

1. DEFINITIONS

In these Terms unless inconsistent with the context the following definitions will apply:

“Agreement” shall mean	the formal contract incorporating these Terms, setting out the exact amount of the Fee and any additional terms and conditions each taking priority over these Terms where a conflict arises.
“Client” shall mean	the company, firm, organisation or concern named in the body of the Agreement and shall include all associate companies of the Client.
“Commencement Date” shall mean	the date Safety Agenda first provides the Services to the Client.
“Fee” shall mean	the subscription price of the Services payable by the Client as set out in the body of the Agreement and the Set Up.
“Intellectual Property Rights” shall mean	patents, registered designs, trade marks and service marks (whether registered or not and including applications for any of the foregoing), copyright, design right, semiconductor topography rights, trading names, rights in and to software including source codes, rights in and to technical information and other confidential information and know-how, rights in and to databases and all other intellectual property rights and similar property rights of whatever nature subsisting in any part of the world.
“Safety Agenda” shall mean	Safety Agenda Limited.
“Safety Agenda Training Manager”	shall mean the Services provided by the Website.
“Set Up” shall mean	the Safety Agenda online application form as completed by the Client in order to set up the account between Safety Agenda and the Client.

“Service Hours” shall mean	between the hours of 09.00 and 17.00 Monday to Friday but shall exclude Public Holidays.
“Services” shall mean	the application of the Safety Agenda Training Manager to provide a database for the training details of workers.
“Terms” shall mean	these Terms and Conditions as varied from time to time.
“Website” shall mean	http://www.safetyagenda.com and http://www.sa-trainingmanager.com

2. APPLICATION

The Terms shall apply to every provision of the Services by Safety Agenda. No variation of the Terms (whether in the body of the Agreement or not) shall be valid unless in writing signed by an authorised representative of each of the Client and Safety Agenda. For the avoidance of doubt the Client’s own terms and conditions of Order shall not be incorporated into the Terms.

3. THE PROVISION OF SERVICES

- 3.1 Safety Agenda will provide the Services on the Terms;
- 3.2 For the avoidance of doubt Safety Agenda shall not be obliged to provide the Services until a formal Agreement has been signed by both Client and Safety Agenda and Safety Agenda has received payment in respect of the first instalment of the Fee; Exceptionally and without obligation on its part Safety Agenda may offer the Client a free trial of the Services on the terms of paragraph 3.6.
- 3.3 The Services shall be provided subject to paragraph 3.5 below 24 hours a day and the Website updated during Service Hours as further particularised in paragraph 5.1.2.
- 3.4 The parties agree that Safety Agenda may use the name, logo and brief descriptions and images of the Client for its own promotional purposes.
- 3.5 Safety Agenda shall not be liable for any break in transmission beyond its control nor for interruptions in the Services due to routine or emergency work upon its Server.
- 3.6 A free trial is subject to the following :-
 - 3.6.1 it shall be determinable by Safety Agenda at any time without notice;

3.6.2 Safety Agenda's obligations under paragraph 5 shall not apply.

4. *CLIENT'S RESPONSIBILITIES AND WARRANTIES*

4.1 Whilst the Services are being provided the Client will:

- 4.2.1 use only skilled and competent operatives in consideration of the Services;
- 4.2.2 limit access to the Safety Agenda Training Manager to that number of operatives permitted under the agreed Fee;
- 4.2.3 not carry out any unauthorised alteration adaptation or modification of the Safety Agenda Training Manager;
- 4.2.4 promptly pay all sums due in respect of the Services and in the case of monthly subscriptions pay the instalments by direct debit, debit card or credit card;
- 4.2.5 keep its passwords and user names absolutely secret;
- 4.2.6 immediately advise Safety Agenda should it become aware that unauthorised persons are accessing the Safety Agenda Training Manager;

5. *SAFETY AGENDA'S RESPONSIBILITIES AND WARRANTIES*

5.1 Safety Agenda will:

- 5.1.1 use reasonably competent staff in the performance of the Services and perform these with reasonable care and skill;
- 5.1.2 provide the Services 24 hours a day and update the Website as frequently as necessary during the Service Hours and as reasonably promptly as circumstances allow;
- 5.1.3 endeavour to correct any break in transmission or access to the Website which is within its control as quickly as reasonably practicable;
- 5.1.4 in the event that the Fee (or any part of it) includes VAT to provide the Client with a VAT invoice periodically in arrears following receipt of the relevant payment.

5.2 Safety Agenda **WARRANTS** that it will keep absolutely secret all information which it receives from the Client in confidence **PROVIDED THAT** this warranty will not apply to information which is in the public domain either at the time of receipt or time of disclosure nor to information which Safety Agenda is under a public duty to disclose.

6. *LIMITATION OF LIABILITY*

- 6.1 Safety Agenda's obligations and liabilities in respect of the Services are exhaustively defined in the Terms.
- 6.2 The express obligations of and warranties made by Safety Agenda in paragraph 5 are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind whether express, implied, statutory or otherwise relating to anything supplied or the Services provided (in this paragraph 6 referred together as a warranty) including (without limitation) a warranty as to the condition, quality performance, merchantability or fitness for purpose of the Services or any aspect of them. In particular the Client acknowledges that the internet is a volatile media given to unexpected and often inexplicable crashes and breaks in transmission.
- 6.3 Subject to paragraph 6.4 Safety Agenda will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused whether arising under contract, tort (including negligence) or otherwise including (without limitation) loss of production, loss of or corruption to data, loss of profits, or of contracts, loss of operation time, loss of goodwill or anticipated even if Safety Agenda has been advised of their possibility.
- 6.4 Safety Agenda shall be liable in the event of Safety Agenda's negligence or that of its employees or properly appointed sub-contractors.
- 6.4.1 without limit for death or injury to persons;
- 6.4.2 in all cases not falling within 6.4.1 the lesser of £5,000 in aggregate and the aggregate fees paid by the Client to Safety Agenda in the 12 months preceding the relevant claim.
- 6.5 Safety Agenda does not check and does not claim to check the accuracy or validity of any statement contained in the Client's data on the Website.

7. *CLIENT INDEMNITY*

- 7.1 The Client will indemnify Safety Agenda in respect of any claim including a third party claim for any injury loss damage or expense occasioned by or arising directly or indirectly from the Client's possession operation use modification or supply to a third party of any thing supplied or provided under the Services and any part of it except and insofar as Safety Agenda is liable as expressly provided by the Terms.

8. PAYMENT FOR SERVICES

- 8.1 The Client will pay Safety Agenda for the provision of the Services, the Fees and charges set out in the body of the Agreement and the Set Up and any cancellation or additional Fees that might arise due to breach of the Terms by the Client.
- 8.2 Fees together with VAT at the prevailing rate will be paid by the Client within 30 days of invoice unless payment is by direct debit.
- 8.3 The Client will in addition to such Fees and charges pay interest to Safety Agenda upon the amount of any invoice which is overdue from the date of invoice to the date of actual payment at 2% per annum over NatWest Bank Plc base rate for the time being.
- 8.4 On each anniversary of the Commencement Date the Fee payable hereunder shall be increased by the proportion by which the Retail Prices Index has increased from the Index two months before the month of the anniversary by comparison with the month 14 months before the month of the anniversary.

9. TERMINATION

Notwithstanding any other provision hereunder the parties shall be entitled to terminate this Agreement at any time upon the giving of written notice by one of them to the other in the event of any of the following:

- 9.1 The other party committing a material breach of any of its obligations or undertakings under these this Agreement and failing to remedy such breach (if capable of remedy) within a period of thirty days following receipt of written notice from the party giving notice so to do or within such longer period as may be mutually agreed between the parties;
- 9.2 The other party making a composition with its creditors or becoming insolvent or ceasing to trade or being wound up (other than for the purposes of a solvent reconstruction or amalgamation); or
- 9.3 one party giving to the other six months' written notice of termination to expire on an anniversary of the Commencement Date.

10. CANCELLATION AND SUSPENSION OF SERVICES

Safety Agenda reserves the right to suspend provision of the Services in the event that any Fee is overdue.

11. EFFECT OF SUSPENSION AND TERMINATION

Immediately following suspension or termination of the Services (whether partial or in respect of all the Services) the Client shall forthwith pay to Safety Agenda all outstanding Fees and charges and a reasonable amount due in respect of all Services for which no invoice has at the date of suspension been delivered, including any Fees and charges payable by instalments. In calculating a reasonable charge Safety Agenda shall be entitled to take into account any loss of profit suffered by them arising out of the suspension or termination as the case may be.

12. ALTERNATIVE DISPUTE RESOLUTION

If a dispute arises between Safety Agenda and the Client the parties hereto agree first to use their respective best endeavours in good faith to settle the dispute by mediation before having recourse to arbitration litigation or some other dispute resolution procedure. A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt of such notice the parties must within seven (7) days of receipt convene a meeting between their respective Chief Executive Officers and the other relevant members of management to attempt to resolve the dispute. If the dispute is not resolved within seven (7) days or within such further period as the parties agree then the dispute is to be referred to a mediation provider appointed by the parties and in default of agreement by the President for the time being of the Law Society.

13. FORCE MAJEURE

Neither Safety Agenda nor the Client will be liable to the other for any delay in performance or failure to perform its obligations under the Terms (other than a payment obligation) due to any course outside its reasonable control. Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable.

14. NOTICES

All notices which are required to be given shall be in writing and shall be sent to the address of the recipient set out on the Order or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received:

- 14.1 by hand delivery – at the time of delivery
- 14.2 by first class post – 48 hours after the date of mailing
- 14.3 by facsimile transmission or email – immediately on transmission within the Service Hours (the hours of any Saturday Sunday or Public Holiday shall be ignored) provided a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.

15. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter.

16. JURISDICTION

This Agreement shall be subject to the exclusive jurisdiction of the Courts of England and Wales and shall be interpreted according to English law.