

These Terms and Conditions shall apply to the provision of Software by THSP Risk Management, the trading name of The Health and Safety People Ltd, a company registered in England under number 02730817, of Unit F, Bedford Business Centre, Mile Road, Bedford MK42 9TW, hereinafter called "the Company" to the Client.

Please read these terms and conditions carefully. You agree to comply with and be bound by these Terms and Conditions upon your first use of the Software. If you do not agree to all of these terms and conditions, you must not use the Software.

1. **Definitions and Interpretation:** In these Terms and Conditions, the following expressions have the following meanings:
  - "Client" means the individual, firm or corporate body using the Software.
  - Where an individual is entering into this Contract on behalf of a business, the individual confirms they have the authority to enter into this Contract on behalf of that business and the business shall be the Client in the context of this Contract;
  - "Client Data" means the data inputted to the Software by the Client (or the Client's authorised agents), authorised users, or us on the Client's behalf, for the purpose of using the Software or facilitating the Client's use of the Software;
  - "Consumer" means an individual consumer as defined in the Consumer Rights Act 2015;
  - "Contract" means the contract formed as detailed in clause 2, which includes the acceptance of these Terms and Conditions;
  - "Software" means the online risk assessment software provided by the Company; and
  - "Website" means www.thsp.co.uk.
- 1.1 Unless the context otherwise requires, each reference in these Terms and Conditions to:
  - 1.1.1 "we", "us" and "our" is a reference to the Company;
  - 1.1.2 "you" and "your" is a reference to the Client;
  - 1.1.3 "writing" and "written" includes emails and similar communications;
  - 1.1.4 a statute is a reference to that statute as amended or re-enacted at the relevant time;
  - 1.1.5 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
  - 1.1.6 a clause refers to a clause of these Terms and Conditions;
  - 1.1.7 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 1.2 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation.
- 1.3 Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender. References to persons shall include corporations.
2. **The Contract**
  - 2.1 A legally binding Contract is formed as soon as you use the log-in details provided by us in order to first access the Software. You agree to comply with and be bound by these Terms and Conditions upon your first use of the Software.
  - 2.2 Once the Contract is formed, and provided payment (where necessary) is made in accordance with clause 4, we will immediately grant you a non-exclusive, non-transferrable licence to use our Software solely for your own internal business operations, within the bounds of these Terms and Conditions.
  - 2.3 The Contract will be for a term of 12 months and any subsequent renewed term.
3. **Software**
  - 3.1 We will send you an initial log-in as an "Authorised User".
  - 3.2 It is your responsibility to ensure that your employees, agents and other parties under your control who will use the Software do so in accordance with these Terms and Conditions and are accordingly notified of the same.
  - 3.3 You will ensure that any Authorised User who leaves your employment has their access to the Software removed promptly and in any case that they have no access to the Software whatsoever after the expiry of a maximum of 7 days from the date their employment ends. You will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, shall promptly notify us. We shall be entitled to carry out regular audits to ensure that only Authorised Users have access to the Software.
  - 3.4 All proprietary rights in the Software remain with us. You shall not:
    - 3.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, transmit, or distribute all or any portion of the Software in any form or media or by any means;
    - 3.4.2 attempt to reverse compile, disassemble, or reverse engineer all or any part of the Software;
    - 3.4.3 access all or any part of the Software in order to build a product or service which competes with the Software;
    - 3.4.4 vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software;
    - 3.4.5 sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party except the Authorised Users; or
    - 3.4.6 attempt to obtain, or assist third parties in obtaining, access to the Software other than as provided under this clause 3.
  - 3.5 We do not warrant that your use of the Software will be uninterrupted or error-free; nor that the Software, and/or the information obtained by you through the Software will meet your requirements.
  - 3.6 We are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
  - 3.7 We reserve the right to carry out maintenance at such times as may be

- 3.8 The Client acknowledges that Client Data may be held outside of or transferred to countries which do not have data protection laws equivalent to those in force in the European Economic Area.
- 3.9 The Client undertakes that it will not allow or suffer any password to be used by more than one Authorised User and confirms that it will use reasonable endeavours to ensure that each Authorised User keeps their password confidential. The Client will also ensure that each password is reasonably strong and secure, containing a combination of letters, numbers and symbols, and is changed regularly, no less frequently than once every three months.
- 3.10 The Client shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Software that:
  - 3.10.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 3.10.2 facilitates illegal activity;
  - 3.10.3 depicts sexually explicit images;
  - 3.10.4 promotes unlawful violence;
  - 3.10.5 is knowingly discriminatory based on race, gender, religious belief, sexual orientation, disability, or any other illegal activity; or
  - 3.10.6 causes or may cause damage or injury to any person or property and we reserve the right, without liability to the Client, to remove any material that breaches the provisions of this clause.
- 3.11 The rights provided under this clause 3 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client without our written permission.
- 3.12 The Client shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for its legality, reliability, integrity, accuracy and quality. The Client is responsible for backing up any Client Data and we shall not be responsible for any loss, destruction, alteration or disclosure of such Client Data.
- 3.13 The Client is solely responsible for procuring and maintaining its network connections and telecommunications links and for all problems, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.
- 3.14 The Client assumes sole responsibility for results obtained from their use of the Software and for conclusions drawn from such use.
4. **Payment**
  - 4.1 The Software is commercially licensed software. It is not open-source, freeware or shareware.
  - 4.2 For existing Clients of THSP Risk Management, who pay an ongoing fee for our retained health and safety services and who are up to date with payments and have not breached the terms of any agreement with us, we will permit the use of the Software free of charge and this service will renew along with the retained health and safety services being renewed. Should the Client not wish to continue with the retained health and safety services they will have the option to purchase this software service under the terms of this agreement.
  - 4.3 For any other Clients, the licence fee payable for use of the Software is as stated on our Website, or otherwise as agreed between us in writing. In this event, payment will be due prior to the Software becoming available to the Client. On the THSP portal on our Website, Clients will be asked to fill in their details and make payment by card through the Website. Once payment is received, the Software will become accessible to the Client for the initial term and any subsequent renewed term.
  - 4.4 All payments made via the Website will go through an online payment gateway provider, such as SagePay. No credit or debit card information is provided to us and completion of the transaction will be subject to you agreeing to this payment gateway provider's terms and conditions. A separate contractual relationship is created between you and the payment gateway provider and we cannot be held liable for any errors, actions, omissions or incorrect charges that may be made by such third party.
  - 4.5 We reserve the right to review our licence fees periodically and will provide you with a minimum of 30 days' notice of any change in the fees before such change shall take effect.
  - 4.6 Prior to the expiration of the 12 month period you will be notified that you are coming to the end of your contract for the provision of the Software. At this time you will have the option to renew your contract.
  - 4.7 All sums payable by either Party pursuant to the Contract are exclusive of VAT at the current rate or any other tax (except corporation tax), for which that Party shall be additionally liable. All payments by the Client shall be made in pounds sterling without any set-off, withholding or deduction. Any amendment to the standard VAT rate will be notified in writing and subsequent payments adjusted accordingly.
5. **Intellectual Property Rights, Claims and Disputes**
  - 5.1 The Software, together with any and all intellectual property rights of whatever nature which now or in the future subsist in the Software are and shall remain our property. This Contract does not constitute a sale of the original Software or any copies thereof.
  - 5.2 You must notify us immediately if you become aware of any unauthorised use of the whole or any part of the Software by any person.
  - 5.3 We will defend, at our own expense, any claim brought against you alleging that the use of the Software infringes the intellectual property rights of a third party and we shall pay all reasonable costs and damages awarded or agreed to in settlement of such a claim provided that you:
    - 5.3.1 give us the sole authority to defend or settle the claim;
    - 5.3.2 furnish us with prompt written notice of the alleged claim; and
    - 5.3.3 provide us with reasonable assistance in respect of the claim.
  - 5.4 We shall have no liability for any such claim resulting from any modification of any part of the Software by any party other than us or an authorised agent of ours.
6. **Our Obligations**
  - 6.1 We warrant that the Software will operate as described, when used properly.

- 6.2 We warrant that we will use all reasonable care and skill in fulfilling our obligations under this Contract and that all personnel have qualifications and experience appropriate for the tasks to which they are allocated.
- 6.3 We will ensure that we and our servants, agents and subcontractors take all reasonable precautions to ensure that no known viruses, spyware or other malware for which detection and antidote software is generally available are coded or introduced into the Software.
- 6.4 If we receive written notice from you, after the Contract is formed, of any breach of our obligations then we shall remedy the defect or error in question at our own expense and as soon as reasonably possible.
- 6.5 When notifying us of a defect or error, please (where possible) provide us with a documented example of such defect or error.
- 6.6 Our obligations are subject to you complying with your obligations under the terms of this Contract and shall also be subject to the limits and exclusions of liability set out in clause 8. In particular, they shall not apply if any defect in the Software arose or was exacerbated as a result of:
- 6.6.1 incorrect use, operation or corruption of the Software;
- 6.6.2 any unauthorised modification or alteration of the Software; or
- 6.6.3 use of the Software with other software or on equipment with which it is incompatible.
- 7. Termination**
- 7.1 The contract will automatically terminate upon the expiration of the 12 month period, unless the contract has been renewed, or if the Health and Safety contract has been renewed as per clause 4.2 above
- 7.2 We may terminate this Contract at any time by giving the Client at least 30 days' written notice.
- 7.3 Either Party may terminate the Contract immediately by giving written notice to the other if the other Party commits any serious breach of any term of this Contract and (if the breach is capable of being remedied) has failed to remedy the breach within 14 days after receiving a written request from the other Party to do so.
- 7.4 The Contract cannot otherwise be cancelled and in this event, no refund will be provided and the Services will remain available to you until officially terminated.
- 7.5 Upon termination, the Client's access and licence to use any Software provided by us shall terminate immediately and we will irretrievably delete any Client Data contained in the Software in accordance with the Data Protection Act.
- 7.6 In the event of any breach or suspected breach by the Client, we reserve the right to immediately disable the Client's account and access to any Software provided by us, until we have investigated the breach.
- 7.7 Any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiration of this Contract shall survive termination on a pro-rata basis.
- 7.8 The rights to terminate this Contract given by this clause 7 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 8. Liability**
- 8.1 Nothing in these Terms and Conditions excludes or seeks to exclude our liability for death or personal injury caused by our negligence, or for fraud or fraudulent misrepresentation.
- 8.2 Except as provided in clause 8.1 above, we will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the Contract. All warranties or conditions whether express or implied by law are hereby expressly excluded to the maximum extent permitted by law.
- 8.3 It is imperative that we are kept informed of any changes within the business that may or may not have an effect on the Client's requirements, legal or otherwise. Should this information not be forthcoming from the Client, or our requests for information not be responded to by the Client, we shall have no liability whatsoever for any effects on the Client's business' requirements for which we have not been made aware or had no response to requests and have the right to terminate the contract forthwith without any financial or other liability to us whatsoever.
- 8.4 In the event of a breach by us of our express obligations under these Terms and Conditions, the remedies of the Client will be limited to damages, which in any event, shall not exceed the fees paid by the Client for the use of the Software in the 12 months preceding the date on which the alleged claim arose.
- 8.5 The Software produces reports and information based on Client Data inputted by the Client. We accept no liability whatsoever for any loss or damage resulting from advice or instructions produced by the Software where the Client has incorrectly entered information (whether accidentally or deliberately) or where changes have occurred that have not been updated by the Client.
- 9. Confidentiality:** Each Party undertakes that throughout the duration of the Contract, the Parties may disclose certain confidential information to each other. Both parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under this Agreement. Each Party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless so authorised by the other Party in writing.
- 10. Data Protection:** All personal information that we may collect (including, but not limited to, your name, address and telephone number) will be collected, used and held in accordance with the provisions of the General Data Protection Regulations 2016 and any amendments to it.
- 11. Force Majeure:** Neither Party to this Contract shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 12. No Agency or Partnership:** This Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Contract.
- 13. Notices and Communications**
- 13.1 We may revise these Terms and Conditions from time to time. Revised Terms and Conditions will apply to the use of our Software from the date the new version is published on our Website. Please check our Website regularly to ensure you are familiar with the current version.
- 13.2 All notices/communications shall be sent to us by email via the Support link on the Website. Such notice will be deemed received the day of sending if the email is received on a business day and on the next business day if the email is sent on a weekend or public holiday.
- 13.3 We may from time to time ask you to provide a testimonial or case study. You can choose to do so, in which case we may use your name for marketing purposes. You can, of course, decline to do so at any time.
- 13.4 All Authorised Users may be sent regular tips and advice on how to make the most of the Software. Users can choose to unsubscribe at any time by clicking the link at the bottom of the email.
- 14. Other Important Terms**
- 14.1 We may transfer (assign) our obligations and rights under these Terms and Conditions (and under the Contract, as applicable) to a third party (if for example, if we sell our business). If this occurs you will be informed by us in writing. Your rights under these Terms and Conditions will not be affected and our obligations under these Terms and Conditions will be transferred to the third party who will remain bound by them.
- 14.2 You may not transfer (assign) your obligations and rights under these Terms and Conditions (and under the Contract, as applicable) without our express written permission.
- 14.3 Each Party acknowledges that, in entering into this Contract, it does not rely on any representation, warranty or other provision except as expressly provided in this Contract. This Contract constitutes the entire Contract between you and us with respect to its subject matter and supersedes all proposals, representations, understandings and prior Contracts, whether oral or written, and all other communications between us relating to that subject matter.
- 14.4 The Contract is between you and us. It is not intended to benefit any other person or third party in any way and no such person or party will be entitled to enforce any provision of these Terms and Conditions.
- 14.5 Any part of these Terms and Conditions found to be unlawful, invalid or otherwise unenforceable would be severed from our Contract. The validity and enforceability of the remaining parts of the Contract would not be affected.
- 14.6 If any rights under these Terms and Conditions are not exercised or enforced following a breach of contract by either party, this does not mean that either of us has waived our right to do so at a later date.
- 15. Law, Jurisdiction and Dispute Resolution**
- 15.1 This Contract and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with the laws of England and Wales.
- 15.2 The Client recognises that our business relies upon the protection of our Intellectual Property Rights ("IPR"). In the event of a breach or threatened breach of IPR, we will be caused irreparable damage and may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of our IPR.
- 15.3 With respect to all other disputes which are not IPR related, the following clauses 15.4 – 15.6 shall apply.
- 15.4 Where there is a dispute, the aggrieved Party shall notify the other Party in writing of the nature of the dispute with as much detail as possible about the issue. A senior representative of each of the Parties shall communicate within 7 days of the date of the written notification in order to reach an agreement about the nature of the issue and the corrective action to be taken by the respective Parties.
- 15.5 If the Parties cannot resolve a dispute in accordance with clause 15.4, they shall seek to resolve the dispute or difference amicably using an Alternative Dispute Resolution ("ADR") procedure acceptable to both Parties before pursuing any other remedies available to them. If either Party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute is not resolved to the satisfaction of both Parties within 30 days after it has arisen, the matter shall be settled in accordance with the procedure below.
- 15.6 If the Parties cannot resolve the dispute by the procedure set out above, the Parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Contract.