

# The Small Print

CR02, April 2020, v2.3.

# Terms of Engagement Security Services

## 0. Background

- 0.1. Code 9 Security Ltd, a Company registered in England and Wales with Company No. 09948713, and Registered Office at 16 Glenmore Business Park, Telford Road, Salisbury, SP2 7GL (the "Company") is in the business of providing private security services.
- 0.2. The Client agrees to obtain and Code 9 Security Ltd agrees to provide the Services on the terms set out in this Agreement.

## 1. Interpretation

The following definitions and rules of interpretation apply in the agreement.

### 1.1. Definitions

<b>Affiliate</b>	any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.
<b>Anniversary Date</b>	the anniversary date is defined in Schedule 1.
<b>Applicable Laws</b>	all applicable laws, statutes, regulations and codes from time to time in force.
<b>Business Day</b>	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Business Hours</b>	the period from 09:00 to 17:00 on any Business Day.
<b>Change Order</b>	has the meaning given in Clause 7.1.
<b>Charges</b>	the sums payable for the Services, as set out in Schedule 2.
<b>Commencement Date</b>	the date on which the provision of Services shall commence, as set out in Schedule 1.
<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures</b>	as defined in the Data Protection Legislation
<b>Client's Equipment</b>	any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in Schedule 1.
<b>Client Materials</b>	all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to Code 9 Security Ltd in connection with the Services, including the items provided pursuant to Clause 5.1.4.
<b>Data Protection Legislation</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables** any output of the Services to be provided by Code 9 Security Ltd to the Client as specified in Schedule 1 and any other documents, products and materials provided by Code 9 Security Ltd to the Client in relation to the Services (excluding Code 9 Security Ltd's Equipment).

**Intellectual Property Rights** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

**Mandatory Policies** the Client's business policies and codes listed in Schedule 3, as amended by notification to Code 9 Security Ltd from time to time.

**Milestones** a date by which a part of the Services is to be completed, as set out in Schedule 1.

**Services** the services as set out in Schedule 1, including services which are incidental or ancillary to such services.

**Supplier's Equipment** any equipment, including tools, systems, cabling or facilities, provided by Code 9 Security Ltd to the Client and used directly or indirectly in the supply of the Services including any such items specified in Schedule 1 but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Client.

**UK 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.

**VAT** value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

- 1.10. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.11. A reference to writing or written includes letter and email but not fax.
- 1.12. An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13. A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.14. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Commencement and Duration

- 2.1. This Agreement shall commence on the date when it has been signed by the parties and shall continue unless terminated earlier in accordance with Clause 14 (Termination), or the expiry of a defined term.
- 2.2. Either party may, by the giving of not less than 3-months written notice, elect to terminate the Agreement on the anniversary date.
- 2.3. The Agreement shall be deemed to renew automatically on the anniversary date save where notice is received by either party to terminate, per Clause 2.2 above.
- 2.4. Code 9 Security Ltd shall provide the Services to the Client in accordance with this Agreement from the Commencement Date nominated in the Client Care Schedule.

## 3. Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

- 3.1. The provisions of Schedule 4 relating to TUPE shall apply when this Agreement commences.

## 4. Our Responsibilities

- 4.1. Code 9 Security shall use best endeavours to supply, manage and complete the Services, and deliver the Deliverables to the Client in accordance with this Agreement in all material respects.
- 4.2. Code 9 Security Ltd shall use best endeavours to meet any performance dates or milestones specified in Schedule 1 but any such dates shall be estimates only and time for performance by Code 9 Security Ltd shall not be the essence of this Agreement.
- 4.3. Code 9 Security Ltd shall appoint a Security Practitioner for the Services, such person as identified in Schedule 1. That person shall have authority to contractually bind Code 9 Security Ltd on all matters relating to the Services (including by signing Change Orders). Code 9 Security Ltd shall use all best endeavours to ensure the same person acts as the Security Practitioner throughout the term of this Agreement but may replace that person from time to time where reasonably necessary in the interests of Code 9 Security Ltd's business.
- 4.4. Code 9 Security Ltd shall use best endeavours to observe all health, safety, welfare and security requirements that apply at any of the Client's premises and have been communicated to it under Clause 5.1.5 and which are set out in Schedule 3, provided 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.

## 5. Client's Obligations

- 5.1. The Client shall:
  - 5.1.1. cooperate with Code 9 Security Ltd in all matters relating to the Services;
  - 5.1.2. appoint a manager for the Services, such a person as identified in Schedule 1. That person shall have the authority to contractually bind the Client on matters relating to the Services (including by signing Change Orders);
  - 5.1.3. provide for Code 9 Security Ltd, 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 Code 9 Security Ltd including any such access as is specified in Schedule 1;
  - 5.1.4. provide to Code 9 Security Ltd in a timely manner all documents, information, items and materials in any form (whether owned by the Client or third party) required under Schedule 1 or otherwise reasonably required by Code 9 Security Ltd in connection with the Services and ensure they are accurate and complete in all material respects;
  - 5.1.5. inform Code 9 Security Ltd of all health and safety and security requirements that apply at any of the Client's premises, such requirements are as set out in Schedule 3. If the Client wishes to make a change to those requirements which will materially

- 5.1.6. affect provision of the Services, it can only do so via the change control procedure set out in Clause 7 (Change control); ensure all 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;
- 5.1.7. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Code 9 Security Ltd to provide the Services, including in relation to the installation of the Code 9 Security Ltd's Equipment, the use of all Client Materials and the use of the Client's Equipment insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
- 5.1.8. keep, maintain Code 9 Security Ltd's Equipment in good condition and in accordance with Code 9 Security Ltd's instructions from time to time and shall not dispose of or use the Code 9 Security Ltd's Equipment other than in accordance with the Code 9 Security Ltd's written instructions or authorisation;
- 5.2. If Code 9 Security Ltd'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, then, without prejudice to any other right or remedy it may have, Code 9 Security Ltd shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.

## 6. Non-Solicitation

- 6.1. Except in respect of any transfer of employees of Code 9 Security Ltd to the Client pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), the Client shall not, without the prior written consent of Code 9 Security Ltd, at any time from the date of this Agreement to the expiry of 12-months after the termination or expiry of this Agreement, solicit or entice away from Code 9 Security Ltd or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Code 9 Security Ltd in the provision of the Services.
- 6.2. Any consent given by Code 9 Security Ltd in accordance with Clause 6.1 shall be subject to the Client paying to Code 9 Security Ltd a sum equivalent to 25% of the then current annual remuneration of Code 9 Security Ltd's employee, consultant or subcontractor or, if higher, 25% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

## 7. Change Control

- 7.1. Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
  - 7.1.1. the Services;
  - 7.1.2. Code 9 Security Ltd's existing Charges;
  - 7.1.3. the timetable of the Services; and
  - 7.1.4. any of the terms of this Agreement.
- 7.2. If Code 9 Security Ltd wishes to make a change to the Services it shall provide a draft Change Order to the Client.
- 7.3. If the Client wishes to make a change to the Services:
  - 7.3.1. it shall notify Code 9 Security Ltd and provide as much detail as Code 9 Security Ltd reasonably requires of the proposed changes, including the timing of the proposed changes; and
  - 7.3.2. Code 9 Security Ltd shall, as soon as reasonably practicable after receiving the information at Clause 7.3.1, provide a draft Change Order to the Client.
- 7.4. If the parties:
  - 7.4.1. agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or
  - 7.4.2. are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Clause 28 (Multi-tiered dispute resolution procedure).
  - 7.4.3. Code 9 Security Ltd may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Client pursuant to Clause 7.3 on a time and materials basis at Code 9 Security Ltd's rates specified in Schedule 2.

## 8. Charges and Payment

- 8.1. In consideration of the provision of the Services by Code 9 Security Ltd, the Client shall pay the Charges.
- 8.2. Unless otherwise agreed, our Charges will be calculated principally by reference to the time spent by Code 9 Security Ltd in providing our services at the standard hourly rates applicable to the relevant Security Practitioner, Security Officer or employee. Time will be charged in minimum units of 15-minutes.

- 8.3. The term 'time spent' includes:
- 8.3.1. Time spent in the undertaking of duties pertaining to this assignment, e.g. guarding;
  - 8.3.2. Time spent in the drafting of reports, statements of other such documentation;
  - 8.3.3. Meetings with you, your colleagues and others;
  - 8.3.4. Telephone calls made and received, where those telephone calls are not incidental to the assignment;
  - 8.3.5. Correspondence and communications of all kinds sent and received, that are not incidental to the assignment;
  - 8.3.6. Time spent in dealing with assignments that are necessary as a natural consequence of the assignment, e.g., attending Court, police interviews or statement writing.
- 8.4. Code 9 Security Ltd's charges will consist of four elements:
- 8.4.1. Time Spent
    - 8.4.1.1. Code 9 Security Ltd will charge an hourly rate for all time spent on your assignment in accordance with Schedule 2 and will be calculated on a time spent basis. Code 9 Security Ltd reviews its charging annually to take account of changes in administrative costs, inflation and relevant third-party changes. Code 9 Security Ltd will notify you in writing of any increase in our Charges.
  - 8.4.2. Value-Added Tax
    - 8.4.2.1. Code 9 Security Ltd must add value-added tax ("VAT") to the charges and certain other expenses with each invoice.
    - 8.4.2.2. Our VAT Registration Number is GB 260 8035 22
  - 8.4.3. Expenses
    - 8.4.3.1. It may be necessary to incur expenses (often called "disbursements"). Code 9 Security Ltd will notify you in advance, where possible, of the estimated or actual amount and the reason for any expenses. Where expenses are likely to exceed £100 (exclusive of VAT), Code 9 Security Ltd may require you to make payment on account to cover the cost of those expenses.
  - 8.4.4. Fixed Charges
    - 8.4.4.1. Keyholding Services
      - 8.4.4.1.1. Code 9 Security Ltd charges an annual retained charge of £365.00 plus VAT for keyholding services, applicable to each individual premises.
- 8.5. Bank Holidays, Public Holidays and Christmas Festivities
- 8.5.1. Code 9 Security Ltd charges shall be calculated at twice the Schedule 2 tariff on bank holidays, public holidays, Easter Sunday, Christmas Eve, Christmas Day, New Years' Eve and New Years' Day.
  - 8.5.2. Code 9 Security Ltd will review its pricing in November of each year with those changes taking effect from January.
- 8.6. The Client shall pay each invoice submitted to it by Code 9 Security Ltd within 30 days of receipt to a bank account nominated in writing by Code 9 Security Ltd from time to time.
- 8.7. Without prejudice to any other right or remedy it may have, if the Client fails to pay Code 9 Security Ltd any sum due under this Agreement on the due date:
- 8.7.1. the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 8.7.1 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%;
  - 8.7.2. Code 9 Security Ltd may suspend all or part of the Services until payment has been made in full.
- 8.8. All sums payable to Code 9 Security Ltd under this Agreement:
- 8.8.1. are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
  - 8.8.2. are divisible by each invoicing period of one week; and
  - 8.8.3. shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) notwithstanding any defect or default in the services carried out or to be carried out.
- 9. Intellectual Property Rights**
- 9.1. In relation to the Deliverables:
    - 9.1.1. Code 9 Security Ltd and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Client Materials;
    - 9.1.2. Code 9 Security Ltd grants 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 this Agreement to copy and modify the Deliverables (excluding the Client Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
  - 9.1.3. the Client shall not sub-license, assign or otherwise transfer the rights granted in Clause 9.1.2 to its Affiliates and Clients.
- 9.2. In relation to the Client Materials, the Client:
- 9.2.1. and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials; and
  - 9.2.2. grants Code 9 Security Ltd a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this Agreement for the purpose of providing the Services to the Client.
- 9.3. Code 9 Security Ltd:
- 9.3.1. warrants the receipt, use of the Services and the Deliverables by the Client and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party;
  - 9.3.2. shall, subject to Clause 13 (Limitation of liability), indemnify the Client in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with any claim brought against the Client for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and
  - 9.3.3. shall not be in breach of the warranty at Clause 9.3.1, and the Client shall have no claim under the indemnity at Clause 9.3.2, to the extent the infringement arises from:
    - 9.3.3.1. the use of the Client Materials in the development of, or the inclusion of the Client Materials in any Deliverable;
    - 9.3.3.2. any modification of the Deliverables or Services, other than by or on behalf of Code 9 Security Ltd; and
    - 9.3.3.3. compliance with the Client's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided Code 9 Security Ltd shall notify the Client if it knows or suspects that compliance with such specification or instruction may result in infringement.
- 9.4. The Client:
- 9.4.1. warrants the receipt and use of the Client Materials in the performance of this Agreement by Code 9 Security Ltd, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - 9.4.2. shall indemnify Code 9 Security Ltd in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Code 9 Security Ltd arising out of or in connection with any claim brought against Code 9 Security Ltd, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Client Materials.
- 9.5. If either party (the Indemnifying Party) is required to indemnify the other party (the Indemnified Party) under this Clause 9, the Indemnified Party shall:
- 9.5.1. notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at Clause 9.3.2 or Clause 9.4.2 (as applicable) (IPRs Claim);
  - 9.5.2. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
  - 9.5.3. provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by Code 9 Security Ltd of the Indemnified Party's costs so incurred; and
  - 9.5.4. not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 10. Compliance with Laws and Policies**
- 10.1. In performing its obligations under this Agreement, Code 9 Security Ltd shall comply with:
  - 10.2. the Applicable Laws; and

- 10.3. the Mandatory Policies, provided the Client shall give Code 9 Security Ltd not less than 1 months' notice of any change to such policies.
- 10.4. Changes to the Services required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed via the change control procedure set out in Clause 7 (Change control).

## 11. Data Protection

- 11.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.2. The parties acknowledge, for the purposes of the Data Protection Legislation, the Client is the controller and Code 9 Security Ltd is the processor, except in the case of body worn video where Code 9 Security Ltd is both the controller and processor. Schedule 5 sets out the scope, nature and purpose of processing by Code 9 Security Ltd, the duration of the processing and the types of personal data and categories of data subject.
- 11.3. Without prejudice to the generality of Clause 11.1, the Client will ensure it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Code 9 Security Ltd for the duration and purposes of this Agreement.
- 11.4. Without prejudice to the generality of Clause 11.1, Code 9 Security Ltd shall, in relation to any personal data processed in connection with the performance by Code 9 Security Ltd of its obligations under this Agreement:
- 11.4.1. process personal data only on the documented written instructions of the Client unless Code 9 Security Ltd is required by Applicable Law to otherwise process that personal data. Where Code 9 Security Ltd is relying on the laws of a member of the European Union or European Union law as the basis for processing personal data, Code 9 Security Ltd shall promptly notify the Client of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits Code 9 Security Ltd from so notifying the Client;
- 11.4.2. ensure 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 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);
- 11.4.3. ensure all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 11.4.4. 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:
- 11.4.4.1. the Client or Code 9 Security Ltd has provided appropriate safeguards in relation to the transfer;
- 11.4.4.2. the data subject has enforceable rights and effective legal remedies;
- 11.4.4.3. Code 9 Security Ltd complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 11.4.4.4. Code 9 Security Ltd complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
- 11.4.4.5. 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;
- 11.4.4.6. notify the Client without undue delay on becoming aware of a personal data breach;
- 11.4.4.7. 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 Applicable Law to store the personal data; and
- 11.4.4.8. maintain complete and accurate records and information to demonstrate its compliance with this Clause 11 and allow for audits by the Client or the Client's designated auditor and immediately inform the

Client if, in the opinion of Code 9 Security Ltd, an instruction infringes the Data Protection Legislation.

- 11.5. The Client does not consent to Code 9 Security Ltd appointing any third-party processor of Personal Data under this Agreement.
- 11.6. Either party may, at any time on not less than 30 days' notice, revise this Clause 11 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).

## 12. Confidentiality

- 12.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 12.2.
- 12.2. Each party may disclose the other party's confidential information:
- 12.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 12; and
- 12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 13. Limitation of Liability

- 13.1. Code 9 Security Ltd has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover Code 9 Security Ltd has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 13.2. The restrictions on liability in this Clause 13 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.4. Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- 13.4.1. death or personal injury caused by negligence;
- 13.4.2. fraud or fraudulent misrepresentation; and
- 13.4.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 13.5. Subject to Clause 13.4, Code 9 Security Ltd's total liability to the Client in respect of all breaches of duty occurring within any contract year shall not exceed the cap.
- 13.6. In Clause 13.5:
- 13.6.1. cap. The cap is the greater of £25,000 and the total charges in the contract year in which the breaches occurred;
- 13.6.2. contract year. A contract year means a 12-month period commencing with the date of this Agreement or any anniversary of it; and
- 13.6.3. total charges. The total charges means all sums paid by the Client and all sums payable under this Agreement in respect of goods and services actually supplied by Code 9 Security Ltd, whether or not invoiced to the Client.
- 13.7. This Clause 13.7 sets out specific heads of excluded loss and exceptions from them:
- 13.7.1. Subject to Clause 13.4, the types of loss listed in Clause 13.7.3 are wholly excluded by the parties, but the types of loss and specific losses listed in Clause 13.7.4 are not excluded.
- 13.7.2. If any loss falls into one or more of the categories in Clause 13.7.3 and also falls into a category, or is specified, in Clause 13.7.4, then it is not excluded.
- 13.7.3. The following types of loss are wholly excluded:
- 13.7.3.1. loss of profits;
- 13.7.3.2. loss of sales or business;
- 13.7.3.3. loss of agreements or contracts;
- 13.7.3.4. loss of anticipated savings;
- 13.7.3.5. loss of use or corruption of software, data or information;
- 13.7.3.6. loss of or damage to goodwill; and
- 13.7.3.7. indirect or consequential loss.
- 13.7.4. The following types of loss and specific loss are not excluded:
- 13.7.4.1. sums paid by the Client to Code 9 Security Ltd pursuant to this Agreement, in respect of any Services not provided in accordance with this Agreement;
- 13.7.4.2. wasted expenditure;
- 13.7.4.3. additional costs of procuring and implementing replacements for, or alternatives to, Services not

provided in accordance with this Agreement. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;

13.7.4.4. losses incurred by the Client arising out of or in connection with any third party claim against the Client which has been caused by the act or omission of Code 9 Security Ltd. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, Code 9 Security Ltd's personnel, regulators and Clients of the Client;

13.8. Code 9 Security Ltd has given commitments as to compliance of the Services with relevant specifications in Clause 4. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

13.9. Unless the Client notifies Code 9 Security Ltd it intends to make a claim in respect of an event within the notice period, Code 9 Security Ltd shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

#### 14. Termination

- 14.1. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 14.1.1. the other party commits a material breach of any term of this Agreement which breach is irremediable or if such breach is remediable fails to remedy that breach within a period of 14-days after being notified in writing to do so;
  - 14.1.2. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  - 14.1.3. 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1),5 or 123(2) of the Insolvency Act 1986;
  - 14.1.4. 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 any of its creditors other than (being 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;
  - 14.1.5. 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;
  - 14.1.6. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
  - 14.1.7. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 14.1.8. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - 14.1.9. 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 the other party's assets and such attachment or process is not discharged within 14 days;
  - 14.1.10. 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 14.1.3 to Clause 14.1(j) (inclusive); or
  - 14.1.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.2. For the purposes of Clause 14.1.1 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement.
- 14.2.1. Without affecting any other right or remedy available to it, Code 9 Security Ltd may terminate this Agreement with immediate effect by giving written notice to the Client if:

14.2.2. the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 45 days after being notified to make such payment; or

14.3. there is a change of Control of the Client.

#### 15. Consequences of Termination

- 15.1. On termination or expiry of this Agreement:
- 15.1.1. the Client shall immediately pay to Code 9 Security Ltd all of Code 9 Security Ltd's outstanding unpaid invoices and interest (where applicable) and, in respect of the Services supplied but for which no invoice has been submitted, Code 9 Security Ltd may submit an invoice, which shall be payable immediately on receipt;
  - 15.1.2. the Client shall return all of Code 9 Security Ltd's Equipment. If the Client fails to do so, then Code 9 Security Ltd may enter the Client's premises and take possession of Code 9 Security Ltd's Equipment. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping;
  - 15.1.3. Code 9 Security Ltd shall on request return any of the Client Materials not used up in the provision of the Services; and
  - 15.1.4. the following clauses shall continue in force: Clause 1 (Interpretation), Clause 6 (Non-solicitation), Clause 9 (Intellectual property rights), Clause 12 (Confidentiality), Clause 13 (Limitation of liability), Clause 15 (Consequences of termination), Clause 19 (Waiver), Clause 21 (Severance), Clause 23 (Conflict), Clause 28 (Multi-tiered dispute resolution procedure), Clause 29 (Governing law) and Clause 30 (Jurisdiction).
  - 15.1.5. 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.

#### 16. Force Majeure

- 16.1. Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- 16.1.1. acts of God, flood, drought, earthquake or other natural disaster;
  - 16.1.2. epidemic or pandemic;
  - 16.1.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - 16.1.4. nuclear, chemical or biological contamination or sonic boom;
  - 16.1.5. any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - 16.1.6. collapse of buildings, fire, explosion or accident; and
  - 16.1.7. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
  - 16.1.8. non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
  - 16.1.9. interruption or failure of utility service.
- 16.2. Provided it has complied with Clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 16.4. The Affected Party shall:
- 16.4.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - 16.4.2. use all best endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
  - 16.4.3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 4 weeks' written notice to the Affected Party.

#### 17. Assignment and Other Dealings

- 17.1. This Agreement is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

17.2. Code 9 Security Ltd may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided Code 9 Security Ltd gives prior written notice of such dealing to the Client.

## 18. Variation

18.1. Subject to Clause 7 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 19. Waiver

- 19.1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 19.2. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.3. A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## 20. Rights and Remedies

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

## 21. Severance

- 21.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but shall not affect the validity and enforceability of the rest of this Agreement.
- 21.2. If any provision or part-provision of this Agreement is deemed deleted under Clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 22. Entire Agreement

- 22.1. 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.
- 22.2. Each party agrees it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) is not set out in this Agreement. Each party agrees it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## 23. Conflict

23.1. If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules, the provisions of this Agreement shall prevail.

## 24. No Partnership or Agency

- 24.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 24.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 25. Third Party Rights

- 25.1. Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 25.2. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

## 26. Notices

- 26.1. Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:
- 26.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 26.1.2. sent by email to the address specified in Schedule 1.
- 26.2. Any notice or communication shall be deemed to have been received:
- 26.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

- 26.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 16:00 on the second Business Day after posting or at the time recorded by the delivery service; and
- 26.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 26.2.3, business hours means 09:00 to 16:00 Monday to Friday on a day that is not a public holiday in the place of receipt.

26.3. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 27. Counterparts

- 27.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 27.2. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.
- 27.3. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## 28. Multi-Tiered Dispute Resolution Procedure

- 28.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- 28.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Manager of the Client and Security Practitioner of Code 9 Security Ltd shall attempt in good faith to resolve the Dispute;
- 28.1.2. if the Manager of the Client and Security Practitioner of Code 9 Security Ltd are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Director (or equivalent) of the Client and Managing Director of Code 9 Security Ltd who shall attempt in good faith to resolve it; and
- 28.1.3. if the Director (or equivalent) of the Client and Managing Director of Code 9 Security Ltd are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14-days after the date of the ADR notice.
- 28.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Clause 30 (Jurisdiction) which clause shall apply at all times.
- 28.3. If the Dispute is not resolved within 28 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 28 days, or the mediation terminates before the expiration of the said period of 28 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 30 (Jurisdiction).

## 29. Governing Law

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

## 30. Jurisdiction

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

**Code 9 Security Ltd**  
16 Glenmore Business Park  
Telford Road  
Salisbury  
Wiltshire  
SP10 3FG

**03332 420 620**

**[enquiries@code9security.com](mailto:enquiries@code9security.com)**

© Copyright 2022. All Rights Reserved.