limitations, including but not limited to monthly transaction volumes and the number of calls You are permitted to make against ACE Wizard's application programming interface. Any such limitations will be advised.

#### 7. Communication Conditions:

As a condition of these Terms, if You use any communication tools available through the Website (such as any forum, chat room or message centre), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website, You represent that You are permitted to make such communication. ACE Wizard is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Services. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, ACE Wizard does reserve the right to remove any communication at any time in its sole discretion.

#### 8. Indemnity:

You indemnify ACE Wizard against: all claims, costs, damage and loss arising from Your breach of any of these Terms or any obligation You may have to ACE Wizard, including (but not limited to) any costs relating to the recovery of any Access Fees and/or Project Fees that are due but have not been paid by You.

#### 7. Preferential pricing or discounts:

You may from time to time be offered preferential pricing or discounts for the Access Fees and / or Project Fees. Eligibility for such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of any Fees in relation to Your Organisations. Without prejudice to any other rights that ACE Wizard may have under these Terms or at law, ACE Wizard reserves the right to render invoices for the full (non-discounted) Access Fees and / or Project Fees due or suspend or terminate Your use of the Service in respect of Your Organisation in the event that any invoices for those Fees are not paid in full in accordance with the requirements set out in the Fee Schedule.

## 4. Confidentiality

### 1. Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

1. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
2. Each party's obligations under this clause will survive termination of these Terms.
3. The provisions of clauses 4.1.1, 4.1.2 and 4.2 shall not apply to any information which:
  - i. is or becomes public knowledge other than by a breach of this clause;
  - ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - iii. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  - iv. is independently developed without access to the Confidential Information.

### 2. End Client Confidentiality:

As part of the Service You or Your Linked Engineers enter End Client data for use by the End Client through the Client Service. The Confidentiality terms listed in clause 4.1 applies to the End Client independently from the Assessment Firm.

1. The provisions of clauses 4.1 and 4.2 shall not apply to any information which:
  - i. Can be used by ACE Wizard to share with its business partners where required to improve energy saving statement accuracy used in the Client Service;
  - ii. Can be used by ACE Wizard to share with its business partners where required to share with its business partners identify additional or updated energy saving statements in the Client Service and Service;
  - iii. Can be used by ACE Wizard to share with its business partners where required to help the End Client realise the energy savings identified in the Client Server
  - iv. Can be used by ACE Wizard to share with its business partners where required to improve the Service to You

### 3. Privacy Policy

Our Privacy Policy can be found on your account page on the System and on our website

## 5. Intellectual Property

### 1. General:

Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of ACE Wizard (or its licensors).

### 2. Ownership of Data:

Title to, and all Intellectual Property Rights in, the Data remain Your property and the property of the related End Client. However, Your access to the Data is contingent on full payment of the ACE Wizard Access Fee & Project Fees when due. End Client access to their data is dependent on the End Client subscribing to the Client Service or the default access period (whichever is longer) as detailed in the Fee Schedule. You grant ACE Wizard a licence to use, copy, transmit, store, and back-up Your information and Your End Client Data for the purposes of enabling You to access and use the Services and for any other purpose related to development and provision of services to You and independently from You the End Client.

### 3. Backup of Data:

You must maintain copies of all Data inputted into the Service. ACE Wizard adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. ACE Wizard expressly excludes liability for any loss of Data no matter how caused.

### 4. Third-party applications and your Data.

If You use third-party applications for use in conjunction with the Services, You acknowledge that ACE Wizard may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Services. ACE Wizard shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

## 6. Warranties and Acknowledgements

### 1. Authority:

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

## 2. Acknowledgement:

You acknowledge that:

1. You are authorised to use the Services and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person you have authorised to use the Service. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Services (whether that information and Data is Your own or that of anyone else).
2. ACE Wizard has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) you agree that:
  - i. You are responsible for ensuring that You have the right to do so;
  - ii. You are responsible for notifying your End Client and giving access to End Client information or Data during the End Client default access period as detailed in the Fee Schedule
  - iii. You agree that ACE Wizard has permission to provide the End Client access to the End Client information or Data without Your authorisation if ongoing End Client access has not been provided by you during End Client access period as detailed in the Fee Schedule.
  - iv. You will indemnify ACE Wizard against any claims or loss relating to:
    - a. ACE Wizard's refusal to provide any person access to Your information or Data in accordance with these Terms,
    - b. ACE Wizard's making available information or Data to any person with Your authorisation not already covered in these terms of use
3. The provision of, access to, and use of, the Services is on an "as is " basis and at Your own risk.
4. ACE Wizard does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. ACE Wizard is not in any way responsible for any such interference or prevention of Your access or use of the Services.
5. ACE Wizard is not an assessment auditor or an assessment body and use of the Services does not constitute the receipt of energy or assessment advice. If You have any assessment questions, please contact your assessment body.
6. the use of the Service does not ensure an assessor produces a compliant high-quality report.
7. It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.
8. You remain solely responsible for complying with all applicable assessment and auditing requirements. It is Your responsibility to check that storage of and access

to your Data via the Software and the Website will comply with laws applicable to you (including any laws requiring you to retain records).

9. ACE Wizard has the right to change the price and pricing structure on all Fees detailed in the Fee Schedule. ACE Wizard will give a minimum of 90 days' notice to You of any such changes.

### 3. No warranties:

ACE Wizard gives no warranty about the Services. Without limiting the foregoing, ACE Wizard does not warrant that the Services will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

### 4. Consumer guarantees:

You warrant and represent that You are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms.

## 7. Limitation of Liability

1. To the maximum extent permitted by law, ACE Wizard excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website.
2. If You suffer loss or damage as a result of ACE Wizard's negligence or failure to comply with these Terms, any claim by You against ACE Wizard arising from ACE Wizard's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by You in the previous 12 months.
3. If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

## 8. Termination

### 1. Notice Period

A minimum of 3 full months' notice period is required to be given by You to ACE Wizard when terminating or reducing your monthly Access Fee.

### 2. Fees

ACE Wizard will not provide any refund for any remaining prepaid period for a prepaid Access Fee or prepaid Project fees.

### 3. No-fault termination:

These Terms will continue for the period covered by the Access Fee paid or payable under clause 3.1. At the end of each billing period these Terms will automatically continue for another period of the same duration, provided You continue to pay the prescribed Access Fee and any due Project Fees in accordance with the Fee Schedule, unless either party terminates these Terms by giving at least 3 full month's advance written notice. If You elect to terminate these Terms by providing 3 full month's advance written notice, You shall be liable to pay all relevant Access Fees and Project Fees up to and including the day of termination of these Terms.

#### 1. Marketing:

All references to ACE Wizard and the Service must be removed from Your systems and client facing documentation (online or physical) within 14 days of the termination date.

#### 2. Breach:

If You:

- a. breach any of these Terms and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- b. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Access Fees or Project Fees that are not paid in full in accordance with the requirements set out in the Fee Schedule); or
- c. You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

ACE Wizard may take any or all of the following actions, at its sole discretion:

- d. Terminate this Agreement and Your use of the Services and the Website;
- e. Suspend for any definite or indefinite period of time, Your use of the Services and the Website;
- f. Suspend or terminate access to all or any Data.
- g. Remove all references to Your organisation as an ACE Wizard partner from our material and request all reference to ACE Wizard are removed from any of Your marketing material within 14 days
- h. Take either of the actions in sub-clauses (d), (e), (f) and (g) of this clause 8(5) in respect of any or all other persons whom You have authorized to have access to Your information or Data.

For the avoidance of doubt, if payment of any invoice for Access Fees and/Project Fees due in relation to any of Your Assessment Firms, Child Assessment Firms or Linked Engineers (as defined at clause 3) is not made in accordance with the requirements set out in the Fee Schedule, ACE Wizard may: suspend or terminate Your use of the Service, the authority for all or any of Your Organizations to use the Service, or Your rights of access to all or any Data.

#### 4. Accrued Rights:

Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

1. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
2. immediately cease to use the Services and the Website.

#### 5. Expiry or termination:

Clauses 3.1, 3.7, 4, 5, 6, 7, 8 and 10 survive the expiry or termination of these Terms.

#### 6. Deletion of Data:

You will be given the option to have your data deleted within 30 days of the Termination date were this deletion does not prevent End Clients accessing the Service now or in the future.

## 9. Help Desk

#### 1. Technical Problems:

In the case of technical problems, You must make all reasonable efforts to investigate and diagnose problems before contacting ACE Wizard. If You still need technical help, please check the support provided online by ACE Wizard on the Website or failing that email us at [support@acewizard.co.uk](mailto:support@acewizard.co.uk).

#### 2. Service availability:

Whilst ACE Wizard intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason ACE Wizard has to interrupt the Services for longer periods than ACE Wizard would normally expect, ACE Wizard will use reasonable endeavours to publish in advance details of such activity to users via the website or through email.

## 10. General

### 1. Entire agreement:

These Terms and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and ACE Wizard relating to the Services and the other matters dealt with in these Terms.

### 2. Waiver:

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

### 3. Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

### 4. No Assignment:

You may not assign or transfer any rights to any other person without ACE Wizard's prior written consent.

### 5. Severability:

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

### 7. Notices:

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to ACE Wizard must be sent to [support@acewizard.co.uk](mailto:support@acewizard.co.uk) or to any other email address notified by email to You by ACE Wizard. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.

### 7. Rights of Third Parties:

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.