

## TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES v0.3 (RETAINER)

The attention of the Client is particularly drawn to the provisions of clause 8.

### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Agreement:** the agreement between the Supplier and the Client for the supply of Services in accordance with these Conditions.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 5.

**Client:** the client, whose details are set out in the Order Form.

**Client's Representative:** a person appointed by the Client to be the Supplier's primary point of contact in connection with the provision of the Services with the necessary authority to legally bind the Client or such replacement from time to time.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.2.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Commencement Date:** the date of countersignature by the Supplier as shown on the Order Form.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Deliverables:** including, not limited to reports, schedules and other such paperwork provided by the Supplier for the Client.

**Initial Term:** the time period beginning on the Commencement Date and running in accordance with the Order Form.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all

other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Client's order for the Services as set out in the Order Form.

**Order Form:** the order form signed by the Client and referencing these Conditions.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Client as set out in the Order Form.

**Supplier:** Rhino Safety Limited incorporated and registered in England and Wales with company number 09581663 whose registered office is at Suite 23 Edwin Foden Business Centre, Moss Lane, Sandbach, England, CW11 3AE

**Supplier Materials:** has the meaning set out in clause 4.1(i).

**Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing or written** includes email but not fax.

## 2. BASIS, OF AGREEMENT, COMMENCEMENT AND DURATION

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues a countersigned and dated Order Form at which point and on which date the Agreement shall come into existence (**Commencement Date**).

2.3 The Agreement constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Agreement.

- 2.4 The Supplier shall provide the Services to the Client in accordance with this Agreement.
- 2.5 This Agreement shall commence on the Commencement Date and shall continue until it is terminated in accordance with clause 9.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the catalogues or brochures of the Supplier, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.
- 2.7 These Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.8 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

### **3. SUPPLIER'S RESPONSIBILITIES**

- 3.1 The Supplier shall supply the Services as specified in the Order Form.
- 3.2 The Services will be provided during Business Hours (being 9am to 5pm on Business Days) only.
- 3.3 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.4 The Supplier shall use reasonable endeavours to meet any agreed performance dates but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.
- 3.5 The Supplier shall use reasonable endeavours to observe, all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been communicated to it under clause 4.1(f), provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
- 3.6 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

#### 4. CLIENT'S OBLIGATIONS

##### 4.1 The Client shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services and appoint the Client's Representative in relation to the Services, who shall have the authority contractually to bind the Client on matters relating to the Services;
- (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by the Supplier or any of them;
- (d) prepare the premises of the Client for the supply of the Services;
- (e) provide, in a timely manner, such information and materials as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
- (f) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises;
- (g) ensure that all of the Client's equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, in all cases before the date on which the Services are to start;
- (i) keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the premises of the Client in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the written instructions or authorisation of the Supplier.

4.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

4.3 The Client shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the

Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to the Supplier confirming such costs, charges and losses to the Client in writing.

4.4 The Client shall not, without the prior written consent of the Supplier, at any time from the date of this Agreement to the expiry of 12 months after termination or expiry of this Agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

4.5 Any consent given by the Supplier in accordance with clause 4.4 shall be subject to the Client paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

## **5. CHARGES AND PAYMENT**

5.1 The Charges for the Services are as set out in the Order Form. The Charges are payable in the instalments set out in the Order Form. For the avoidance of any doubt, it is the Client's responsibility to ensure that payment reaches the Supplier's nominated account on or before the due date for payment taking into account, for example, bank transfer times and bank holidays.

5.2 The Supplier shall invoice the Client in advance with such invoice payable in the instalments set out in the Order Form. The Client shall pay each instalment:

- (a) on or before the dates set out in the Order Form; and
- (b) in full and cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Agreement.

5.3 The Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

5.4 If the Client fails to make any payment due to the Supplier under the Agreement by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Barclays Bank PLC from time to time. Such interest shall accrue on a daily basis from the due date until actual

payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

- 5.5 The Client shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Supplier.

- 6.2 The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Agreement to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.

- 6.3 The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Agreement to use the Supplier's Intellectual Property Rights in the materials detailed in the Order Form (excluding materials provided by the Client) for the purpose of marketing the Supplier's supply of the Services to the Client.

- 6.4 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2 or clause 6.3.

- 6.5 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the Agreement for the purpose of providing the Services to the Client.

- 6.6 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the use by the Client of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Client.

- 6.7 All Supplier Materials are the exclusive property of the Supplier.

## 7. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Agreement.

## 8. LIMITATION OF LIABILITY

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, the Supplier shall not be liable to the Client, whether in Agreement, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of or damage to goodwill;
  - (f) loss of use or corruption of software, data or information; and
  - (g) any indirect or consequential loss.
- 8.3 Subject to clause 8.1, the Supplier's total liability to the Client, whether in Agreement, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £500,000.

8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

8.5 This clause 8 shall survive termination of the Agreement.

## 9. TERMINATION

9.1 Unless terminated earlier in accordance with the remainder of this clause 9 (**Termination**), this agreement shall continue for the Initial Term and shall automatically extend for 12 months (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 30 calendar days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

9.2 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition order;
- (f) 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 its assets and such attachment or process is not discharged within 14 days;

- (g) 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 the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) 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 9.2(b) to clause 9.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Client's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.3 Without limiting its other rights or remedies, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Agreement on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

9.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Agreement or any other agreement between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(m), or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Agreement on the due date for payment.

## **10. CONSEQUENCES OF TERMINATION**

10.1 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

On termination of the Agreement for any reason:

- (a) the Client shall immediately pay to the Supplier all sums due under this Agreement (including the balance of the Charges payable under this Agreement for entire term of the Agreement).
- (b) the Client shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the premises of the Client and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry;
- (d) the licenses granted in clauses 6.2 and 6.3 shall terminate immediately and the Client shall make no further use of the relevant materials; and
- (e) the following clauses shall continue in force: clause 4.1(i), (Supplier's Materials), clause 6 (Intellectual property rights), clause 7 (Confidentiality), clause 8 (Limitation of liability), clause 10.2 (Force Majeure), clause 13.9 (Governing law), clause 13.10 (Jurisdiction).

10.2 For the purposes of this Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to epidemics, pandemics, 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 network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation, direction or restriction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

10.3 The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

10.4 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 8 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Client.

## 11. TUPE

11.1 The parties reasonably believe that at the commencement of this Agreement there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (**TUPE**). If, however,

there is a relevant transfer, the Client shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier including without limitation all legal expenses and other professional fees (together with VAT thereon) in connection with such relevant transfer provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Supplier.

## **12. DATA PROTECTION**

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor. The Order Form sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 12.3 Without prejudice to the generality of clause 12.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Client for the duration and purposes of this Agreement.
- 12.4 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by the Data Protection Legislation to otherwise process that Personal Data. Where the Supplier is relying on the Data Protection Legislation as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Data Protection Legislation unless the Data Protection Legislation prohibit the Supplier from so notifying the Client;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be

restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by the Data Protection Legislation to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 12.

12.5 The Client consents to the Supplier appointing third-party processors of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter into, with each such third-party processor, a written agreement incorporating terms which are substantially similar to those set out in this clause 12 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.4.

12.6 Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar

terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

### **13. GENERAL**

#### **13.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

**13.2 Variation.** Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

**13.3 Waiver.** A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**13.4 Rights and remedies** The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **13.5 Severance.**

- (a) If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.6 **Entire Agreement**

- (a) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

13.7 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.7(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.8 **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.

13.9 **Governing law.** The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

13.11 **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

## TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES v0.3 (ONE OFF)

The attention of the Client is particularly drawn to the provisions of clause 8.

### 14. INTERPRETATION

14.1 **Definitions.** In these Conditions, the following definitions apply:

**Agreement:** the agreement between the Supplier and the Client for the supply of Services in accordance with these Conditions.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

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**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Deliverables:** including, not limited to reports, schedules and other such paperwork provided by the Supplier for the Client.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Client's order for the Services as set out in the Order Form.



**Order Form:** the order form signed by the Client and referencing these Conditions.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Client as set out in the Order Form.

**Supplier:** Rhino Safety Limited incorporated and registered in England and Wales with company number 09581663 whose registered office is at Suite 23 Edwin Foden Business Centre, Moss Lane, Sandbach, England, CW11 3AE

**Supplier Materials:** has the meaning set out in clause 4.1(i).

**Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes email but not fax.

## **15. BASIS, OF AGREEMENT, COMMENCEMENT AND DURATION**

- 15.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 15.2 The Order shall only be deemed to be accepted when the Supplier issues a countersigned and dated Order Form at which point and on which date the Agreement shall come into existence (**Commencement Date**).
- 15.3 This Agreement shall commence on the Commencement Date and shall continue until completion of the Services unless it is terminated in accordance with clause 9.
- 15.4 The Agreement constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Agreement.
- 15.5 The Supplier shall provide the Services to the Client in accordance with this Agreement.

- 15.6 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the catalogues or brochures of the Supplier, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.
- 15.7 These Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 15.8 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

## **16. SUPPLIER'S RESPONSIBILITIES**

- 16.1 The Supplier shall supply the Services as specified in the Order Form.
- 16.2 The Services will be provided during Business Hours (being 9am to 5pm on Business Days) only.
- 16.3 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.
- 16.4 The Supplier shall use reasonable endeavours to meet any agreed performance dates but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.
- 16.5 The Supplier shall use reasonable endeavours to observe, all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been communicated to it under clause 4.1(f), provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
- 16.6 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

## **17. CLIENT'S OBLIGATIONS**

- 17.1 The Client shall:
- (a) ensure that the terms of the Order are complete and accurate;

- (b) co-operate with the Supplier in all matters relating to the Services and appoint the Client's Representative in relation to the Services, who shall have the authority contractually to bind the Client on matters relating to the Services;
- (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by the Supplier or any of them;
- (d) prepare the premises of the Client for the supply of the Services;
- (e) provide, in a timely manner, such information and materials as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
- (f) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises;
- (g) ensure that all of the Client's equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, in all cases before the date on which the Services are to start;
- (i) keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the premises of the Client in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the written instructions or authorisation of the Supplier.

17.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

17.3 The Client shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to the Supplier confirming such costs, charges and losses to the Client in writing.

17.4 The Client shall not, without the prior written consent of the Supplier, at any time from the date of this Agreement to the expiry of 12 months after termination or expiry of this Agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

17.5 Any consent given by the Supplier in accordance with clause 4.4 shall be subject to the Client paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

## **18. CHARGES AND PAYMENT**

18.1 The Charges for the Services are as set out in the Order Form. The Charges are payable in the instalments set out in the Order Form. For the avoidance of any doubt, it is the Client's responsibility to ensure that payment reaches the Supplier's nominated account on or before the due date for payment taking into account, for example, bank transfer times and bank holidays.

18.2 The Supplier shall invoice the Client in advance of the Services with such invoice payable in the instalments set out in the Order Form. The Client shall pay each instalment:

- (a) on or before the dates set out in the Order Form; and
- (b) in full and cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Agreement.

18.3 The Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

18.4 If the Client fails to make any payment due to the Supplier under the Agreement by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Barclays Bank PLC from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

18.5 The Client shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

## **19. INTELLECTUAL PROPERTY RIGHTS**

19.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Supplier.

19.2 The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Agreement to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.

19.3 The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Agreement to use the Supplier's Intellectual Property Rights in the materials detailed in the Order Form (excluding materials provided by the Client) for the purpose of marketing the Supplier's supply of the Services to the Client.

19.4 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2 or clause 6.3.

19.5 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the Agreement for the purpose of providing the Services to the Client.

19.6 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the use by the Client of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Client.

19.7 All Supplier Materials are the exclusive property of the Supplier.

## **20. CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party

(**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Agreement.

## **21. LIMITATION OF LIABILITY**

- 21.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 21.2 Subject to clause 8.1, the Supplier shall not be liable to the Client, whether in Agreement, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of or damage to goodwill;
  - (f) loss of use or corruption of software, data or information; and
  - (g) any indirect or consequential loss.
- 21.3 Subject to clause 8.1, the Supplier's total liability to the Client, whether in Agreement, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £500,000.
- 21.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

21.5 This clause 8 shall survive termination of the Agreement.

## **22. TERMINATION**

22.1 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition order;
- (f) 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 its assets and such attachment or process is not discharged within 14 days;
- (g) 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 the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) 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 9.2(b) to clause 9.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Client's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

22.2 Without limiting its other rights or remedies, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Agreement on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

22.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Agreement or any other agreement between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(m), or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Agreement on the due date for payment.

## **23. CONSEQUENCES OF TERMINATION**

23.1 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

On termination of the Agreement for any reason:

- (a) the Client shall immediately pay to the Supplier all sums due under this Agreement;
- (b) the Client shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the premises of the Client and take possession of them. Until they have been returned, the Client shall be solely responsible for their



safe keeping and will not use them for any purpose not connected with this Agreement;

- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry;
- (d) the licenses granted in clauses 6.2 and 6.3 shall terminate immediately and the Client shall make no further use of the relevant materials; and
- (e) the following clauses shall continue in force: clause 4.1(h), (Supplier's Materials), clause 6 (Intellectual property rights), clause 7 (Confidentiality), clause 8 (Limitation of liability), clause 10.2 (Force Majeure), clause 13.9 (Governing law), clause 13.10 (Jurisdiction).

23.2 For the purposes of this Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to epidemics, pandemics, 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 network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation, direction or restriction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

23.3 The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

23.4 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 8 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Client.

## **24. TUPE**

24.1 The parties reasonably believe that at the commencement of this Agreement there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (**TUPE**). If, however, there is a relevant transfer, the Client shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier including without limitation all legal expenses and other professional fees (together with VAT thereon) in connection with such relevant transfer provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Supplier.

**25. DATA PROTECTION**

- 25.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 25.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor. The Order Form sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 25.3 Without prejudice to the generality of clause 12.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Client for the duration and purposes of this Agreement.
- 25.4 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by the Data Protection Legislation to otherwise process that Personal Data. Where the Supplier is relying on the Data Protection Legislation as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Data Protection Legislation unless the Data Protection Legislation prohibit the Supplier from so notifying the Client;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by the Data Protection Legislation to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 12.

25.5 The Client consents to the Supplier appointing third-party processors of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter into, with each such third-party processor, a written agreement incorporating terms which are substantially similar to those set out in this clause 12 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.4.

25.6 Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **26. GENERAL**

### **26.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

26.2 **Variation.** Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

26.3 **Waiver.** A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

26.4 **Rights and remedies** The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

26.5 **Severance.**

- (a) If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

26.6 **Entire Agreement**

- (a) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

26.7 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.7(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

26.8 **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.

26.9 **Governing law.** The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

26.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

26.11 **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.



