

## THSP Risk Management – Terms and Conditions

These Terms and Conditions shall apply to the provision of services 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.

### 1. Definitions and Interpretation:

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“**Acceptance**” means the acceptance of our proposal by the signing (electronically or otherwise) of a Service Contract, and includes the acceptance of these Terms and Conditions;

“**Client**” means the individual, firm or corporate body purchasing the services. 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; “**Contract**” means the contract formed upon Acceptance by the Client as above; “**Expense**” means any cost incurred by us in direct relation to the provision of the services;

“**Proposal**” means the proposal for the performance of the services by way of a “Service Contract” and/or proposal for additional services, which remains open for acceptance for a period of 30 days and shall constitute our entire scope of works;

“**Services**” means the services to be carried out by us as detailed in the Service Contract;

“**Software**” means, where applicable, the online software-based service provided by the Company; and

“**Term**” means the term of this Contract as defined in clauses 2 and 12.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “we”, “us” and “our” is a reference to the Company;

1.2.2 “writing” and “written” includes emails, faxes and similar communications;

1.2.3 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.4 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;

1.2.5 a clause is a reference to a clause of these Terms and Conditions;

1.2.6 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation.

1.4 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 The Contract is formed as soon as we receive Acceptance, via the signing (electronically or otherwise) of a Service Contract, and includes the acceptance of these Terms and Conditions, which shall apply between us. No terms or conditions stipulated or referred to by the Client in any form whatsoever shall in any respect vary or add to these terms and conditions unless otherwise agreed by us in writing.

2.2 Any prices provided by us which are not contained in our Service Contract are for illustrative purposes only and shall not be binding.

2.3 The Company shall, throughout the initial Term of this Contract and any subsequent renewed Term, and in consideration of the fees being paid in accordance with the terms of payment herein, provide the Services to the Client in accordance with the provisions of this clause 2.

2.4 The Contract will continue for a minimum Term as outlined in the Service Contract, and thereafter shall be automatically renewed, with the exception of the price, on the same terms and conditions as set out in this Contract on a rolling basis for the same Term as the original, minimum Term unless a written notice to terminate is given by either party in accordance with clause 12 below. We shall notify the Client of any such price increase in accordance with these terms and conditions.

2.5 We reserve the right to review our fees periodically and in any event, shall do so annually. The Client shall be given a minimum of 60 days’ notice of any change in the fees or in these terms and conditions before such change shall take effect.

### 3. The Services

3.1 Once the Contract is formed, we will commence the provision of the Services as detailed in the Service Contract.

3.2 On commencement of an annual Service Contract, we will allocate a dedicated account executive to the Client. We will endeavour to ensure continuity but shall have the right to replace any such primary contact as required.

3.3 We will contact the Client as soon as reasonably possible to arrange a date for the audit, which will be carried out thereafter on an annual basis.

3.4 Our findings from this audit will be reported to the Client with our recommendations, if any.

3.5 All reports, procedures and documentation we prepare will be based on information provided to us at the time by the Client and will be legally accurate as at the date of their preparation. We cannot be held liable for any adverse consequences where the Client has withheld information necessary for us to provide our professional advice.

3.6 We may provide an action plan for implementing our recommendations and it is the Client’s responsibility to ensure these recommendations are implemented correctly and fully.

3.7 We may provide the Client with templates for documentation such as supplier agreements, employment contracts and handbooks, policies and safety booklets. These will be based on information provided to us at the time and will contain sections which the Client will need to complete. We are not responsible for any sections completed or deleted by the Client.

3.8 Our normal working hours for site visiting are Monday – Friday, 7am – 7pm excluding public holidays. Services or visits required outside of these times will incur additional costs, as will particular requirements of the Client, such as specifically timed visits or specified consultants.

3.9 Additional documentation can be ordered as extra to the Contract, subject to a minimum order quantity, together with a fee for postage and packaging. Any such documentation ordered will be invoiced and payable in accordance with clause 6 below.

3.10 Face Fit testing can be carried out as extra to the Contract, subject to minimum numbers. We will invoice for the number of tests booked, not the actual number of tests carried out and failed tests will also be charged for. Full details will be provided with our price list and/or Proposal.

3.11 Training can be carried out as extra to the Contract and is subject to separate terms and conditions, available on request.

3.12 We shall use all reasonable endeavours to complete our obligations under the Contract, but time will not be of the essence in the performance of these obligations.

4. **Software:** The following clause 4 applies where we are providing software, whether as an individual service or as part of a Service Contract:

4.1 For the purpose of this clause 4, “Authorised Users” means current employees, expressly authorised agents and officers of the Client who are authorised to use the Software and “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.

4.2 Software agreements are for a minimum Term of one year as outlined in the Service Contract, and thereafter shall be automatically renewed, with the exception of the price, on the same terms and conditions as set out in this Contract on a rolling 12 month basis unless a written notice to terminate is given by either party in accordance with clause 12 below. We shall notify the Client of any such price increase in accordance with these terms and conditions. The Contract cannot otherwise be cancelled and in this event, no refund will be provided and the Services will remain available to the Client until officially terminated.

4.3 The Client is required to provide us with the name of an Authorised User, which we will detail in the Proposal.

4.4 Subject to the Client paying the fees and the other terms and conditions of this Contract, we will grant to the Client a non-exclusive, non-transferable licence to permit the Authorised Users to use the Software during the term of this Contract solely for the Client’s internal business operations.

4.5 The Client shall ensure that Authorised Users who leave the employment of the Client have their access to the Software removed promptly. The Client shall 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 quarterly audits to ensure that only Authorised Users have access to the Software.

4.6 All proprietary rights in the Software remain with us or our agents. The Client shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Contract:

4.6.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means;

4.6.2 attempt to reverse compile, disassemble, or reverse engineer all or any part of the Software;

4.6.3 access all or any part of the Software in order to build a product or service which competes with the Software;

4.6.4 unless expressly authorised by us, use the Software to provide services to third parties;

4.6.5 subject to clause 16, 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

4.6.6 attempt to obtain, or assist third parties in obtaining, access to the Software other than as provided under this clause 4.

4.7 We do not warrant that the Client’s use of the Software will be uninterrupted or error-free; nor that the Software, and/or the information obtained by the Client through the Software will meet the Client’s requirements.

4.8 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 the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4.9 We reserve the right to carry out maintenance at such times as may be necessary at our discretion.

4.10 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.

4.11 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 secure.

4.12 The Client shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Software that:

4.12.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

4.12.2 facilitates illegal activity;

4.12.3 depicts sexually explicit images;

4.12.4 promotes unlawful violence;

4.12.5 is knowingly discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or

4.12.6 causes 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.

4.13 The rights provided under this clause 4 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.

4.14 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.
- 4.15 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.
- 4.16 The Client assumes sole responsibility for results obtained from the use of the Software by the Client, and for conclusions drawn from such use.
- 5. Commercial Legal Expenses Insurance:** The following clause 5 applies where we are providing Commercial Legal Expenses Insurance only:
- 5.1 We act as an appointed representative of Vantage Protect Ltd, which is authorised and regulated by the Financial Conduct Authority.
- 5.2 We will send a Key Facts Document and the detailed Policy upon the Client's acceptance of our Proposal. The Client must read both documents carefully to ensure they meet the Client's requirements and to check that all details are correct. Failure to inform us of any inaccuracies may invalidate the policy and/or result in a claim being rejected or reduced.
- 5.3 In line with the Financial Conduct Authority Regulations, insurance policies will not automatically renew. Prior to renewal, we will send a renewal proposal form. The Client is required to complete this form accurately and to the best of their knowledge. Upon receipt, we will issue a proposal for a further year's cover, which will only commence once we receive the signed Proposal letter.
- 5.4 The Client has 14 days from commencement of cover in which to cancel the policy and receive a full refund. Please refer to the Key Facts Document provided for full details.
- 6. Fees and Payment**
- 6.1 The Client agrees to pay the fees as detailed in the accepted Proposal in accordance with the terms of payment herein.
- 6.2 In addition, we shall charge to the Client our reasonable travelling time and travel Expenses where these are not included in the Proposal, any incidental Expenses for materials used and for third party goods and services supplied in connection with the provision of the services.
- 6.3 The Client will pay for any additional services provided by us that are not specified in the Contract. These additional services shall be charged in accordance with our current, applicable rate in effect at the time of the performance or such other rate as may be agreed. Any charge for additional services will be supplemental to the amounts that may be due for Expenses.
- 6.4 If the agreed Software fees are on a per-user basis, then in the event that the number of users as detailed in the Proposal increases, the pricing shall be adjusted in the Client's next invoice, commencing from the date the number of users increased. Should the Client wish to decrease the number of users as detailed in the Proposal, the Client must first discuss this with us and we reserve the right to adjust our price per user accordingly. Under no circumstances can the number of users fall below any minimum number identified in the Proposal.
- 6.5 Payment can be made by way of monthly instalments, paid by Direct Debit over the Term of this Contract. In this event, we require a deposit of 25% of the total Contract value up front before the Services can commence. Payments by Direct Debit will incur an administration fee of 4.5%.
- 6.6 Alternatively, the Client can pay for the Services annually in advance by cheque, credit/debit card or bank transfer. Payments by credit card will incur an administration fee of 2%.
- 6.7 All invoices must be paid within 30 days from the date of invoice.
- 6.8 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.
- 6.9 The time of payment shall be of the essence. If the Client fails to make any payment on the due date then we shall, without prejudice to any right which we may have pursuant to any statutory provision in force from time to time, have the right to suspend the services, suspend access to any Software where applicable, and charge the Client interest on a daily basis at an annual rate equal to the aggregate of 8% above the base rate of the Bank of England from time to time on any sum due and not paid on the due date in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgment.
- 7. Client's Responsibilities**
- 7.1 The Client agrees to:
- 7.1.1 make payments in accordance with clause 6;
- 7.1.2 provide us with any information, advice and assistance relating to the services as we may reasonably require within sufficient time to enable us to perform the services in accordance with the Contract;
- 7.1.3 appoint a primary contact to act as the Client's representative to liaise with us in connection with the services; and
- 7.1.4 carry out any preparatory and follow up work as instructed by us.
- 7.2 If the Client fails to meet any of the provisions of clause 7.1 above, without limiting our other rights or remedies, we shall:
- 7.2.1 have the right to suspend performance of the services until the Client remedies the default;
- 7.2.2 disable the Client's account and access to any Software provided by us, where applicable;
- 7.2.3 not be held liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and
- 7.2.4 be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from the Client's default.
- 8. Delays & Abortive Visits:** Our price is based on being able to complete our services in the agreed number of hours or consecutive days over the period as detailed in the Proposal. We reserve the right to recover any costs incurred by way of delays or abortive visits, or for any other delays attributable to the Client including, but without limitation, failing to carry out agreed actions or not providing necessary information or services, or failing to give proper notice to terminate or cancel as detailed herein and these will be charged at our standard fee rates applicable at the time.
- 9. Errors or Discrepancies:** The Client shall be responsible for the accuracy of any information submitted to us and for ensuring that the Proposal (and Software, if applicable) reflects their requirements. Our Proposal is based on the information provided to us at the time of its preparation. Should any errors or discrepancies become evident which affect the order value, we reserve the right to make adjustments to it.
- 10. Variation and Amendments**
- 10.1 If the Client wishes to vary the services to be provided, they must notify us in writing as soon as possible. We shall endeavour to make any required changes and any additional costs thereby incurred shall be invoiced to the Client.
- 10.2 If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the provision of the services, we shall notify the Client immediately. We shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.
- 10.3 Any agreed variation or amendment will be carried out in accordance with these terms and conditions and any price increase necessitated as a result shall be payable in accordance with the terms for payment herein.
- 11. Cancellation**
- 11.1 Should the Client wish to cancel an appointment for an audit, we require a minimum of one working days' notice. We reserve the right to charge a fee of £250 + VAT where such notice is not provided.
- 11.2 Should the Client cancel a scheduled site visit, we shall be immediately entitled to payment for:
- 11.2.1 100% of our fees if the cancellation takes place within 24 hours of the scheduled visit;
- 11.2.2 50% of our fees if the cancellation takes place between 25 and 48 hours of the scheduled visit.
- 11.3 If, due to unforeseen circumstances, we have to reschedule or cancel a scheduled visit, we will contact the Client as soon as possible to minimise disruption and will book another visit as soon as reasonably possible.
- 12. Termination**
- 12.1 As detailed in clause 2.4 above, annual Service Contracts shall continue for a minimum Term as outlined in the Service Contract, and thereafter shall be automatically renewed, with the exception of the price, on the same terms and conditions as set out in this Contract on a rolling basis for the same Term as the original, minimum Term unless a written notice to terminate is given by either party in accordance with this clause 12. Such notice is to be given a minimum of 30 days before the end of the then-current Term and shall be effective only at the end of that Term.
- 12.2 If the Contract is automatically renewed due to the Client's failure to provide the correct notice, and the Client subsequently terminates the Contract, this shall incur a cancellation fee equivalent to 12 months' annual fee under the Service Contract, which shall become immediately due and payable.
- 12.3 We may terminate this Agreement immediately without liability to the Client by giving written notice:
- 12.3.1 in the event that the Client has failed to pay the fees when required to do so and fails or refuses to do so following the expiry of a written notice from us requesting such payment within 7 days; or
- 12.3.2 in the event of the Client committing a serious criminal offence or giving to us any false or misleading statement or making any negligent or fraudulent misrepresentation in relation to this Contract; or
- 12.3.3 if any of our employees suffer harassment or are abused by the Client or their employees during the term of this Agreement.
- 12.4 Either Party has the right to terminate this Contract immediately if the other goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.
- 12.5 In the event of termination:
- 12.5.1 all payments required under this Contract shall become due and immediately payable. In respect of Services provided but for which no invoice has been submitted, we shall be entitled to submit an invoice, which shall become due and immediately payable;
- 12.5.2 the Client shall no longer use our company name in any future health and safety or employment documentation, or any other form of documentation whatsoever, and we shall accept no responsibility or liability whatsoever for these services from the date of termination;
- 12.5.3 any access and licence to use any Software provided by us shall terminate immediately;
- 12.5.4 the Client shall immediately return all equipment and materials provided by us. If the Client fails to do so within 28 days from the date of termination, we shall be entitled to enter onto the Client's premises to take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe-keeping;
- 12.5.5 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.
- 12.6 The rights to terminate this Contract given by this clause 12 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 13. Confidentiality**
- 13.1 For the purposes of this clause 13, Confidential Information shall include all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature. Both we and the Client shall undertake that, except as provided by sub-Clause 13.2 or as authorised in writing by the other Party, both Parties shall at all times during the continuance of the Contract and for 2 years after its termination:
- 13.1.1 keep confidential all Confidential Information;
- 13.1.2 not disclose any Confidential Information to any other party;
- 13.1.3 not use any Confidential Information for any purpose other than as contemplated by the Contract;
- 13.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

- 13.1.5 ensure that (as applicable) none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 13.1.1 to 13.1.4.
- 13.2 Subject to sub-Clause 13.3, either Party may disclose Confidential Information to:
- 13.2.1 any of their sub-contractors or suppliers;
- 13.2.2 any governmental or other authority or regulatory body; or
- 13.2.3 any of their employees or officers or those of any party described in sub-Clauses 13.2.1 or 13.2.2;
- 13.3 Disclosure under sub-Clause 13.2 may be made only to the extent that is necessary for the purposes contemplated by the Contract, or as required by law. In each case the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 13.2.2 or is an authorised employee or officer of such a body, the disclosing Party must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 13.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.
- 13.5 When using or disclosing Confidential Information under sub-Clause 13.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.
- 13.6 The provisions of this Clause 13 shall continue in force in accordance with their terms, notwithstanding the termination of the Contract for any reason.
- 14. Documentation:** We include for any documentation to be submitted in our normal standard format only. If additional copies or specific requirements are needed, we reserve the right to apply additional charges. We shall retain title to the documentation and no documentation shall be handed over until all payments as detailed above have been made in full.
- 15. Literature and Representations:** Any marketing literature is presented in good faith as a guide to represent the services offered and does not form a part of the Contract. None of our employees or agents are authorised to make any representation concerning the services unless confirmed by us in writing. In entering into the Contract, the Client acknowledges that it does not rely on and waives any claim for breach of any such representations, which are not so confirmed.
- 16. Intellectual Property**
- 16.1 Subject to a written agreement to the contrary, we or our agents reserve all intellectual property rights which may subsist in the provision of the services. Under no circumstances shall material provided by us be lent, hired out, sold or otherwise circulated by either manual or electronic means, nor shall it be photocopied or otherwise reproduced without our express written consent. We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of such intellectual property rights.
- 16.2 The Client shall not be entitled to use our name, logo or emblem (or that of any of our agents or sub-contractors) without our prior written consent.
- 16.3 The Client warrants that any document or instruction furnished or given by them shall not cause us to infringe any letter patent, registered design or trade mark in the execution of these services and shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in settlement of any claim for infringement of any patent, copyright, design, licence, trademark or any intellectual property rights which results from our use of the Client's information.
- 17. No Employment:** Nothing in this Contract shall render or be deemed to render us an employee or agent of the Client or the Client an employee or agent of ours.
- 18. Assignment and Sub-Contracting**
- 18.1 The Client shall not be entitled to assign the benefits under the Contract.
- 18.2 We may sub-contract the performance of any of our obligations under the Contract without the prior written consent of the Client. We shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.
- 19. Liability and Indemnity**
- 19.1 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.
- 19.2 Except as provided in clause 19.1 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.
- 19.3 We hereby exclude all liability in respect of any claims arising out of any alteration to, or modification of, a Client's procedures, working practices or conditions at the time of our investigation unless such alteration and/or modification are made on our recommendation or with our express knowledge and consent.
- 19.4 It is both of our obligations to abide by current UK employment and health and safety legislation. We will provide, to the best of our knowledge, advice, guidance and best practice within the realms of current UK employment and health and safety legislation based on the information provided by the Client.
- 19.5 Where we have good reason to believe that our professional advice is not being followed, we shall take reasonable steps to ensure that any Client overruling or neglecting our advice is formally made aware of the potential adverse consequences which may result. We shall not be liable for any consequences should our professional advice not be taken. We shall not be liable for any adverse consequences where the Client has withheld information necessary for us to provide professional advice.
- 19.6 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.
- 19.7 The Client shall indemnify us against all damages, costs, claims and expenses suffered by us arising from loss or damage to any premises, property or equipment (including that of third parties) caused by the Client, or his agents or employees.
- 19.8 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 and Expenses paid by the Client for the services in the 12 months immediately preceding the date on which the claim arose.
- 20. Restrictive Covenants**
- 20.1 The Client, or any associated company, will on no account use the services of our employees other than through us.
- 20.2 The Client will not, during the term of the Contract and for a period of 6 months from its expiry or termination, without our prior written consent, solicit, entice away, appoint in any way or cause to be employed, engaged or appointed any person who is or has been an employee, agent, director, consultant or independent contractor of ours in the provision of the Services.
- 20.3 Any consent given by us in accordance with clause 20.2 above shall be subject to the Client paying to us a sum equivalent to 50% of the then current annual remuneration of said employee, agent, director, consultant or independent contractor or, if higher, 50% of the annual remuneration to be paid by the Client to that employee, agent, director, consultant or independent contractor.
- 20.4 Whilst the above restrictions are considered by the parties to be reasonable in all the circumstances, it is agreed that if taken together they are adjudged to go beyond what is reasonable in all the circumstances for our protection but would be judged reasonable if part or parts of the wording of them were deleted or its period reduced or an area defined, they shall apply with such words deleted or with such modifications as may be necessary to make it valid and effective.
- 21. Force Majeure:** Neither Party shall be liable for any failure or delay in performing their obligations under the Contract 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.
- 22. Waiver**
- 22.1 No waiver by us of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of the Contract shall be effective only if given in writing and signed by the waiving Party and then only in the instance and for the purpose for which the waiver is given.
- 22.2 No failure or delay on the part of any party in exercising any right, power or privilege under the Contract shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.
- 23. Severance:** The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and the Contract, as appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.
- 24. Data Protection:** Both parties agree to comply with all applicable data protection legislation including, but not limited to, the General Data Protection Regulation 2016 and any subsequent amendments thereto.
- 25. Third Party Rights:** No part of the Contract is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- 26. Notices**
- 26.1 All notices under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice. Notices shall be deemed to have been duly given: when delivered, if delivered by courier or other messenger (including registered mail) during normal working hours of the recipient; when sent, if sent by fax or email and a successful transmission report or return receipt is generated; on the fifth working day following mailing, if mailed by national ordinary mail, postage prepaid; or on the tenth working day following mailing, if sent by airmail, postage prepaid. In each case notices shall be addressed to the most recent address, email address, or fax number notified to the other Party.
- 26.2 Service of any document for the purposes of any legal proceedings concerning or arising out of the Contract shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing.
- 27. Law and Jurisdiction**
- 27.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 27.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.