

## B Rhino (Pty) Ltd.

### Standard Terms and Conditions

v4.1



#### B Rhino (Pty) Ltd. Terms and Conditions

1. **Definitions:**

1.1. In these terms and conditions, the following expressions shall have the following meanings:

- 1.1.1. "**Affiliates**" means a Party's officers, agents, contractors, or other persons in respect of whose actions such Party may be held to be vicariously liable;
- 1.1.2. "**Agreement**" means the Contract read together with these Terms and Conditions;



- 1.1.3. "**BlickRhino**" means B Rhino (Pty) Ltd, a private company, with Registration Number 2019/473091/07, registered in terms of the laws of the Republic of South Africa, having its principle place of business at 94 Sir David Baird Drive, Bloubergstrand, Western Cape, 7441, and email address: legal@blckrhino.com;
- 1.1.4. "**Business Day**" means any day of the week, excluding Saturdays, Sundays and official public holidays in the Republic of South Africa;
- 1.1.5. "**Client**" means a customer of BlickRhino;
- 1.1.6. "**Confidential Information**" shall mean any information received by one Party from the other Party and is marked as confidential or a similar notice (if disclosed in writing or a tangible form), identified as confidential (if disclosed verbally) or should reasonably be treated as confidential under the context in which such disclosure was made;
- 1.1.6.1. Confidential Information shall not include information that the Party receiving the information can demonstrate:  
is lawfully in the public domain at the time of disclosure thereof; subsequently becomes lawfully part of the public domain by publication or otherwise; and is or becomes available to the Party receiving such information from a source other than the Party revealing the information, which source was lawfully entitled without any restriction on disclosure to disclose such information to a third party.
- 1.1.6.2. The Party receiving the Confidential Information will:  
safeguard Confidential Information with the same degree of care as it exercises with its own Confidential Information, but no less than reasonable care;  
  
not disclose any Confidential Information to third parties; and will use the other Party's Confidential Information solely in the exercise of the rights and obligations under these Terms and Conditions and for no other purpose.
- 1.1.6.3. The Party receiving the Confidential Information may disclose same only pursuant to a requirement or request by operation of law, regulation or court order, but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed.
- 1.1.7. "**Contract**" or "**Invoice**" means the contract or accepted quote for the sale and purchase of Products and/or Services to which these Terms



and Conditions are applicable;

- 1.1.8. **"Effective Date"** means
  - 1.1.8.1. In the case of the provision of SaaS licences:
    - the date when access is granted to the SaaS platform or
    - where no platform access is provided, date of installation of first endpoint/node/system software at Client;
  - 1.1.8.2. In the case of any SOC/SIEM service, the date upon which first logs are ingested by BlickRhino or its partner supplier; or
  - 1.1.8.3. Any other time as agreed between BlickRhino and Client in the Contract, or otherwise in writing.
- 1.1.9. **"End User"** means the Client in the context of purchasing a SaaS, either directly or via a Channel Partner
- 1.1.10. **"Initial Term"** means the specified period during which the Products and Services will be provided as specified in the Contract
- 1.1.11. **"Losses"** shall mean all losses (including, but not limited to, those in respect of injury, damage to physical property or loss of life), liabilities, costs, expenses, fines, penalties, damage, and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
- 1.1.12. **"Parties"** means BlickRhino and Client, and **"Party"** means any one of them, as the context indicates;
- 1.1.13. **"Price"** means the price for Products or Services stated in the Contract;
- 1.1.14. **"Products"** and **"Services"** means the products and/or services detailed in the Contract or Invoice;
- 1.1.15. **"SaaS"** means software as a service, and
- 1.1.16. **"Subscription"** means any SaaS subscribed for by each End User
- 1.1.17. **"Term"** means the renewal, after the Initial Term period during which the Services will be provided, as specified in the Contract
- 1.1.18. **"Terms and Conditions"** means these terms and conditions.

## 2. Interpretation:

- 2.1. Clause headings in this Agreement are used for convenience only and shall be ignored in its interpretation.
- 2.2. In this Agreement, unless a contrary intention clearly appears:



- 2.2.1. any reference to the singular includes the plural and vice versa;
    - 2.2.2. any reference to one gender includes the other gender; and
    - 2.2.3. any reference to natural persons includes legal persons and vice versa.
  - 2.3. When any number of days is prescribed, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.
  - 2.4. Where in this Agreement, provision is made for the Parties (or either of them) to agree on or grant approval in respect of any matter, such agreement or approval shall only be valid and binding on the Parties thereto if reduced to writing and signed by the duly authorised representative of such Parties.
  - 2.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
  - 2.6. Where words have been defined in the body of the Agreement, such words will, unless otherwise required by the context, have the meanings so assigned throughout the Agreement.
  - 2.7. The rule of construction in terms of which an agreement shall be interpreted against the party responsible for its drafting shall not apply.
  - 2.8. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
  - 2.9. Where an expression has been defined, whether in clause 1 above, or elsewhere, and such definition contains a provision conferring a right or imposing an obligation on any Party, then, notwithstanding that it is contained only in a definition, effect shall be given to that provision as if it were a substantive provision contained in the body of the Agreement.
  - 2.10. Expiration or termination shall not affect such of the provisions of this Agreement which of necessity must continue to have effect after such expiration or termination, notwithstanding that such provision may not expressly provide
3. **Products and Services:**
- 3.1. BlickRhino agrees to provide the Client with Products and/or Services as set out in the Contract or Invoice.



3.2. Insofar as any SaaS provided to Client, the underlying technology may or may not be owned by BlckRhino and the End User terms of use shall be governed by the respective technology owner's End User Licence Agreement (EULA). An up-to-date list of BlckRhino's technology partners and a link to their respective EULA's can be viewed at <https://blckrhino.com/SaaSEULA>

This list includes BlckRhino's End User Licence Agreement link as well, which shall govern term of use of BlckRhino HORN and other technology owned by BlckRhino supplied to Client from time to time.

3.3. The quantity, quality and format of the Products and/or Services shall be those set out in the Contract or Invoice.

3.4. The Client is responsible for ensuring the Products and/or Services are suitable for its requirements.

3.5. These Terms and Conditions apply to all Contracts for the supply of Products and/or Services by BlckRhino to the Client.

3.6. Services will commence on the Effective Date.

3.7. On-site engagements, if required, will be conducted at the Client's premises and information collation and report writing will be conducted from BlckRhino's offices.

3.8. In the case of ad-hoc consulting services, these may result in the provision of a summary report, which BlckRhino will present to the Client on completion. However, if any serious risk, vulnerability or other significant issue is identified, this will be reported immediately to the nominated contact of the Client and a course of action will be agreed.

3.9. Both Parties acknowledge and agree that in providing the Products or Services, BlckRhino is an independent supplier and shall not be considered the Client's agent, partner or employee.

#### 4. Fees:

4.1. Basis of Fees

4.1.1. Our fees reflect:

4.1.1.1. the resourcing BlckRhino anticipates allocating to the Service, charged at competitive rates, and adjusted where appropriate to reflect other factors. Those factors may include specialised knowledge; skills; and/or responsibility required; the figures involved; the importance of the matter; urgency; and/or results achieved, and/or



- 4.1.1. 2.The underlying cost of any applicable underpinning SaaS or technology.
    - 4.1.2. For services and products sourced in other currencies, applicable rates used for the purposes of quoting shall be presented in the Contract (Contract Rate). BlckRhino shall be entitled to pass on any increases in costs, caused as a result of a more than 5% deterioration in the market rate as against the Contract Rate. Any cost increases shall be communicated to Client within a 30 days notice period.
  - 4.2. Unless otherwise stipulated in the Contract, fee’s charged in respect of any SaaS shall be invoiced monthly upfront from the Effective Date.
  - 4.3. Unless otherwise stipulated in the Contract, consultancy services shall be invoiced 50% upfront with the balance on engagement completion.
  - 4.4. All fees are payable 30 days from invoice.
  - 4.5. Fee estimates or Quotations
    - 4.5.1. Any fee estimate given by us for matters which have uncertain resourcing requirements, will be given in good faith but will not be contractually binding unless there is written acceptance of a proposal submitted by BlckRhino or where any other communication expressly so provides. It will be subject to the stated exceptions, assumptions and any other factors outside our control and, wherever it is practicable to do so, BlckRhino will notify Client if it is likely to be exceeded.
  - 4.6. Disbursements and expenses
    - 4.6.1. In addition to our fees, BlckRhino may incur disbursements and expenses from time to time. More specifically, you will be notified if any disbursements or expenses are applicable, unless already agreed to in accordance with a signed proposal.
    - 4.6.2. Disbursements may include our external lawyers’ fees, expert fees (if applicable), and courier charges.
    - 4.6.3. Expenses BlckRhino incur will also be charged to Client (including, by way of example, travel and accommodation expenses). Disbursements and/or expenses-only bills may be delivered when or at any time after the disbursement and/or expense is incurred.
  - 4.7. Deposits
    - 4.7.1. As security for the payment of the fees and disbursements incurred on Client’s behalf, BlckRhino reserve the right to require the payment of a deposit. BlckRhino shall not be obliged to act nor to take any steps in furtherance of the commencement or completion of the mandate until such deposit has been received. Any deposit payable will be outlined in the Contract or a signed proposal or other agreed written communication.
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#### 4.8. Referral Fees

- 4.8.1. BlckRhino reserves the right to claim referral fees from services providers introduced to the Client by BlckRhino. These referral fees are charged to service providers and will not affect any payment made by the Client to the service provider unless otherwise stated. All referrals claimed are agreed to between the service provider and BlckRhino and it is the Client's ultimate choice to select a service provider that it deems competent.

#### 4.9. Conditions of Payment

- 4.9.1. Unless otherwise agreed in writing between BlckRhino and the Client, BlckRhino will invoice Client as per the schedule stated in the Contract or Invoice.
- 4.9.2. Invoiced amounts shall be due and payable within 30 (thirty) Business Days of receipt of Invoice or the date stipulated within the particular Invoice, unless otherwise agreed with client in writing.
- 4.9.3. If Client fails to pay BlckRhino any sum due timeously, BlckRhino shall be entitled to charge interest at 2% above prime or terminate the Contract together with these Terms and Conditions and suspend provision of any Products and/or Services supplied to the Client.
- 4.9.4. If the Client's procedures require that an invoice be submitted against a purchase order to payment, the Client shall be responsible for issuing such purchase order as close as possible to commencement of service delivery.
- 4.9.5. If the Client cancels any planned engagement less than 5 (five) Business Days prior to the scheduled engagement, BlckRhino shall be entitled to charge the Client a cancellation charge equal to 40% (forty percent) of the agreed fees related to the engagement.

### 5. **Warranty:**

- 5.1. BlckRhino represents and warrants that it will use its reasonable endeavours to ensure that any work carried out for Client will be carried out with reasonable skill and care and diligence in a professional manner and that all of BlckRhino's personnel engaged in fulfilling its obligations under the Contract have sufficient qualifications and/or professional competency and experience to carry out the Services under the Contract in accordance with the standards and practices normal for the industry.
- 5.2. BlckRhino represents and warrants that it will use reasonable endeavours to ensure that neither it nor its personnel shall damage or corrupt any business application, or any other systems, networks or data owned by or licensed to Client.



- 5.3. BlckRhino will take reasonable care to implement measures to reduce risk that it will not do or cause or permit anything to be done which may endanger the Client's intellectual property rights or that will infringe the legal rights of any person.
- 5.4. BlckRhino undertakes:
  - 5.4.1. to use all information received during the Contract solely in connection with the execution of the Contract;
  - 5.4.2. to use all reasonable measures to preserve the secrecy of confidential information; and
  - 5.4.3. not to disclose confidential information to any third party without Client's prior consent in writing.
- 5.5. Neither Party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded herein or reduced to writing and signed by the Parties.

## 6. **Indemnification:**

- 6.1. Subject to the limitations contained in clause 8, each Party shall indemnify and hold harmless the other Party and its Affiliates and their respective officers, directors, employees, partners, agents, successors and assigns from, and shall defend the other against, any costs, liabilities, damages or expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim that the services, software, or any work performed by either party, or their agents, consultants or contractors under this Agreement infringes the proprietary rights of any third party.
- 6.2. A Party seeking indemnification under clause 7 shall:
  - 6.2.1. give the other prompt written notice upon becoming aware of the possibility of a claim;
  - 6.2.2. not make any admission which may be prejudicial to the defence of the claim without the indemnifying Party's prior written consent;
  - 6.2.3. allow the indemnifying Party exclusive control of the defence or settlement of the claim; and
  - 6.2.4. reasonably cooperate, at the expense of the indemnifying Party, in the defence of settlement of the claim.
- 6.3. If a claim for infringement occurs or is reasonably likely to occur, the indemnifying Party will:
  - 6.3.1. procure for the other Party the right to use the item in question; or
  - 6.3.2. replace or modify the item so that it becomes non-infringing.





If neither option is reasonably available to the indemnifying party, the indemnifying party may terminate this Agreement.

- 6.4. BlckRhino will indemnify Client for direct physical injury or death caused solely by the negligence of BlckRhino employees acting within the course of their employment and the scope of their authority under these Terms and Conditions.

## 7. **Limitation of Liability**

- 7.1. Neither BlckRhino nor any of its directors, agents or employees shall be liable for personal injury to or the death of any person including but not limited to Client, or the loss of or damage to any property of whatever nature, howsoever arising or caused, arising out of, or related to (and agrees not to institute any proceedings in respect of), the Agreement.
- 7.2. Disclaimers and limitation of liability
- 7.2.1. save for otherwise specifically stated herein, and to the fullest extent permissible by law, BlckRhino disclaims all warranties, any representations of fitness for purpose of any kind, whether express or implied in respect of the Products and Services and Client utilises the Products and Services entirely at its own risk;
  - 7.2.2. the Client agrees that BlckRhino is unable to, and is not required to, guarantee a particular result, or set of commercial results;
  - 7.2.3. the Client agrees that BlckRhino shall not be liable for any Losses however arising and whatever the cause including, but not limited to, Losses arising as a result of Client's negligence, and/or failure to furnish BlckRhino with adequate information and/or documentation it requires in accordance with this Agreement;
  - 7.2.4. the Client hereby indemnifies BlckRhino and its directors, agents or, employees from any Losses, which may arise as a result of Client's unlawful conduct, willful misconduct, negligence, and/or gross negligence; and
  - 7.2.5. the Client irrevocably waives any claims it may have against BlckRhino arising out of, or related to (and agrees not to institute any proceedings in respect of), the Products and Services or this Agreement more than 1 (one) year after the cause of action relating to such claim or legal action arose.

- 7.3. Should it be found that BlckRhino is liable to Client for any Loss, then the Parties agree that the entire liability of BlckRhino to the Client, in respect of any claim whatsoever or breach of these terms and conditions, whether or not arising out of negligence, shall be limited to the fees paid by Client to which the claim relates.
- 7.4. In no event shall one Party be liable to the other Party for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable, or such Party had been made aware of the possibility of the other Party incurring such a loss.
- 7.5. Neither Party shall be liable to the other Party for any outages or slow-downs of such Party's computer systems resulting from the performance of any services, unless such outages or slowdowns are the result of the Party's gross negligence, recklessness or wilful misconduct
- 7.6. For the avoidance of doubt, neither Party shall be liable for any damages to the extent that the other Party has failed to take back-up copies of data in accordance with best computing practice.

**8. Protection of Personal Information Act ("POPI Act"):**

- 8.1. The POPI Act sets conditions that any person who processes personal information must comply with and aims to protect the personal information of people. The POPI Act aims to strike a balance between the right to privacy and the need for the free flow of, and access to information, and to regulate how personal information is processed.
- 8.2. The POPI Act includes eight information protection conditions and these conditions are subject to exclusions and processing of information is prohibited in certain instances. The conditions are:
  - 8.2.1. accountability;
  - 8.2.2. processing limitation;
  - 8.2.3. purpose specification;
  - 8.2.4. further processing limitation;
  - 8.2.5. information quality;

- 8.2.6. openness;
  - 8.2.7. security safeguards; and
  - 8.2.8. data subject participation.
- 8.3. BlckRhino confirms that it will take reasonable and required steps to protect, secure and process all information received from any Clients in a professional manner, in accordance with the aforementioned conditions.
- 8.4. However, Client agree and confirm that you will not hold BlckRhino responsible for any breach of confidentiality, stemming from wilful or intentional misconduct or criminal activity, and/or any form of gross negligence, especially where any breach of confidentiality or information that arises as a result of any action taken by Client in providing the information to BlckRhino.
- 8.5. Any damage suffered by Client as a result of any breach of POPI obligations stemming from the signed Proposal, this agreement or any Services offered to or provided by BlckRhino to Client, shall be limited to a maximum of the value of the Services rendered to Client by BlckRhino, or Products purchased by Client from BlckRhino, and BlckRhino cannot and will not be held responsible for any future-dated damages and/or patrimonial damages suffered downstream of any breach.
9. **Breach:**
- 9.1. Should either Party ("Defaulting Party") commit any breach of any term, condition, undertaking, warranty or representation contained in the Agreement and:
    - 9.1.1. should such breach be incapable of being remedied; or
    - 9.1.2. should such breach be capable of being remedied, and should the Defaulting Party fail to remedy such breach within 7 (seven) Business Days after receipt of notice to that effect in writing from the other Party,
- then, unless the Parties agree in writing that such breach can be remedied by the payment of money in respect of any loss, the other Party ("Aggrieved Party") shall be entitled, at its election, without prejudice to any other rights which it may have in terms of this Agreement or at law, either: 9.1.3. to require the Defaulting Party to make specific performance; or

9.1.4. to cancel this Agreement, in either event without prejudice to the Aggrieved Party's rights and to claim damages.

**10. Termination:**

- 10.1. The Initial Term of the Agreement shall commence on the Effective Date and shall continue for the term specified in the applicable Contract. In relation to Services which include the provision of a SaaS, this Agreement shall not terminate on the expiry of the Initial Term but shall continue to endure in full force and effect thereafter on a month-to-month basis, subject to the right of either party to terminate the Agreement on one calendar months' notice in writing to the other party.
- 10.2. This Contract may be terminated by either Party forthwith on written notice should:
- 10.2.1. the other Party convene a meeting of creditors or pass a resolution for winding up (except in the case of a winding up purely for the purposes of a solvent amalgamation or reconstruction) or have a petition for winding up presented (except as aforesaid) or shall have a receiver, administrative receiver, administrator or similar officer appointed over all or any part of its assets and the same is not discharged within 40 (forty) Business Days of such appointment.
- 10.2.2. The termination of aforementioned Contract shall, at all times, be without prejudice to the accrued rights of the Parties hereunder including their rights and remedies in respect of breach of Contract and those clauses that by necessity must continue to have effect after termination shall survive termination, including clauses 9 and 12.
- 10.3. Effect of Termination; Survival - If Client terminates this Agreement for any reason, Client agrees to pay BlckRhino within twenty (20) Business Days for all Products supplied and Services performed by BlckRhino up to the date of cancellation that have not previously been paid for by Client. Additionally, if Client terminates this Agreement other than for cause, then Client shall pay to BlckRhino, as a cancellation fee and not as a penalty, an amount equal to the service charge for the remainder of the Agreement until the Client could validly have terminated the Agreement upon notice in accordance with clause "Notice".

**11. Dispute resolution and arbitration:**

- 11.1. Save as otherwise contained herein, should any dispute arise between the Parties in connection with this Agreement, the Parties shall attempt on the basis of good faith to settle such dispute by way of negotiation.
- 11.2. If either Party provides written notification to the other that such attempt has failed then each Party shall attempt to agree upon the appointment of a suitably qualified mediator, within 10 (ten) days of such dispute being referred.
- 11.3. If agreement is not reached as to the appointment of such mediator within 10 (ten) days after either Party has in writing called for the appointment of a mediator, or where an appointment has been agreed upon and such mediator is not able to mediate a resolution of such dispute within 30 (thirty) days after such appointment then either Party may give written notice to the other Party referring the dispute to arbitration in accordance with the provisions of this clause 11("Arbitration Notice").
- 11.4. The arbitration shall be:
  - 11.4.1. held in Cape Town;
  - 11.4.2. conducted in the English language;
  - 11.4.3. held before a single arbitrator;
  - 11.4.4. subject to the provisions of this clause 11, conducted in accordance with the Arbitration Foundation of Southern Africa (AFSA) Rules; and
  - 11.4.5. held as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) business days of the date  
of the Arbitration Notice.
- 11.5. The arbitrator shall be if the question in issue is:
  - 11.5.1. primarily an accounting matter an independent accountant advocate with no less than 10 (ten) years' experience agreed upon between the Parties; or
  - 11.5.2. primarily a legal matter, an independent practicing senior advocate with no less than 10 (ten) years' standing agreed upon between the Parties;and

- 11.5.3. any other matter a suitably qualified independent person agreed upon between the Parties.
- 11.6. If the Parties cannot agree upon a particular arbitrator under the provisions of clause 12.5 above within 7 (seven) business days after the arbitration has been demanded, the nomination shall be made by the president for the time being of the South African Institute of Chartered Accountants within 7 (seven) days after the Parties have so failed to agree.
- 11.7. The arbitrator shall determine which Party shall pay the costs of and incidental to the arbitration or, if more than 1 (one) Party is to contribute, the ratio of their respective contributions, and the scale on which such costs are to be paid.
- 11.8. Subject to each Party's rights of appeal in accordance with the AFSA Rules, the Parties irrevocably agree that the decision of the arbitrator shall be final and binding on them, shall be carried into effect, and shall be capable of being made an order of any court of competent jurisdiction.
- 11.9. The provisions of this clause 11:
- 11.9.1. constitute irrevocable consent by the Parties to any proceedings in terms of this clause 11 and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
  - 11.9.2. are severable from the rest of this Agreement and shall remain in effect despite the termination, or invalidity for any reason, of this Agreement; and
  - 11.9.3. shall not preclude any Party from obtaining interim relief on an urgent basis from any court of competent jurisdiction pending the decision of the arbitrator.
- 11.10. This clause shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has terminated.

12. **Confidentiality and Authorised Disclosure:**

- 12.1. Neither Party shall, without the prior written consent of the other Party (which consent may, for the avoidance of doubt, be withheld in the unfettered discretion of the Party called upon to disclose the Confidential Information) disclose such Confidential Information to any person, and/or make use of such Confidential Information for any purposes other than in connection with the terms and conditions of this Agreement.

- 12.2. The Party receiving the Confidential Information may disclose same to its officers, employees, and subcontractors but only to the extent required for the purposes of the performing of its obligations pursuant to the provisions hereof.
- 12.3. The Party receiving the Confidential Information shall inform any officer, employee or subcontractor to whom it discloses such Confidential Information, that such information is confidential and shall instruct them to keep it confidential and not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement), on the basis that the Party disclosing the Confidential Information is responsible for any disclosure, in breach of this clause 12, by the person to whom it is disclosed.
- 12.4. Notwithstanding the provisions of this clause 12, either Party may make reference to this Agreement, the Parties' identities and a general description of the benefits provided pursuant to and in terms of this Agreement, unless such information is explicitly and specifically identified as Confidential Information on written notice by either Party to the other.
- 12.5. The Parties hereby confirm that the provisions of a mutual non-disclosure agreement between them, if executed, shall be in full force and effect and apply to all information furnished by either Party in connection with the provision of Products and Services. Any subcontractors will be disclosed and the same provisions of mutual non-disclosure agreements will be in place.
13. **Dependencies:**
- 13.1. Client acknowledges that the provision of Products and/or Services is dependent upon the performance of Client, and its Affiliates (if applicable), and that BkckRhino shall not be liable for its failure to perform to the extent such failure is due to:
- 13.1.1. a failure by Client or any third party retained by, or under the control of, Client to provide data or materials that Client or such third party is required to provide to BkckRhino or required by BkckRhino to perform the services under this Agreement; 13.1.2.
- a failure by Client to timely and accurately perform its responsibilities as set forth in this Agreement; and/o
- 13.1.3. a failure by Client to obtain consents, approvals or access for BkckRhino.
14. **Force Majeure:**

- 14.1. Neither Party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, theft, acts of nature, embargos, legislation, civil commotion, unrest or disturbance, pandemic, breakdown in transportation facilities, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties or utility providers of equipment, Services or Products.
- 14.2. The affected Party shall be entitled to a reasonable extension of its obligations after notifying the other Party of the nature and extent of such events.
15. **Procedures & Waiver:**
- 15.1. BlickRhino consultants shall conform to Client's normal codes of staff and information security practice, if provided.
- 15.2. The failure by either Party to enforce at any time or for any period any one or more of these Terms and Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions herein.
16. **Severability:**
- 16.1. If any provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed, and the remainder of the provisions herein shall continue in full force and effect as if these terms and conditions had been agreed with the invalid illegal or unenforceable provision eliminated.
17. **Limitation of Third-Party Rights:**
- 17.1. Nothing in these terms and conditions is intended to, nor shall it confer any rights on a third party.
18. **Notices:**
- 18.1. Each of the Parties choose as its domicilium citandi et executandi the respective address set out in this clause for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of, or in connection with, this Agreement.
- 18.2. Each of the Parties shall be entitled from time to time to vary its domiciliumcitandietexecutandito any other address within the Republic of South Africa which is not a Post Office Box or postrestante.



- 18.3. The Parties choose domiciliumcitandietexecutandi ("**Domicilium**") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows:
- 18.3.1. B Rhino (Pty) Ltd: the address recorded in clause 1.1.3 above.
  - 18.3.2. Client: Address: perContract  
Email: perContract  
Attention: PerContract
- 18.4. Any notice given in terms of this Agreement shall be in writing and shall:
- 18.5. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 18.5.1. if sent by courier be deemed to have been received on the date of delivery by the courier service concerned;
  - 18.5.2. if transmitted by electronic mail message, be deemed to have been delivered to and received by the addressee upon receipt of an automated acknowledgement of receipt by the sender from the addressee or any conduct of the addressee sufficient to indicate to the sender that the electronic mail message has been received,  
unless the contrary is proved.
- 18.6. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of facsimile transmission shall be adequate written notice or communication to such Party.
19. **Governing Law and Jurisdiction:**
- 19.1. South African Law shall be the applicable law of these terms and conditions and all Parties agree, subject to clause 11, to submit to the exclusive jurisdiction of the South African courts.
20. **General:**

- 20.1. Client shall not be entitled to cede, assign or otherwise transfer its right, title and interest in and to the Agreement to any other party without the prior written consent of BlickRhino. BlickRhino shall be entitled to cede, assign or otherwise transfer its right, title and interest in and to this Agreement to any other party without the Client's consent and without their knowledge.
- 20.2. No addition to, variation or consensual cancellation or novation of the Agreement and no waiver of any right arising from this Agreement, or its breach or termination, shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representatives.
- 20.3. No indulgence, which either Party may grant to the other, shall constitute a waiver of any of the rights of the grantor.
- 20.4. This Agreement may be executed in one or more counterparts and in separate counterparts, each of which when executed shall be deemed to be an original but when taken together shall constitute one and the same Agreement.