

GENERAL TERMS AND CONDITIONS

SonaSafe 20/20 Limited (SonaSafe)

Last updated 1st October 2025

1 APPLICATION

1.1 These Terms and the PSA apply to all SonaSafe Products and/or Services supplied by SonaSafe to the Client. In the event of any inconsistency between the PSA, these Terms or any terms and conditions of the Client, the PSA will prevail. Any additional or special terms will only apply if they are agreed in writing and signed by both parties.

2 DEFINITIONS

2.1 In these Terms, unless the context otherwise requires:

- (a) **Business Day** means a day other than a Saturday, Sunday or public holiday in New Zealand;
 - (b) **Client** means the client of SonaSafe who is purchasing the SonaSafe Products or engaging SonaSafe for the provision of Services;
 - (c) **Client Data** means any data that:
 - (i) is provided by, or on behalf of, the Client for processing by SonaSafe or for the purpose of providing the Services, deliverables and/or access to the SonaSafe Dashboard; and
 - (ii) relates to the Client's business and is generated in the course of receiving the Services, deliverables and/or access to the SonaSafe Dashboard;
 - (d) **Client Responsibilities** means the responsibilities of the Client as specified in these Terms, the Proposal and/or PSA that the Client is required to carry out to facilitate SonaSafe's performance of the Services;
 - (e) **Confidential Information** means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into the PSA and includes, without limitation, any information (including Personal Information) and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy or other proprietary information or material of a party or dealings under the PSA;
 - (f) **Control** means with respect to any entity or person, possession of the power, directly or indirectly, to direct or cause the direction of the management policies of such entity or person, whether through legal and/or beneficial ownership of shares or otherwise;
 - (g) **Consequential Loss** means means any loss, damage, cost, or expense that does not arise directly from a breach of these Terms but occurs as a secondary or indirect result of that breach, including, without limitation:
 - (i) loss of profits, revenue, or business;
 - (ii) loss of anticipated savings;
 - (iii) loss of use, production, or opportunity;
 - (iv) loss of reputation or goodwill; and
 - (v) loss of data or information.
 - (h) **Covered Environment** means the specific area(s) of the Site and/or the specific area(s) around the Client's vehicles intended to be covered by the SonaSafe System;
 - (i) **Documentation** means the specifications, operating manuals, user instruction manuals, technical literature, and all other materials, relating to the installation, use, maintenance, support and/or servicing of the relevant SonaSafe Products and/or Services;
 - (j) **End User** means the Client's personnel, agents and subcontractors who are granted access to the SonaSafe Products by the Client;
 - (k) **Fees** means the amounts payable by the Client to SonaSafe for the provision of the relevant Services and/or SonaSafe Products;
 - (l) **Force Majeure Event** means any of the following events:
 - (i) epidemic or pandemic;
 - (ii) act of terrorism, war (either declared or not declared), civil disorders, revolution or act of public enemies;
 - (iii) flood, storm, tempest, earthquake, fire, explosion or other act of God;
 - (iv) act or restraint of any national or governmental authority; or
 - (v) strike or lock-out,
- and any other event or factor (similar to the events described above) beyond the reasonable control of the party adversely affected, which prevents, delays or hinders the performance by either or both parties of their obligations under these Terms;
- (m) **Generated Data** means new data other than the Client Data generated or derived as part of providing the SonaSafe Products and/or Services;
 - (n) **GST** means goods and services tax payable under the Goods and Services Tax Act 1985;
 - (o) **HASAW** means the Health and Safety at Work Act 2015, associated regulations and any relevant codes of practice, as may be updated from time to time;
 - (p) **Insolvency Event** means where
 - (i) the Client is or becomes or is deemed to be insolvent or bankrupt;
 - (ii) the Client goes into receivership or has a receiver, administrator, trustee and/or manager (including a statutory manager) or any analogous official appointed in respect of all or any of the Client's property or assets;
 - (iii) any resolution is passed by the Client or any other corporate body for its dissolution or liquidation (except for the purposes of a solvent reconstruction), or a distress, attachment, execution or other legal process in respect of indebtedness of the Client is levied or enforced on the Client and is not discharged or stayed within 15 Business Days; or
 - (iv) any other insolvency event or proceedings analogous to any of the foregoing occurs in relation to the Client;
 - (q) **IP Rights** means any registered or unregistered, intellectual property including any and all rights to and interests in, or protecting, any and all industrial and intellectual property of any kind, whether or not in a material form, including but not limited to copyrights, patents, trademarks, brand names, designs, (or equivalent in any jurisdiction), any processes, formulae, designs, reports, drawings, specifications, software, blue prints, know-how, experiences, characteristics, inventions, discoveries, improvements and research data, in relation to any industry;
 - (r) **Minimum Standards** means the minimum technical and functional standards of hardware and software specified by SonaSafe to perform the Services effectively, as set out in the Documentation, and updated by SonaSafe from time to time;
 - (s) **Personal Information** means "Personal Information" or "Personal Data" as defined under the Privacy Act 2020, and which the SonaSafe has received or has access to;
 - (t) **PPSA** means the Personal Property Securities Act 1999;
 - (u) **PPSR** means the Personal Property Securities Register established under the PPSA;
 - (v) **PSA** means the Products and Services Agreement between SonaSafe and the Client setting out the specific SonaSafe Products the Client will purchase from SonaSafe and/or Services that the Client will engage SonaSafe for, as well as the terms on which SonaSafe will provide ongoing support to the Client, including the service levels;
 - (w) **Proposal** means any proposal, quotation, offer, statement of work, scope of work or other document submitted by SonaSafe to the Client describing the SonaSafe Products and/or Services to be supplied, including any specifications, proposed pricing, invoicing, payment terms, deliverables, timelines or other related information;
 - (x) **Quote** means the statement issued by SonaSafe specifying the price and scope for the supply of the SonaSafe Products and/or Services. A Quote will be provided to the Client with the Proposal and/or PSA.
 - (y) **Related Company** has the same meaning as in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that subsection included anybody corporate of any jurisdiction);
 - (z) **Related Party** in respect of a person (first person) means, a

Related Company of the first person, and any person that Controls or has a direct or indirect equity or ownership interest in the first person, is Controlled or directly or indirectly part owned by the first person, or is Controlled or part owned by the same person that Controls or directly or indirectly part owns the first person, and includes, if the first person is an individual, any spouse, partner or relative of the first person or any relative of the spouse or partner of the first person;

- (aa) **Security Interest** has the meaning given to that term in section 17 of the PPSA;
- (bb) **Services** means the services SonaSafe will provide to the Client as may be specified in a PSA;
- (cc) **Site** means the Client's Site;
- (dd) **SonaSafe Dashboard** means SonaSafe's software-as-a-service, cloud, or other hosted platform;
- (ee) **SonaSafe Products** means the hardware, software and equipment, including the SonaSafe System and the SonaSafe Dashboard;
- (ff) **SonaSafe System** means the advanced machine operator awareness system which is fitted to the Client's vehicles and other plant and equipment, designed to identify the presence of crew and other vehicles nearby, and which includes the SonaSafe Dashboard;
- (gg) **Terms** means these SonaSafe Terms and Conditions, as may be updated from time to time by the notice from SonaSafe to the Client;
- (hh) **Third Party Applications** means third party hardware, software, or other accessories that may be required to facilitate the Client's use of the SonaSafe Products;
- (ii) **Trial** means the temporary, limited or pilot access to or use of the SonaSafe Products and/or Services for evaluation, testing or assessment purposes;
- (jj) **Trial Commencement Date** means the date on which a Trial begins, being the date on which the SonaSafe Equipment is installed at the Site for Trial purposes;
- (kk) **Trial Term** means the period of time that the Trial is active for the Client's assessment of the SonaSafe Products and/or Services, commencing on the Trial Commencement Date and continuing until the end date specified in the Proposal or the date on which SonaSafe terminates the Trial by written notice to the Client; and
- (ll) **Workers** means SonaSafe's personnel, agents and subcontractors engaged in the performance of the Services.

3 PROPOSAL

- 3.1 SonaSafe will issue the Client with a Proposal, including (where applicable) any Trial arrangements, including the anticipated Trial Commencement Date, the Trial Term and a Quote. Upon the Client's acceptance of the Proposal, the Proposal will form a contract and will be governed by these Terms.
- 3.2 SonaSafe will deliver to, and make accessible for the Client, the SonaSafe Products and/or Services by the delivery date specified in the Proposal.

4 TRIAL

- 4.1 The Trial Term will be indicated on the Proposal. Any Trial is carried out for the Client's limited use within its business for the purpose of evaluating, testing and assessing the SonaSafe Products and Services during the Trial Term. The Client acknowledges that the Trial is not a full commercial deployment and is provided on a temporary and evaluative basis only.
- 4.2 For the purposes of the Trial, the Client will purchase, and SonaSafe will arrange for, the SonaSafe Products to be installed at the Site on a temporary basis. The Client will give SonaSafe and its Workers access to the Site for the Trial installation. SonaSafe will issue an invoice to the Client for the Trial installation and the SonaSafe Products provided, and the Client shall pay the invoice by the 20th day of the month following the month in which it is issued.
- 4.3 SonaSafe grants the client a non-exclusive, non-transferable, revocable and royalty-free licence to use SonaSafe's IP Rights solely for the purposes of the Trial. Clause 17 of these Terms will apply to the Trial. All of SonaSafe's IP Rights remain the sole property of SonaSafe (or its licensors), and this licence will automatically terminate on expiry or termination of the Trial Term.

- 4.4 The Client must promptly return or delete all Trial materials on request or at the end of the Trial.
- 4.5 The Trial is provided "as is" and without any warranties, representations or guarantees. To the maximum extent permitted by law, SonaSafe excludes all liability arising from or in connection with the Trial.
- 4.6 If, at any time during the Trial Term, the Client notifies SonaSafe in writing that it does not wish to proceed with a PSA:
 - (a) unless the parties agree otherwise, the SonaSafe Products will be returned to SonaSafe within the agreed trial period;
 - (b) the Client must allow SonaSafe and/or its contractors reasonable access to the Site to remove the SonaSafe Products;
 - (c) the Client must ensure the SonaSafe Products are returned in substantially the same condition as supplied;
 - (d) upon the SonaSafe Products being returned (or removed) to SonaSafe's satisfaction, SonaSafe will refund to the Client the amounts paid for the SonaSafe Products, less any reasonable costs of return, removal, decommissioning, or damage; and
 - (e) for clarity, any fees paid for Services (including installation, training, configuration or support) are non-refundable.
- 4.7 The Client agrees that:
 - (a) risk in the SonaSafe Products passes to the Client on delivery and remains with the Client throughout the Trial Term until the SonaSafe Products are returned to SonaSafe to its nominated location or removed by SonaSafe; and
 - (b) the refund described in this clause 4.6 is the Client's sole and exclusive remedy in respect of termination of the Trial and the SonaSafe Products, and the Client is not entitled to any further claims, damages or compensation.

5 PRODUCTS AND SERVICES AGREEMENT

- 5.1 If the Client wishes to continue using the SonaSafe Products following the Trial, the parties must enter into a separate PSA.
- 5.2 If the parties enter into a separate PSA, these Terms will apply to the PSA.
- 5.3 If there is any inconsistency between these Terms and the specific terms of the PSA, those specific terms will prevail.

6 TITLE AND RISK

- 6.1 Where the Client has entered into a PSA, the Client agrees that:
 - (a) risk in the SonaSafe Products passes to the Client on the date and at the time of delivery of the SonaSafe Products at the Site. The Client will be responsible for insuring the SonaSafe Products on delivery; and
 - (b) title to the SonaSafe Products passes to the Client on payment for those SonaSafe Products;
- 6.2 The parties agree that SonaSafe retains a security interest in the SonaSafe Products until full payment is received. The Client acknowledges that this clause creates a security interest for the purposes of the PPSA and agrees that SonaSafe may register, at the Client's cost, a financing statement on the PPSR to protect its interest. The Client will do all things reasonably required by SonaSafe to perfect and maintain the security interest.
- 6.3 The Client must not change its name, company number or NZBN or other details required on the PPSR, without first notifying SonaSafe in writing.
- 6.4 The Client acknowledges and agrees to waive its right to receive any notice under the PPSA (including notice of a verification statement under section 145) unless the notice is required by the PPSA and cannot be excluded. To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 114(1)(a), 116, 120(2), 121, 122, 125, 126, 127, 129, 131, 133 and 134 of the PPSA.

7 SONASAFE'S OBLIGATIONS

- 7.1 SonaSafe will:
 - (a) perform the Services described in any Proposal and/or PSA with due skill, care and diligence, in accordance with these Terms and all applicable laws and industry standards;
 - (b) ensure that all personnel engaged in the performance of the services are suitably qualified, experienced and supervised;
 - (c) when attending the Site, comply with, and procure that its Workers comply with, all reasonable and notified Site rules, and the Client's health and safety requirements and security procedures;
 - (d) provide the Services in accordance with any applicable service levels set out in the PSA; and
 - (e) use reasonable endeavours to carry out the Services so as to avoid unnecessary disruption to the Client's operations.

8 THE CLIENT'S OBLIGATIONS

- 8.1 The Client will:

- (a) give SonaSafe all necessary cooperation and assistance in connection with these Terms, including timely access to all information, Client Data, personnel, systems, and the Site as may reasonably be required by SonaSafe to enable it to perform the Services;
 - (b) fulfil all of the Client Responsibilities and in compliance with all applicable laws and regulations;
 - (c) ensure that each End User possesses reasonable level of relevant knowledge and experience to use the Services and the SonaSafe System effectively;
 - (d) procure that its End Users, use the Services in accordance with the Documentation and these Terms, as updated from time to time by notice from SonaSafe to the Client;
 - (e) be solely responsible for the accuracy, quality, integrity, and legality of the Client Data, and the means by which Client acquires the Client Data;
 - (f) use all reasonable efforts to prevent unauthorised access to or use of the Services and the SonaSafe Dashboard, and notify SonaSafe promptly of any unauthorised access or use;
 - (g) implement and maintain IT security measures that meet the Minimum Standards. The Minimum Standards may include, without limitation, antivirus protection, firewalls, password policies, encryption, access controls, and multi-factor authentication. The Client must ensure ongoing compliance with such standards as a condition of receiving the Services;
 - (h) where applicable, ensure that the maximum number of End Users as set out in the PSA is not exceeded and/or that other parameters in respect of which the Fees are determined are not exceeded;
 - (i) ensure that each End User is either an employee or agent of the Client, that each End User is assigned with individual and unique access credentials, and that such access credentials are not shared between individuals. The Client shall be liable for any unauthorised use exceeding the permitted number of End Users and may be required to pay additional Fees for such use. A reduction in End Users shall not reduce or otherwise affect the Client's obligations in respect of any Fees or other amounts payable under these Terms and the PSA, unless agreed in writing by the parties;
 - (j) promptly disable any login account if SonaSafe discovers (through undertaking any monitoring and audits or otherwise) that any login details have been provided to any party that is not Client or an End User;
 - (k) not request, permit or authorise anyone other than SonaSafe or an entity that SonaSafe has approved in writing, to provide any services similar to the Services in connection with the SonaSafe Products;
 - (l) carry out all other responsibilities of the Client set out in these Terms in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, SonaSafe may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (m) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the SonaSafe Dashboard, and for all problems, conditions, delays, delivery failures and all other loss or damage caused by or relating to the Client's network connections or telecommunications link; and
 - (n) be responsible for all acts and omissions of its End Users of the SonaSafe Products as if those acts and omissions were the Client's. To the maximum extent permitted by law, the Client will indemnify SonaSafe against all costs, losses, damages, and expenses arising out of or in connection with End Users' use of the SonaSafe Products.
- 9.2 If SonaSafe fails to provide, or is delayed in providing, any Services and/or access to the SonaSafe System, due to:
- (a) the Client's failure to comply with clause 9.1; and/or
 - (b) any latent defect in any of the Services that is not the fault of SonaSafe,
- then:
- (c) SonaSafe will not be liable for any failure or delay in providing the Services; and
 - (d) the parties will use reasonable endeavours to agree an extension of time to any timetable set out in the PSA.
- 9.3 The Client will provide at its cost, any specialist equipment such as an elevated work platform (EWP) if requested by SonaSafe.

10 THIRD PARTY APPLICATIONS

- 10.1 The Client acknowledges that certain Services and/or the SonaSafe System rely on or incorporate Third Party Applications. SonaSafe is the sub-licensor of the Third Party Applications and grants the Client a non-exclusive, non-transferable licence to use the Third Party Applications solely for the Client's internal business purposes and in accordance with these Terms and the applicable Third Party Applications licence agreement. The Client will obtain rights to use such Third Party Applications solely through the sublicense granted by SonaSafe under these Terms and not directly from the third party licensor. The Client agrees to comply with all applicable licence terms and conditions governing the use of such Third Party Applications.
- 10.2 All Services provided by SonaSafe in relation to the relevant Third Party Applications are strictly limited to the account and licence provisions granted by the applicable third party licensor. The Client acknowledges that SonaSafe's ability to deliver the Services is subject to, and constrained by, the scope, terms, and limitations of the third party licensor's account and licence rights for such Software.
- 10.3 SonaSafe shall remain responsible for ensuring that the Third Party Applications remains fully licensed and available for the Client's use under the terms of the applicable software licence agreement. The Client shall immediately notify SonaSafe if it becomes aware of any issues affecting the Third Party Application's availability or functionality.
- 10.4 The Client agrees to promptly install, or allow SonaSafe to install, any updates, patches, or upgrades to Third Party Applications as may be required by the applicable third party licensor or as reasonably requested by SonaSafe to ensure the continued functionality, compatibility, performance, or security of the Services. SonaSafe shall not be liable for any failure or degradation in the Services arising from the Client's failure to install such updates in a timely manner.
- 10.5 SonaSafe will provide reasonable assistance to the Client in relation to the configuration or integration of Third Party Applications that is necessary for the operation of the Services. However, SonaSafe does not guarantee compatibility or functionality of any Third Party Applications and is not responsible for ongoing support unless otherwise stated as being included in the Services.
- 10.6 The Client acknowledges that Third Party Applications licensors may update, modify, or discontinue their products at any time. SonaSafe shall not be liable for any impact such changes may have on the Services.
- 10.7 SonaSafe makes no warranties or representations regarding the performance, security, or availability of any Third Party Applications and shall not be liable for any loss or damage arising from the failure, malfunction, or discontinuation of such software.

11 SERVICE LIMITATIONS

- 11.1 SonaSafe shall have no obligation to provide Services in connection with:
- (a) failures caused by the Client's misuse, negligence, or unauthorised modification of the SonaSafe Products;
 - (b) the Client's failure to carry out the Client Responsibilities;
 - (c) damage resulting from power surges, environmental conditions, or acts of nature;
 - (d) software or hardware not supplied, supported, or approved by

9 CLIENT RESPONSIBILITIES

- 9.1 In providing the Services, SonaSafe may require assistance from the Client and access to the Site. The Client will:
- (a) carry out the Client Responsibilities to an adequate standard, and in a timely, competent, efficient, and professional manner, using appropriate care and skill;
 - (b) ensure that SonaSafe and its Workers have:
 - (i) reasonable access to the Client's Site, network, vehicles and machines; and

- SonaSafe; or
- (e) network or internet connectivity issues outside SonaSafe's reasonable control.
- 11.2 SonaSafe will use reasonable efforts to meet response and resolution times as outlined in the PSA. However, such times are estimates only and are not guaranteed, unless expressly stated as binding in the PSA.
- 11.3 SonaSafe reserves the right to carry out routine maintenance during scheduled maintenance windows, which may result in temporary unavailability of the Services. SonaSafe will use reasonable efforts to notify the Client in advance of any such maintenance.
- 12 **PRICES**
- 12.1 The estimated prices for SonaSafe Products and Services will be as set out in the Quote. Estimated prices are subject to variation based on further review of the Site and the Covered Environment.
- 12.2 SonaSafe may withdraw a Quote before it is accepted. A Quote will lapse, without notice, 22 Business Days after it is given.
- 13 **FEES AND PAYMENT**
- 13.1 The Client will pay the price for the SonaSafe Products and any Fees, any agreed disbursements, and any other agreed charges to SonaSafe in accordance with the relevant Quote.
- 13.2 Unless SonaSafe has previously approved a credit application for the Client's purchase of the SonaSafe Products, the Client must pay a 50% deposit for the SonaSafe Products before delivery or installation and the balance immediately without deduction or set-off upon delivery or installation.
- 13.3 Where SonaSafe has approved the Client's credit application for the SonaSafe Products, the Client must pay for the SonaSafe Products in full, without deduction or set off, by the 20th day of the month following the date of invoice.
- 13.4 The Client must pay each invoice for the Fees and any reimbursable expenses in full, without deduction or set off, and in the manner and at the times specified in the relevant Quote, or, if not specified, by the 20th of the month following the month in which the invoice is issued. The Client will reimburse SonaSafe for all actual and reasonable travel and accommodation expenses incurred in connection with the Services, to the extent such expenses are specified in the Quote. SonaSafe will provide receipts or other evidence of such expenses upon the Client's request.
- 13.5 If the Client disputes any invoice, it will give SonaSafe notice of that dispute within 10 Business Days of receipt of the relevant invoice but will otherwise pay the undisputed part of the invoice in accordance with the required timeframes in clauses 13.3 and 13.4. Any disputed amount will be referred for resolution in accordance with clause 23.
- 13.6 Subject to clause 13.5, if the Client fails to pay any amounts due, SonaSafe may without prejudice to its other rights or remedies under these Terms or at law:
- charge interest on that amount owing from the due date until the date of actual payment at 5% per annum over the base overdraft rate charged by SonaSafe's principal bankers from time to time and will be payable on demand; and/or
 - suspend the provision of the Service, access to the SonaSafe System under any PSA and/or further delivery of the SonaSafe Products, all without liability to the Client.
- 13.7 SonaSafe may, at each anniversary of the date of these Terms, review the Fees payable by the Client to SonaSafe. SonaSafe may, at its discretion, adjust the Fees following such review, and any such adjustment will apply automatically from the anniversary date of the PSA. The Client agrees to pay the Fees as adjusted.
- 13.8 SonaSafe may accept and apply payments from the Client in respect of any indebtedness at SonaSafe's discretion.
- 13.9 If the Client has been approved for credit, all payments shall become immediately due and payable if SonaSafe reasonably believes that the information in the Client's credit application is not correct or no longer correct, or if the Client defaults under any agreement with SonaSafe, suffers an Insolvency Event or makes or attempt to make an arrangement or composition with the Client's creditors.
- 14 **CANCELLATION**
- 14.1 The Client may not cancel an order for SonaSafe Products or Services without SonaSafe's written consent. As a condition of giving

- consent, SonaSafe may require reimbursement of any costs incurred by SonaSafe as a result of the Client's order and cancellation.
- 14.2 SonaSafe may cancel or suspend all or part of an order for SonaSafe Products or Services without liability to the Client, in any of the circumstances set out in clause 13.9 or if fulfilling the order becomes impractical or uneconomic due to any cause beyond SonaSafe's control.
- 15 **HEALTH AND SAFETY**
- 15.1 The Client must ensure that the Site is safe and complies with all applicable provisions of the HASAW before granting SonaSafe and its Workers access to perform the Services.
- 15.2 The Client must promptly inform SonaSafe of any known hazards, risks or Site-specific health and safety requirements that may affect SonaSafe personnel while on the Client's premises.
- 15.3 The Client acknowledges and agrees that it is a "person conducting a business or undertaking" (PCBU) for the purposes of the HASAW in respect of its Site, operations and work environment. The Client accepts primary responsibility for ensuring, so far as is reasonably practicable, the health and safety of all persons (including the Workers) while they are on the Client's premises or otherwise engaged in work under the Client's management or control.
- 15.4 The Client must, so far as is reasonably practicable, consult, cooperate and coordinate with SonaSafe in respect of health and safety matters relating to the Services and the presence of the Workers at the Site.
- 15.5 SonaSafe will ensure, and procure that its Workers, take all reasonable steps to comply with the Client's health and safety requirements.
- 15.6 The Client must promptly notify SonaSafe of any accident, near miss, incident, or unsafe condition affecting or involving the Workers while on the Site.
- 16 **WARRANTIES**
- 16.1 SonaSafe will provide the same warranty in respect of the SonaSafe Products as provided by the manufacturer. SonaSafe will provide a 12-month warranty, unless otherwise agreed in writing, from the date the SonaSafe Products are delivered to the Client, for any maintenance, repairs, labour, installation or other services provided that the Client notifies SonaSafe in writing of any defect within 5 Business Days of such maintenance, repairs, labour, installation or other services, being required.
- 16.2 SonaSafe will replace or, at its option, repair the SonaSafe Products supplied to the Client which are accepted to be within the terms of the warranty in this clause 16.
- 16.3 SonaSafe will not be liable under a warranty for any attempt to install, calibrate, maintain or repair defective SonaSafe Products that have been made by any person other than SonaSafe or any of its Workers. Any replacements or repairs necessitated by:
- inadequate or incorrect maintenance, calibration or storage;
 - use of unauthorized spare parts;
 - physical misuse or abuse or use in unsuitable environmental conditions;
 - incorrect or negligent use of equipment to which the SonaSafe Products are installed;
 - any other condition proven to be caused by factors outside SonaSafe's control; or;
 - if the warranty seal has been tampered with, or broken,
- shall void the warranty.
- 16.4 The decision as to whether the warranty claim is accepted or not is at SonaSafe's reasonable discretion.
- 16.5 To the fullest extent permitted by law, SonaSafe's liability under these Terms is in substitution for, and to the exclusion of, all other warranties, representations, conditions or obligations imposed or implied by law, statute or otherwise in relation to the SonaSafe Products and Services; and all liability for any indirect, special or Consequential Loss or damage of any kind is expressly excluded.
- 17 **INTELLECTUAL PROPERTY**
- 17.1 SonaSafe warrants that:
- to the best of its knowledge and belief, that the provision of any Service, or access to the SonaSafe System, to the Client does not, and will not, infringe any third party IP Rights; and
 - the Services will meet, function, and perform substantially in accordance with the Documentation provided that SonaSafe will not be liable for any breach of this warranty to the extent that such breach is in relation to a failure of the Third-Party Software and/or the failure of the Client to satisfy its Client Responsibilities.
- 18 **LIMITATION OF LIABILITY**

- 18.1 The Client accepts that the SonaSafe System is not a guarantee or assurance and is not intended to be and cannot be considered or relied upon as a guarantee or assurance of the personal safety of any person, or that there will be no damage to or loss of any tangible property in any Covered Environment in which the SonaSafe System may be operated. Ensuring the safety of any people or property in or in the vicinity of, the Covered Environment is ultimately the responsibility of the Client. SonaSafe does not assume any of the Client's legal health and safety responsibilities as a consequence of the provision of the Services, the SonaSafe Products and/or the SonaSafe System.
- 18.2 SonaSafe will not be liable to Client under the law of tort, contract or otherwise for any:
- indirect or Consequential Loss arising out of, or in connection with, these Terms and the provision of the SonaSafe Products and/or Services; and
 - loss of revenue, loss or profit, data loss, liquidated damages, penalties, fines, implementation delays, arising out of, or in connection with, these Terms and the provision of the SonaSafe Products and/or Services.
- 18.3 SonaSafe's total liability to the Client in respect of all losses suffered or incurred under a PSA will not exceed the Fees paid and/or payable by Client to SonaSafe under the relevant PSA.
- 19 CONFIDENTIALITY AND PRIVACY**
- 19.1 Each party must keep any Confidential Information provided by the other confidential and ensure that, without the other's prior written consent, Confidential Information provided by the other party is not disclosed except as expressly authorised in these Terms.
- 19.2 Each party must take all reasonable steps necessary or desirable in order to safeguard the confidentiality of the Confidential Information provided by the other.
- 19.3 Neither party may use the Confidential Information provided by the other except for the purpose(s) that the Confidential Information was provided.
- 19.4 Each party may disclose the Confidential Information provided by the other to its officers, employees, agents or advisers who:
- are necessary to enable the performance of the Services under these Terms;
 - are advised of the confidential nature of the Confidential Information; and
 - except in the case of officers or employees approved by the other, sign an undertaking acknowledging the confidentiality requirements of these Terms.
- 19.5 Each party acknowledges that damages may not be sufficient remedy for the providing party for any breach of the provisions of these Terms and accordingly the other party is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by it, in addition to any other remedies available to the other party at law or in equity.
- 19.6 To the extent that any of the Client Data constitutes Personal Information as defined in section 7 of the Privacy Act 2020, the Client authorises SonaSafe to collect, use, store, disclose and otherwise process such Personal Information to the extent reasonably required to provide the Services, perform its obligations under these Terms, comply with applicable law, and exercise its legal rights.
- 20 LICENSING AND INTELLECTUAL PROPERTY**
- 20.1 The Client is granted a non-exclusive, non-transferable, revocable licence to use the SonaSafe Products, including the SonaSafe Dashboard for the purposes of receiving the Services.
- 20.2 The Client will not, and will not allow its End Users or other third parties under Client's control to:
- provide access to the SonaSafe Dashboard to any third party through operation of a bureau or like service;
 - copy, modify, duplicate, create a derivative work from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the SonaSafe Dashboard and/or Documentation (as applicable) in any form or media or by any means;
 - attempt to reverse engineer, decompile, transfer, disassemble, or otherwise attempt to extract any or all of the source code of the SonaSafe Dashboard;
 - remove, alter or obscure any copyright trade mark or other proprietary notices on the SonaSafe Dashboard;
 - upload to the SonaSafe Dashboard any material that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy or right of publicity, hateful, or otherwise objectionable;
 - circumvent the user authentication or security of the SonaSafe Dashboard or any related host, network, or account;
 - without prior written consent from SonaSafe, perform any penetration testing on or with respect to the SonaSafe Dashboard, including use of any tools, code or instruction intended to fuzz, damage, destroy, alter, reveal any portion, or expose vulnerability of the SonaSafe Dashboard;
 - sublicense, resell, or distribute any or all of the SonaSafe Dashboard;
 - create multiple accounts to simulate or act as a single account or otherwise access the SonaSafe Dashboard in a manner intended to avoid incurring the payment of any fees for the SonaSafe Dashboard;
 - access all or any part of the SonaSafe Dashboard to build a product or service which competes with the SonaSafe Dashboard; or
 - make any use of the SonaSafe Dashboard that violates any applicable local, national, international, or foreign law.
- 20.3 Each party retains all right, title and interest in and to its pre-existing IP Rights. Nothing in these Terms transfers ownership of any pre-existing IP Rights. For clarity, all IP Rights in the Client Data remains the sole property of the Client, and all IP Rights in the SonaSafe Products, SonaSafe Dashboard and Documentation remains the sole property of the Client.
- 20.4 All IP Rights created or generated by SonaSafe in the course of providing the Services, including the Generated Data and including any analytics, reports, performance metrics or aggregated information, remains the sole property of SonaSafe.
- 20.5 SonaSafe is granted a non-exclusive, royalty-free licence to use, store, copy and process Client's pre-existing IP Rights for the purposes of:
- performing SonaSafe's obligations under these Terms, a PSA or Trial;
 - understanding how the Client is using the SonaSafe Dashboard and Services; and
 - performing data analysis on an aggregated and/or anonymous basis.
- 20.6 Where Generated Data contains Client Data, SonaSafe is granted a non-exclusive, royalty-free licence to use, store, copy and process that portion of the data solely for the purposes stated at clause 20.5(a) to (c) above.
- 20.7 The Client may be granted access to Generated Data relevant to its operations as part of the Services, subject to the terms of the Agreement and any applicable confidentiality restrictions in accordance with clause 19.
- 21 TERMINATION**
- 21.1 SonaSafe may terminate a PSA without cause by providing the Client with 43 Business Days written notice or such lesser period as may be mutually agreed.
- 21.2 Either party may terminate a PSA with immediate effect by giving written notice to the other party if the other party commits a material breach of this Agreement, including (without limitation) any breach of its obligations relating to Confidential Information or IP Rights, and, where the breach is capable of remedy, fails to remedy that breach within the period specified in the notice.
- 21.3 Neither party will be liable for any delay or failure to perform its obligations under these Terms or a PSA to the extent that such delay or failure is caused by a Force Majeure Event. If a Force Majeure Event continues for a period of more than [43] Business Days, either party may terminate these Terms by giving written notice to the other party, without liability for any loss or damage resulting from such termination.
- 21.4 Upon termination of these Terms or a PSA:
- The Client will return to SonaSafe any property, the Documentation and any other materials belonging to SonaSafe within 5 Business Days of termination. To the extent necessary, SonaSafe may enter the Site and recover any property which belongs to SonaSafe;
 - the Client must immediately pay to SonaSafe any amounts owing by the Client to SonaSafe under these Terms; and
 - both parties must immediately return or destroy any of the other party's Confidential Information and must not use or disclose such information after termination.

- 21.5 Termination or expiry of these Terms shall not affect any rights, obligations, or liabilities of the parties that have accrued prior to termination, or any provisions which by their nature are intended to survive, including without limitation: clause 16 (Warranties), clause 17 (Intellectual Property), clause 18 (Limitation of Liability), clause 19 (Confidentiality and Privacy), clauses 20.2 (Licensing and Intellectual Property), this clause 21 (Termination), clause 23 (Dispute Resolution), clause 28 (Notices) and clause 33 (Governing Law). These provisions shall remain in effect notwithstanding termination or expiry.
- 22 INDEMNITIES**
- 22.1 The Client indemnifies, and must keep indemnified, SonaSafe and its Related Parties against all liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis) arising from or in connection with:
- (a) any breach by the Client of these Terms, including any failure to comply with its obligations, representations or warranties;
 - (b) any act or omission of the Client, its employees, agents or contractors;
 - (c) any claim by a third party arising from the Client's use of the Services or SonaSafe Products, except to the extent caused by SonaSafe's gross negligence or willful misconduct; and
 - (d) any infringement or alleged infringement of any third party's IP Rights arising from the Client's Data or materials provided to SonaSafe.
- 22.2 SonaSafe indemnifies, and must keep indemnified, the Client against all liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis) arising from or in connection with any claim by a third party that the Services or SonaSafe Products infringe any third party IP Rights, except to the extent the claim arises from the Client's Data, instructions or specifications.
- 22.3 Neither party is liable to indemnify the other to the extent that the loss arises from:
- (a) the other party's negligence, misuse, or breach of these Terms;
 - (b) any use of the Services or Products outside the scope of the Terms or contrary to instructions provided; or
 - (c) any modification or combination of the Services or Products by the other party or a third party without SonaSafe's prior written consent (for SonaSafe's indemnity) or without the Client's written consent (for Client indemnity).
- 23 DISPUTE RESOLUTION**
- 23.1 If a dispute arises out of or relates to these Terms (**Dispute**) neither of the parties may commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief.
- 23.2 A party claiming the Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.
- 23.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 23.4 If the Dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 23.1 (or within such further period agreed in writing by the parties) either party may, by giving written notice to the other party, require the Dispute to be determined by the Mediation of a single Mediator. The Mediator will be appointed by the parties or, failing agreement within 5 Business Days of the notice requiring arbitration, by the President of the New Zealand Law Society on application of either party. The arbitration will be conducted in Auckland, New Zealand as soon as possible and in accordance with the provisions of the Arbitration Act 1996.]
- 24 CONSUMER GUARANTEES ACT 1993**
- 24.1 The parties agree that the SonaSafe Products and/or the Services are acquired for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply.
- 25 CURRENCY**
- 25.1 Unless otherwise agreed in writing, all prices, charges, invoices and payments under these Terms are stated and must be paid in New Zealand dollars (NZD), exclusive of GST and any other applicable taxes, duties or levies.
- 26 NO ASSIGNMENT OR SUBCONTRACTING**
- 26.1 SonaSafe may assign all or any of its rights or obligations under these Terms or subcontract the Services (in whole or in part) to any other person or entity without the prior written consent of the Client. The Client may not assign all or any of its rights or obligations under these Terms to any other person or entity without the prior written consent of SonaSafe. A change in Control shall be deemed to be an assignment for the purposes of these Terms. SonaSafe may provide, deny or withhold its consent and impose any condition it considers necessary in its sole discretion. SonaSafe shall not be required to provide any reasons for its provision, denial, withholding or imposing of conditions of its consent.
- 27 PUBLICITY**
- 27.1 The Client agrees that SonaSafe may use or refer to its name and identify the Client as a current or former customer of SonaSafe, in any publicity or marketing collateral (including any case studies), including after termination of this Agreement, unless otherwise agreed between the parties.
- 28 NOTICES**
- 28.1 Notices must be in writing and are deemed received:
- (a) on delivery to the party's address;
 - (b) five (5) Business Days after posting by pre-paid mail; or
 - (c) when sent to the party's nominated email address.
- 28.2 SonaSafe's notice details are:
- Address: C/O BDO Auckland
Level 10, 19 Como Street
Takapuna
Auckland 0622
- Attention: Paul Sills
Email: paul.sills@paulsills.co.nz
- 28.3 The Client's details are as set out in the Proposal and/or PSA.
- 29 NO WAIVER**
- 29.1 No failure by SonaSafe to exercise any right under these Terms will operate as a waiver of that right.
- 30 AMENDMENTS AND VARIATIONS**
- 30.1 These Terms may be amended by SonaSafe from time to time by written notice to the Client. By receiving the SonaSafe Products and/or Services, the Client is deemed to accept and agree to the Terms in force at the time of such receipt. If the Client does not agree to the amended Terms, the Client may terminate this Agreement by giving [22] Business Days' written notice, in which case SonaSafe will provide the Client with any Services or SonaSafe Products already ordered in accordance with the Terms in force immediately prior to the amendment.
- 31 PARTIAL INVALIDITY**
- 31.1 The illegality, invalidity or unenforceability of a provision of a of these Terms under any law will not affect the legality, validity or enforceability of another provision.
- 32 ENTIRE AGREEMENT**
- 32.1 These Terms, any Proposal or PSA constitute the entire agreement between the parties and supersedes and replaces all previous agreements, understandings, representations and arrangements, whether written or oral, relating to the subject matter of these Terms.
- 32.2 SonaSafe may amend these Terms from time to time by notice to the Client in writing.
- 33 GOVERNING LAW**
- 33.1 These Terms will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.