



## 1. DEFINED TERMS AND INTERPRETATION

### 1.1 Defined terms

In this document:

*Agreement* means the agreement between you and us comprised of these Terms, all Order Forms and each Service Description.

*Applicable Laws* means all legislation, rules, regulations or industry codes of practice which are binding on us and relate to the provision of any of the Services.

*Business Day* means any day other than a Saturday, Sunday or public holiday in Auckland, New Zealand.

*Business Hours* means 8:00am – 6:00pm (AEDT) on a Business Day.

*Charges* means the charges for Supplied Equipment and Services set out in the Order Form.

*Commencement Date* means the date specified in the Order Form.

*Confidential Information* has the meaning ascribed to it in clause 10.1.

*Consulting Services* means the training, set up and consulting services described in the Order Form.

*Contract Period* means the contract period set out in the Order Form.

*Force Majeure Event* means any cause beyond our reasonable control including any act of God, governmental act, war, fire, flood, explosion, civil commotion, strike, lockout or other industrial action (including any such action by one of our sub-contractors) provided that a Force Majeure Event does not include:

- (a) any event which we could have avoided or overcome by exercising a standard of reasonable care at a reasonable cost;
- (b) a lack of funds for any reason or any other inability to pay; or
- (c) a strike, lockout, work stoppage or other labour hindrance by employees of a party unless the strike is part of an industry wide campaign which does not arise out of a dispute between us and our employee(s).

*GST* means any goods and services tax or valued added tax applicable to the Services.

*Guardian Angel Portal* means the online portal maintained by us and used by you and us to administer and record the Monitored Equipment, Monitoring Services, Services and Worker details.

*Intellectual Property* means all statutory, proprietary and common law rights in patents, designs, layout designs, copyright, trade marks, confidential information, know-how, inventions and

databases, whether registered or unregistered, and any applications to register any of the same, whether currently existing or arising in the future, anywhere in the world.

*Monitored Equipment* means:

- (a) the devices specified in an Order Form; and
- (b) any devices added to the Guardian Angel Portal by you or us, provided that such devices are in an operational status, and that such additions are approved by both parties,

as amended from time to time using the Guardian Angel Portal.

*Monitoring Service* means the service of providing a telecommunications link between the Monitored Equipment and our monitoring centre and notifying the relevant person or organisation if there is a Notification.

*Notification* means an event where the Monitored Equipment held by a Worker sends a message to the monitoring station.

*Order Form* means the order form setting out the details of the Services and Charges that you and we have completed and signed.

*Service Description* means the document describing the features and specific terms and conditions that govern the supply of a specific item of Supplied Equipment or a Service as provided by us to you from time to time.

*Services* means the services to be performed by us under this Agreement as described in the Order Form and recorded in the Guardian Angel Portal.

*Supplied Equipment* means any device that we sell to you from time to time.

*We, us and our* means Guardian Angel Safety Limited.

*Worker* means a person nominated by you to carry Monitored Equipment (or, where Monitored Equipment is a vehicle, driven by that person) and to be monitored using the Monitoring Services.

*You and your* means the customer named in the relevant Order Form.

## **1.2 Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) words importing one gender include any gender;
- (b) words importing the singular include the plural and vice versa;
- (c) the terms *including, includes and include* are deemed to include the words “without limitation” after those terms;
- (d) a reference to a *person* includes a company, other corporations and also a body of persons (whether incorporated or not);
- (e) where words or expressions are defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings; and
- (f) any reference to any statute or regulations is a reference to that statute or regulations as amended, novated, supplemented or replaced.

## **2. TERM**

### **2.1 Contract Period**

This Agreement commences on the Commencement Date and will continue, in relation to the relevant Services, for the Contract Period unless terminated earlier in accordance with clause 17.

### **2.2 Extended term**

Following the expiry of the Contract Period, either you or we may terminate this Agreement in relation to the relevant Services by giving not less than 90 days written notice.

## **3. EQUIPMENT AND SERVICES**

### **3.1 General**

We will:

- (a) provide Consulting Services in accordance with the Order Form;
- (b) sell you Supplied Equipment in accordance with the Order Form ;
- (c) provide Monitoring Services to you in accordance with the Order Form, the Guardian Angel Portal and any other documents issued by us which describe the Monitoring Service;
- (d) if there is a Notification, perform the actions in accordance with the response level recorded in the Guardian Angel Portal;
- (e) make a help desk available to you during Business Hours (with the ability to log voice and email messages at any time outside these hours);
- (f) provide training in the use of the Services at your cost when reasonably required and agreed with you;
- (g) maintain a disaster recovery plan and business continuity plan in order to continue to provide the Services during a Force Majeure Event;
- (h) provide you with such other services as may be agreed between you and us in writing; and
- (i) ensure that:
  - (i) we have all of the necessary agreements in place to provide the Services to you;
  - (ii) the Services are performed by appropriately qualified and trained personnel and in accordance with best industry practice; and
  - (iii) the Services are rendered with due care and skill.

### **3.2 Responses to Notifications**

If the response level recorded in the Guardian Angel Portal states that we will contact a security guard company when we receive a Notification, then:

- (a) you acknowledge and agree that the security guard will not:
  - (i) apprehend any individual if there is a potential safety risk; or
  - (ii) enter an area of potential risk,and is not guaranteed to have first aid skills but will stay with an injured Worker until emergency services arrive; and
- (b) you will pay us for each such attendance at the rate applicable at the time.

## **4. YOUR OBLIGATIONS**

### **4.1 Confirmation**

You confirm to us that:

- (a) you have been advised of the different monitoring technologies that are available; and
- (b) you have selected the Supplied Equipment, Monitored Equipment and Services based on your own judgment and not in reliance on any representation or warranty by us.

### **4.2 Obligations**

You will:

- (a) obtain from each Worker consent to allow us to provide the Monitoring Services in relation to that person in accordance with this Agreement;
- (b) enter the details for each Worker into the Guardian Angel Portal; and
- (c) pay any expenses associated with a Notification that involves contacting a third party service provider or the emergency services (and indemnify us against any such expenses).

## **5. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

- (a) You acknowledge that this Agreement creates a security interest in the Supplied Equipment until such time as you have paid us in full for the Supplied Equipment and that this security interest is registrable on the *Personal Property Securities Register*.
- (b) You must sign and deliver any documents that we require to ensure that we have a perfected first ranking security interest in the Supplied Equipment under the PPSA. You shall indemnify us for any costs incurred in registering or maintaining our security interest and/or (if relevant) exercising our rights in Part 9 of the PPSA.
- (c) You waive any right to receive a copy of a verification statement (as defined in the PPSA) under the PPSA and agree to the extent permitted by law that if Part 9 of the PPSA applies to this Agreement (which the parties do not expect or intend):
  - (i) where we have rights in addition to, or existing separately from those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA;
  - (ii) sections 114(1)(a), 133 and 134 of the PPSA will not apply; and
  - (iii) you will have none of the rights referred to in sections 116, 120(2), 125, 129 and 131 of the PPSA and you waive your rights to object under section 121.

## **6. INTELLECTUAL PROPERTY**

### **6.1 Existing Intellectual Property**

All Intellectual Property that is not created, developed or prepared under this Agreement or in connection with the Services shall remain the property of its current owner. Each party agrees that, except for any licences specifically granted pursuant to this Agreement, it shall acquire no right, title or interest in or to the other party's Intellectual Property.

### **6.2 Modifications to existing Intellectual Property**

Unless otherwise agreed in writing by the parties, any improvements, developments or modifications to:

- (a) your existing Intellectual Property created by, or on behalf of, either party during the term of this Agreement and all Intellectual Property therein, will vest absolutely and automatically upon creation in you; and
- (b) our existing Intellectual Property created by, or on behalf of, either party during the term of this Agreement and all Intellectual Property therein, will vest absolutely and automatically upon creation in us.

### **6.3 New Intellectual Property**

Any new Intellectual Property created, developed or prepared by either party (including its agents and employees) under this Agreement or in connection with the Services, together with all modifications, adaptations or developments thereto will, unless agreed otherwise in writing, be owned by the party that creates that new Intellectual Property.

### **6.4 Warranty**

We warrant that the performance of the Services does not and will not infringe any Intellectual Property rights of any third party.

## **7. CHARGES AND PAYMENTS**

### **7.1 Charges**

The Charges payable for the Services:

- (a) are set out in the Order Form; and
- (b) are exclusive of GST (if any).

### **7.2 Obligation to pay**

You will pay the Charges (plus GST) to us in accordance with each invoice in cleared funds without any deduction or withholding:

- (a) for Supplied Equipment, within 14 days of the date of the relevant invoice; and
- (b) for Consulting Services, Monitoring Services and all other Services, on or before the 20<sup>th</sup> of the month following invoice.

### **7.3 Monitoring Services**

Charges for Monitoring Services are payable monthly in advance. We will begin invoicing you for Monitoring Services in respect of each item of Monitored Equipment on the date that we commence providing Monitoring Services for that Monitored Equipment .

### **7.4 Amendments to Charges**

We may amend the Charges:

- (a) by giving you 30 days' written notice if our supplier's charges increase or there is a change to foreign exchange rates that increases our New Zealand dollar costs; and
- (b) on each anniversary of the Commencement Date by giving you 30 days written notice.

### **7.5 Payment period**

- (a) We will invoice you:
  - (i) for Consulting Services at the end of each month or on completion of such Consulting Services;
  - (ii) for each item of Supplied Equipment when you place an order; and
  - (iii) for Monitoring Services, monthly in advance.

- (b) If you do not pay an invoice on the due date, we may charge daily interest for late payment at the rate of 18% per annum from the due date until the date that we receive payment.

## **7.6 Set off**

We may set off any amounts due to us by you under this Agreement against any amounts payable by us to you.

## **7.7 Suspension of Monitoring Services**

We may suspend performance of the Monitoring Services by giving you 7 days' written notice if you have not paid any invoice in full on the due date including by:

- (a) preventing Monitored Equipment from communicating with the monitoring station;
- (b) not responding to Notifications,

and we shall not be liable to you for any loss or damage that you may suffer or incur, and you shall indemnify us against any loss or damage that we may suffer or incur, as a consequence of suspending such Services.

## **8. COMPLIANCE WITH LAWS**

### **8.1 Our obligations**

We shall ensure that our performance of the Services complies with Applicable Laws.

### **8.2 Privacy**

You shall ensure that all Workers have consented to the use and disclosure of any personal information provided to us in the course of providing the Services as required by Applicable Laws.

## **9. REPORTS AND RECORDS**

### **9.1 Reports**

We will provide you with regular reports relating to the provision of the Services.

### **9.2 Records**

We will:

- (a) keep full and accurate records of all work performed in providing the Services;
- (b) meet with you to discuss the Services when reasonably requested; and
- (c) allow you to inspect our records relating to the performance of the Services on reasonable notice during Business Hours.

## **10. CONFIDENTIALITY**

### **10.1 Confidentiality**

Each party:

- (a) agrees that all information in relation to the Services, this Agreement and any trade secrets (including without limitation, the terms of this Agreement) communicated to one party (*Recipient Party*) by the other party (*Disclosing Party*) whether before or after the Commencement Date (*Confidential Information*):
  - (i) are kept strictly confidential;
  - (ii) will be used by the Recipient Party only for the purposes of this Agreement;

- (iii) will not be disclosed to any third party without the prior written consent of the other party; and
- (b) will take the same measures (being not less than reasonable measures) to protect the other party's Confidential Information in its possession, as it takes to protect the confidentiality of its own information.

## **10.2 Exclusions**

The confidentiality obligations in clause 10.1 do not apply to any Confidential Information that:

- (a) was, or after the Commencement Date becomes, generally available to the public through no fault of the Recipient Party;
- (b) was, prior to the time of disclosure, already in the possession of the Recipient Party without an obligation of confidence;
- (c) is, after the time of disclosure, lawfully received from a third party under no secrecy obligation to the Disclosing Party;
- (d) is required to be disclosed by court order or any enactment or rule of law, provided that the Recipient Party immediately notifies the Disclosing Party that a requirement to disclose has arisen by law and provides the Disclosing Party with a reasonable opportunity to take such action as the Disclosing Party considers necessary prior to disclosure provided that nothing in this clause 10.2(d) shall prevent the Recipient Party from discharging its obligations under law in full and on time;
- (e) is disclosed to any stock exchange, to the extent that such disclosure is required pursuant to the listing rules of that stock exchange and provided that, to the extent consistent with enabling the Recipient Party to discharge obligations under any applicable regulatory requirements in full and on time, the Disclosing Party first having the opportunity to review or comment on the formal content of the proposed disclosure; or
- (f) is independently developed by the Recipient Party without using the Disclosing Party's Confidential Information.

## **10.3 Further acknowledgment**

In particular, and without limiting clause 10.1, the parties acknowledge and agree that in the performance of this Agreement, they and their personnel:

- (a) may have access to third party confidential information (and Intellectual Property) provided to the other party as part of its business; and
- (b) shall treat that third party confidential information and Intellectual Property as if it was Confidential Information.

## **10.4 Personnel**

Each party shall:

- (a) advise its personnel who receive the other party's Confidential Information of its confidential nature;
- (b) ensure that such personnel who receive any Confidential Information comply with the confidentiality provisions of this clause 10, and shall be responsible to the other party for the acts and omissions of such personnel; and
- (c) be responsible for the acts and omissions of such personnel in relation to the confidentiality obligations of this clause 10.

## **10.5 Return of information**

Upon the request of the Disclosing Party or on the effective date of termination or expiry of this Agreement, the Recipient Party shall, as soon as reasonably possible but within 20 Business Days:

- (a) return to the Disclosing Party (without keeping or making any copy); or
- (b) at the option of the Disclosing Party, destroy,

all requested Confidential Information of the Disclosing Party still in the Recipient Party's possession and provide written confirmation of such action to the Disclosing Party. To avoid doubt, a party is not required to return information provided to it by the other party where that information has become the property of the Recipient Party.

## **10.6 Notice of loss, damage or misuse**

- (a) The Recipient Party will as soon as reasonably possible notify the Disclosing Party of any loss of or damage to or any unauthorised access, use, modification or disclosure or other misuse of the Disclosing Party's Confidential Information.
- (b) Without prejudice to any other right or remedy Disclosing Party may have, the Recipient Party will promptly make good any loss of or damage to or other misuse of the Disclosing Party's Confidential Information whilst in the Recipient Party's possession.
- (c) The Recipient Party will as soon as reasonably possible notify the Disclosing Party of any event or circumstance that might result in a claim against either party in regards to the misuse of the Disclosing Party's Confidential Information.

## **11. WARRANTIES**

### **11.1 Mutual warranties**

Each party represents and warrants to the other party that:

- (a) it has full power and capacity to execute, deliver and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement:
  - (i) has been duly authorised by all necessary action; and
  - (ii) will not breach the terms and conditions of, or constitute a default under, any other agreement, undertaking or arrangement to which it is a party or bound, or breach any law applicable to it or by which it is bound;
- (c) this Agreement constitutes its legal, valid and binding obligations, enforceable in accordance with its terms;
- (d) it has not taken any action, nor have any other steps been taken or legal steps been commenced or threatened against it, for its liquidation, dissolution or re-organisation;
- (e) it is not in default under any agreement to which it is a party, or which is binding upon it or any of its assets, to an extent or in a manner which will have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (f) no action or administrative proceedings of or before any court or agency which will have a material adverse effect on its ability to perform its obligations under this Agreement has been commenced or threatened against it.



## **11.2 Supplied Equipment warranty**

We warrant that any Supplied Equipment shall be free from defective manufacturer's workmanship and materials for a period of 12 months from the date of delivery of such Supplied Equipment (or such longer period as set out in the manufacturer's warranty). If there is a warranty claim in respect of any Supplied Equipment, you must return such Supplied Equipment to us at your own cost. If the Supplied Equipment is covered by our warranty, we will repair or replace the Supplied Equipment and return it to you at our own cost.

## **11.3 No other warranties**

- (a) To the extent permitted by law, all conditions, warranties, guarantees and representations that could be implied into this agreement are expressly negated and excluded.
- (b) We and you agree that: to the extent that the services are provided for the purpose of a business, the provisions of the *Consumer Guarantees Act 1993* shall not apply.

## **12. INDEMNITY**

Each party (*First Party*) shall indemnify the other party from and against all liabilities, claims, damages, losses, costs and expenses arising from the First Party's breach of this Agreement or the First Party's negligent or unlawful act or omission that results in damage to any property, or the injury or death of any person.

## **13. LIABILITY**

### **13.1 Exclusion of liability**

In no event will any measure of damages awarded against a party in relation to this Agreement include, nor will a party be liable for, any amounts for damages to the extent caused by:

- (a) the other party's failure to perform its obligations under this Agreement;
- (b) the other party's accidental, negligent or wilful acts; or
- (c) the occurrence of a Force Majeure Event affecting either party.

### **13.2 No consequential loss**

Neither party shall be liable to the other party you in tort, contract or otherwise for any loss of income, profit or anticipated savings or for any indirect, incidental, special, consequential or punitive damages arising out of or in connection with its performance or non-performance of this Agreement.

### **13.3 Limitation of liability**

Our liability to you in connection with this Agreement shall be limited to an amount equal to the Charges paid by you to us during the 12 months prior to the relevant breach.

## **14. FORCE MAJEURE**

### **14.1 Force Majeure**

Neither party will be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any Force Majeure Event and the performance of the affected party's obligations, to the extent affected by the Force Majeure Event, will be suspended during the period that the cause persists.

### **14.2 Notice**

A party claiming the benefit of clause 14.1 will promptly notify the other party specifying the cause and extent of its inability to perform any of its obligations and the likely duration of such

non-performance. The affected party will take all reasonable steps to remedy or mitigate the Force Majeure Event for the duration of the non-performance.

#### **14.3 Industrial action**

No party will, by virtue of clause 14.2, be required against its will to settle any strike, lockout or other industrial action or disturbance.

#### **14.4 Termination**

If by reason of a Force Majeure Event a party is unable to perform any obligations under this Agreement for a period of 1 month, the other party may on written notice to that party terminate this Agreement.

### **15. RELATIONSHIP BETWEEN THE PARTIES**

Except as expressly provided in this Agreement or otherwise agreed in writing by the parties nothing in this Agreement will create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties.

### **16. DISPUTE RESOLUTION**

#### **16.1 Notice of dispute**

A party must, as soon as reasonably practicable, give the other party notice of any dispute arising under or in connection with this Agreement.

#### **16.2 Internal dispute resolution**

Any dispute will be referred initially to the parties' respective relationship managers, who will endeavour to resolve the dispute within 10 Business Days of receiving the dispute notice.

#### **16.3 Mediation**

If the parties fail to resolve the dispute under clause 16.2, either party may refer the dispute to mediation. Either party may initiate mediation by giving written notice to the other party. If the parties cannot agree on a mediator within 5 Business Days after mediation has been initiated, then the mediator will be selected by the Chair of the Resolution Institute at the request of either party. The costs of mediation will be shared equally by the parties. If the dispute is not resolved within 5 Business Days (or such longer period as the parties agree) after commencing mediation, then either party may pursue the dispute through legal proceedings.

#### **16.4 Legal Proceedings**

Nothing in this clause 16 affects either party's right to seek urgent interlocutory relief from the courts.

### **17. TERMINATION**

#### **17.1 Termination by either party**

Either party may terminate this Agreement with immediate effect by giving written notice of termination to the other party:

- (a) in accordance with clause 14.4;
- (b) if the other party breaches a material provision of this Agreement and fails to remedy the breach within 20 Business Days after receiving written notice requiring it to do so;
- (c) if the other party breaches a provision of this Agreement where that breach is not capable of remedy; or
- (d) on the occurrence of any of the following:

- (i) the other party ceases to carry on business;
- (ii) the other party ceases to be able to pay its debts as they become due;
- (iii) any step is taken by a mortgagee to take possession or dispose of the whole or part of the other party's assets, operations or business;
- (iv) any step is taken to enter into any arrangement between the other party and its creditors; or
- (v) any step is taken to appoint a receiver, a trustee and manager (or either of them) (including a statutory manager), a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of the other party's assets, operations or business.

## **17.2 Consequences of termination**

- (a) Upon termination, you must pay any outstanding invoices and for any Services and Supplied Equipment provided by us prior to termination.
- (b) If we terminate this Agreement under clauses 17.1(b) or 17.1(c), then you must pay us:
  - (i) any third party costs or expenses that we incur, including our suppliers' early termination fees; and
  - (ii) the Charges for Monitoring Services for the balance of the Contract Period as liquidated damages.
- (c) Termination of this Agreement will not affect any rights or remedies each party may have accrued before the date of termination.
- (d) On the termination or expiry of this Agreement, you must ensure that the Monitored Equipment stops communicating with the monitoring station (at your own cost) and you shall indemnify us for any costs that we may incur if any item of Monitored Equipment continues to communicate with the monitoring station.

## **17.3 Survival**

The provisions of clauses 4, 10, 12, 17 and 18 will survive termination of this Agreement.

## **18. GENERAL**

### **18.1 Governing law**

This Agreement will be governed by and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts in New Zealand.

### **18.2 Waiver**

No delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement will operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement will not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed.

### **18.3 Entire Agreement**

Except as otherwise expressly provided in this Agreement, this Agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.

**18.4 Severability**

If any provision of this Agreement is or becomes unenforceable, illegal or invalid for any reason it will be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and will not affect the enforceability, legality, validity or application of any other provision of this Agreement.

**18.5 Publicity**

Neither party will advertise, or publicly announce any matter relating to this Agreement without the other party's prior written consent.

**18.6 Variations**

Any variation to this Agreement must be in writing and signed by each party.

**18.7 Notice**

Every notice to be given under, or in connection with, this Agreement will be given in writing by:

- (a) personal delivery;
- (b) mailing by fast post or airmail post, and will be deemed to be given 5 Business Day after the date of mailing; or
- (c) email, and will be deemed to be given at the time specified in the read receipt report of the sender's email system,

to the addresses set out in the Order Form. Notwithstanding any other provision contained in this clause 18.7 any notice given on a day which is not a Business Day, or if given after 5:00pm in the place in which it is given will be deemed to be given at 9am on the next Business Day.

**18.8 Assignment**

We may assign or novate any of our rights or obligations arising out of this Agreement to any person by giving you a written notice. You irrevocably appoint us as your attorney for these purposes. You shall not assign or novate any of your rights or obligations under this Agreement to any third party without our prior written consent (which consent will not be unreasonably delayed or withheld).