

# TERMS AND CONDITIONS

## Background

A. The Customer wishes to purchase Contact Tracing Solution and enter a Service Agreement to the terms outlined in the Schedule, and the Contractor has agreed to provide the Services according to the Specifications explained on our website [www.isafesms.com.au/contact-tracing](http://www.isafesms.com.au/contact-tracing).  
B. The parties have agreed to enter into this Agreement to record the terms and conditions for the provision of the Services according to the Specifications.

## 1. DEFINITIONS

1.1 Words used in this Agreement have the following meanings:

**Agreement** means this Services Agreement.

**Schedule** means the page entitled "Schedule" to which these terms and conditions are attached.

**GST** has the meaning given to it in the GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any associated Commonwealth legislation, regulations and publicly available rulings.

**Manufacturer** means provider for hard- and software

**Term** means the period commencing on the Commencement Date and ending on the Expiry Date, and the Further Term, if applicable.

**Product** means secure cloud-based software to monitor events and retrieve analytics; and GPS monitoring devices, a hardware component installed in vehicles and/or machinery to locate its position. Electronic recording of movement.

1.2 Expressions used in the Schedule bear a corresponding meaning in these terms and conditions unless the context requires otherwise.

## 2. PROVISION OF SERVICES

2.1 The Customer appoints the Contractor, and the Contractor accepts the appointment, to provide the Services during the Term for the Fees in accordance with the terms set out in this Agreement.

2.2 The Contractor's appointment is an appointment to:

- provide the Services to the Customer; and
- manage, monitor and administer the provision of the Services.

## 3. SPECIFICATIONS

3.1 The Contractor shall ensure that the Services are carried out in accordance with the Specifications or as otherwise directed by the Customer from time to time.

3.2 The Customer may require a change to the scope of the Specifications at any time during the Term by giving notice in writing to the Contractor.

3.3 The Contractor must comply with the notice and shall be bound by the notice as though the notice and any changes thereby made were included in this Agreement, except for the following

- such changes would constitute the provision of Additional Services, upon which clause 4 would apply.
- if the notice period for the service is less than 2 weeks, the service will be subject to the availability of contractor's staff.

## 4. ADDITIONAL SERVICES

4.1 If at any time during the performance of the Services, either the Customer or the Contractor identifies a need for the performance of additional services which do not form part of the agreed Services ("Additional Services"), the Customer or the Contractor, as the case may be, must advise the other party of the need, costs and if applicable, the urgency, of the Additional Services.

4.2 Before any Additional Services are undertaken, the scope and fees of the Additional Services must be agreed by the Customer and the Contractor in writing.

4.3 The terms of this Agreement will govern the performance of Additional Services approved by the Customer as if a reference to "Services" was a reference to "Additional Services".

## 5. RENEWAL OF TERM

5.1 If the Contractor has throughout the Term and is at the Expiry Date in full compliance with this Agreement, the Customer may at its election renew this Agreement for the Further Term.

5.2 If the Customer renews this Agreement under clause 5.1, the terms of this Agreement will govern the performance of Services during the Further Term as if a reference to "Term" was a reference to "Further Term".

## 6. CONTRACT PERIOD

6.1 The Customer shall pay to the Contractor during the Term the Fees in respect of the Services at the frequency specified in the Schedule.

6.2 The initial Fees are listed in the Schedule and remain in force until terminated by either party. We reserve the right to increase the fees in line with the Consumer Price Index.

6.3 Agreed price increases will not affect any services requested by the Customer with the Contractor prior to the parties reaching agreement under clause 6.2.

## 7. GENERAL OBLIGATIONS OF THE CONTRACTOR

The Contractor shall at all times during the Term ensure that:

- the Services are undertaken and completed:
  - in an efficient and workman-like manner;
  - in compliance with the reasonable instructions given by the Customer in respect of the relevant Services;
  - on or before the due time and date agreed with the Customer in respect of the relevant Services;
  - in compliance with all legal and ethical requirements;
    - licences that are required in respect of the Services to be carried out and completed in relation to the Sites; and
    - it is authorised and trained to operate vehicles, machinery and equipment required to carry out the Services;
  - in performing its obligations under and in connection with this Agreement, it complies with:
    - relevant legislation and other laws in relation to the provision of the Services, including the rules, regulations or by-laws of any lawful authority; and
    - the conditions of all consents, permits, licences and concessions held by the Contractor in relation to the Services.

## 8. INDEMNITIES

8.1 To the extent permitted by law, the Contractor is not liable to you or anyone else for loss or damage of any kind (however caused or arising) relating in any way to product and services including, but not limited to, loss or damage you might suffer as a result of:

- errors, mistakes or inaccuracies of the product;
- you are acting, or failing to act, on any information contained on or referred to on the product and/or any linked data;
- personal injury or property damage of any kind resulting from your access or use of the product;
- any unauthorised access to or use of the secure servers;
- any interruption or cessation of transmission to or from the product;
- any bugs, viruses, trojan horses or other harmful code or communications which may be transmitted to or through the cloud-based software; and/or
- the quality or fitness for any purpose of any linked sites.

8.2 Except as expressly provided in these terms, and to the fullest extent allowed by the law, the Contractor will not be liable for any direct, indirect, special, incidental or consequential damages arising out of your access to or use of the products. This clause is not intended to exclude or limit any rights which you may have under the *Competition and Consumer Act 2010* (Cth).

## 9. ASSIGNMENT

Neither party can assign its interest in this Agreement without the other party's consent in writing.

## 10. CONFIDENTIALITY

10.1 The Contractor must keep confidential all information and documents relating to the Customer's business ("Confidential Information").

10.2 The Contractor must not without the prior written consent of the other party, disclose Confidential Information to any third party, and each party shall take the appropriate measures to ensure that such confidentiality is preserved.

10.3 The obligations of confidentiality in this clause 12 survive the expiry or termination of this Agreement.

10.4 The Customer certifies that it shall hold the data in strict confidence and not disclose the information in the online platform to any party not involved. Furthermore, the Customer shall not use the data to create, compile, or maintain a database. This clause shall not prohibit disclosure of any information if and to the extent:

- the disclosure is required by the law, any competent court, any competent governmental or regulatory authority.
- the disclosure is required for the purpose of any judicial proceedings arising out of this contract or any other Contract entered into under or pursuant to this contract or the disclosure is reasonable required to be made to a tax authority in connection with the tax affairs or the disclosing party;

## 11. TERMINATION

11.1 Either party may terminate this Agreement at any time by giving 1 months' notice in writing to the other.

11.2 A party may terminate this Agreement, by giving written notice to the other party ("defaulting party") if any of the following circumstances occurs:

- if the defaulting party is in breach of this Agreement and fails to remedy the breach within 30 days of receiving a written notice of the breach from the non-defaulting party requiring the breach to be remedied.
- if the defaulting party is in breach of any provision of this Agreement which is not capable of remedy; and

(c) the appointment of a receiver and/or manager, liquidator, administrator, other controller or trustee in bankruptcy to the defaulting party or any of its assets.

## 12. RIGHTS AND OBLIGATIONS ON TERMINATION

**12.1** Termination of this Agreement will not release or discharge either party from any debt, obligation or liability which has accrued and remains to be performed by each party as at the date of such termination or which is intended by this Agreement to survive termination.

**12.2** Without limiting clause 14.1, on termination of the Agreement:

(a) the Contractor must perform those Services paid for by the Customer prior to termination.

(b) each party must return to the other all tangible records of Confidential Information of the other party.

## 13. MANUFACTURER WARRANTY

**13.1** Any warranties, representations and indemnities given under this Agreement survive termination of this Agreement. The customer is entitled to the following:

(a) Purchase Receipt (Service Agreement) must be retained as proof of purchase in order for your guarantee to be valid. These documents must be presented in the event of making a claim.

(b) The manufacturer guarantees all products against defects caused by faulty workmanship and materials for twelve months from date of purchase.

(c) During this guarantee period the manufacturer will repair or replace any defective product. However, if the product includes a number of accessories, only the defective part or accessory will be replaced. The manufacturer reserves the right to make minor adjustments instead of replacing the product or accessory. Packaging, instructions, etc. will not be replaced unless faulty.

(d) Subject to your statutory rights as to the merchantable quality of the product or accessory. In the event of a product or accessory being replaced during the guarantee, the guarantee on the replacement will expire at the original date, i.e., 12 months from the original purchase date.

(e) This Guarantee excludes defects caused by the product not being used in accordance with instructions, accidental damage, misuse or being tampered with by unauthorised persons.

(f) If failure or fault occurs, please contact the contractor.

(g) The goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled: to cancel the service agreement.

or to a refund for the unused portion, or to compensation for its reduced value.

## 14. GENERAL

### 14.1 Interpretation

(a) Words denoting the singular number include the plural and vice versa.

(b) Reference to "the Contractor" in these terms and conditions shall be taken, where relevant, to be a reference to its employees, agents, and permitted sub-contractors.

(c) Reference to any legislation or to any section or provision includes any statutory modification, re-enactment or substituted section or provision, and includes any relevant subordinate legislation.

(d) References to \$ or AUD are to Australian dollars.

### 14.2 Independent Contractor

The Contractor is an independent contractor. Nothing in this Agreement creates a joint venture, partnership, or agency relationship between the parties.

### 14.3 GST

(a) Unless otherwise stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

(b) If GST is imposed on or in respect of any supply made under or in connection with this Agreement then the consideration payable for that supply by the recipient of the supply is increased by an amount determined by multiplying the consideration otherwise payable by the rate at which GST is imposed.

(c) GST amounts payable under this clause 15.3 will be payable at the same time the other consideration for the supply is payable.

### 14.4 Communication

Notices and other communications to be exchanged between the parties may be sent by courier, post, fax or via electronic mail, to that party's address specified in the Schedule, or such other address notified by that party from time to time. Communications sent by:

(a) courier are deemed received by the receiving party when proof of receipt has been signed;

(b) sent via post are deemed received three days after the date of posting;

(c) sent via fax or electronic mail are deemed received immediately after sending unless the sender receives advice of unsuccessful transmission.

### 14.5 Further Assurances

Each party must promptly sign all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

### 14.6 Force Majeure

Neither party will be liable to the other for any failure to comply with this Agreement where the failure is due to circumstances which are not directly within the party's control, including acts of terrorism, natural disaster, industrial action, or a failure of a supplier, public utility or common carrier, provided the affected party diligently commences and continues its obligations under this Agreement promptly upon the removal of such cause.

### 14.7 Variation

No amendment or variation of this Agreement will be binding unless made in writing and signed by an authorised representative of each party.

### 14.8 Dispute Resolution

(a) If any dispute, controversy or claim arises out of or in respect of this Agreement, the parties shall endeavour to resolve the matter by negotiation, and failing negotiation, the parties shall refer same to mediation administered by such person or organisation as the parties may determine by agreement or, failing agreement by the Australian Commercial Disputes Centre.

(b) The mediation of any dispute, controversy or claim referred to in clause 14.8(a) shall be conducted at Brisbane or at such other place as the parties may agree.

(c) The mediation shall be held in accordance with the rules laid down by the mediator.

### 14.9 No waiver

A right created under this Agreement may not be waived except in writing signed by the party granting the waiver.

### 14.10 Costs

Each party will pay its own costs, including legal costs, of and incidental to the preparation and negotiation of this Agreement.

### 14.11 Entire Agreement

This Agreement contains the parties' complete Agreement between them with respect to the Services.

### 14.12 Applicable Law

This Agreement is governed by the laws of the State of Queensland. ■