

General Terms and Conditions (2023)

Thank you for choosing us (“the Company”/ “Us”/ “Our”/ “We”) to support you and your business. These General Terms and Conditions set out the terms upon which the Company will deliver the products and/or services to you.

1 DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

“**Affiliate**” means any organisation that controls, is controlled by or is under common control with a party.

“**Agreement**” means the contract between the Parties which incorporates:

- a) the Order (as defined below);
- b) these General Terms and Conditions; and
- c) any applicable Product and / or Services Specifications referred to in these General Terms and Conditions; and
- d) the applicable Schedules.

“**Change of Control Event**” means where:

- a) any person acquires Control of the Client, whether as part of the same transaction or separately, during the term of this Agreement; and/or
- b) a material part of the Client’s business and/or assets are acquired, whether as part of the same transaction or separately, during the term of this Agreement.

“**Client**” means the party (being an organisation or an individual) contracting with the Company and includes its representatives and/ or employees;

“**Client Materials**” means all documents, electronic media, information, items and materials in any form that is owned and has been supplied by the Client. This includes any sponsor marks;

“**Client Proposal**” means the document containing the particulars of Products and / or Services requested and any proposed Fees;

“**Commencement Date**” means the date on which the Products and/or Services are supplied to the Client in accordance with the Order;

“**Company**” means Wilmington Healthcare Limited incorporated in England and Wales under number 02530185 whose registered office is at 5th Floor, 10 Whitechapel High Street, London E1 8QS.

“**Control**” means in relation to a body corporate, the possession (directly or indirectly) of the power to direct, cause or affect the direction of the management of that body corporate, whether through the ownership of voting securities or the holding of shares, by contract, the constitution of that body corporate or otherwise;

“**Data Processing Agreement**” means the agreement governing the processing of personal data under this Agreement and set out as a Schedule in the relevant Services Specification;

“**Data Protection Law**” means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (the “UK GDPR”), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended. The expressions, “Process”, “Personal Data” “Data Processor”, “Data Controller”, and “Data Subject” shall bear their respective meanings given in the Data Protection Laws;

“Fees” means any and all sums due under the Agreement and payable to the Company;

“Force Majeure Event” an event beyond the reasonable control of a party not attributable to its wilful acts, neglect or failure to take reasonable precautions including, but not limited to, acts of God, governmental acts, flood, fire, explosion, accident, war, civil commotion, pandemic or epidemic or industrial dispute;

“Group Companies” means in relation to any Party, its subsidiaries and subsidiary undertakings, holding company and all other subsidiaries or subsidiary undertakings of its holding company;

“Order” means an order placed by the Client under either an Order Form and/or a Client Proposal;

“Order Form” means the document containing the particulars of Products and / or Services requested and any proposed Fees;

“Parties” means the Company and the Client collectively;

“Privacy Policy” means the Company privacy policy which can be found on Our website unless otherwise stated in the applicable Services Specification;

“Product” means the products supplied by the Company and as set out in the Order and/or Client Proposal;

“Schedule” means the schedules to this Agreement setting out any additional terms relevant to a Product and / or Service including, but not limited to, service level agreement, data sharing agreement and Data Processing Agreement;

“Services” means the services supplied by the Company and as set out in the Order and/or Client Proposal;

“Service Specifications” means the specific terms and conditions applicable to your Products and/or Services; and

“Term” means the duration of this Agreement.

2. AGREEMENT

- 2.1 The Agreement between the Parties concerns the provision by the Company to the Client of all Products and / or Services during the Term, any renewal term and any additional Products and / or Services.
- 2.2 The Company reserves the right to revise these General Terms and Conditions, Service Specifications and other applicable Schedules and documents.
- 2.3 This Agreement shall commence on the Commencement Date and unless terminated as set out in this Agreement, shall remain in force and effect.
- 2.4 To the extent any obligations hereunder have already been performed by either party prior to the Commencement Date, then such obligations shall for all purposes be deemed to have been performed in accordance with and subject to the provisions of this Agreement.

3. PROVISION OF THE PRODUCTS AND /OR SERVICES

- 3.1 The Company shall provide the Products and / or Services in accordance with these General Terms and Conditions, the Service Specifications and the Order.
- 3.2 The Company may at its sole discretion and as it deems necessary, temporarily suspend all or any of the Products and / or Services for the purpose of repair, maintenance or improvement of any of its systems. The Company shall use its reasonable endeavours to minimise any disruption to the Products and / or Services caused by any such suspension and to restore service as soon as reasonably practicable. The Client shall not be entitled to any set off, discount, refund or other credit in the case of any such suspension in accordance with this clause.
- 3.3 If at any time during the Term in the Company’s reasonable opinion the Client is in material breach of any term of this Agreement, the Company may on written notice to the Client (and notwithstanding any of the Company’s other rights under this Agreement) suspend the

provision of all or any part of the Products and/or Services until such time as, in the reasonable opinion of the Company, the Client's breach has been remedied.

- 3.4 For the duration of the Term and any renewal term, subject to payment of Fees and except as otherwise provided for in this Agreement or your Order, the Client shall have the non-exclusive, non-assignable, royalty free, worldwide limited right to use the Products and/or Services solely for its internal use or to promote and exploit the Products and / or Services.
- 3.5 Upon termination of this Agreement, the Client's right to use the Products and / or Services will terminate subject to any relevant provisions within the Services Specifications.

4. MODIFICATIONS TO THE PRODUCTS OR SERVICES

- 4.1 The scope of the Products and / or Services is as set out in the Order. If the scope is amended for any reason by the Client, the Company reserves the right to charge additional Fees.
- 4.2 Subject to clause 4.1 any agreed modification to the Products and / or Services shall be in writing and agreed by both Parties. For the purposes of this clause, 'writing' shall include email to the contact details set out in the Order Form.

5. INTELLECTUAL PROPERTY

- 5.1 The Client shall provide Client Materials as required by the Company in order to provide the Products and / or Services in a timely manner. All rights in the Client Materials shall remain the property of the Client.
- 5.2 All rights in and to any materials supplied by the Company in the provision of the Products and / or Services (other than the Client Materials) shall remain the property of the Company.
- 5.3 If provision of the Products and / or Services includes the creation by the Company of any works capable of being the subject of intellectual property rights, ownership of such rights created shall vest in the Company. The Company shall assert all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.
- 5.4 Nothing in this Agreement grants either party any rights to use the other party's trademarks (registered or unregistered) or trade names directly or indirectly in connection with any Product and/or Service, promotion or publication without the prior written consent of the trademark owner.

6. FEES

- 6.1 The Client shall pay the Fees as set out in the Order. Once placed, an Order is non-cancellable, and any sums paid are non-refundable except as provided for in this Agreement.
- 6.2 Unless otherwise specified in the Order, payment of the Fees shall be made within 30 days from the invoice date, in the currency specified in the Order, in cleared funds to the Company's nominated bank account or by such other payment method as set out in this Agreement.
- 6.3 Any Fees paid by credit card or debit card payments are processed through a payment processor nominated by the Company.
- 6.4 The Company may issue multiple invoices for the Products and / or Services. Invoices will be submitted to Clients pursuant to an Order.
- 6.5 Unless otherwise agreed in writing, the Company will invoice the Client in full once the signed Order Form is received. If a purchase order number is required to make payment by invoice, the Client will provide this information in the Order Form. No Orders will be processed until a relevant purchase order number is provided.
- 6.6 The Client will, on demand, submit to the Company all information requested (including, but not limited to, any relevant purchase order number) in order for the Company to generate invoices.

- 6.7 Unless otherwise agreed, all invoices will be issued to the contact named on the Order Form.
- 6.8 In the event of the Client's failure to pay in accordance with clause 6.2, the Company reserves the right (without prejudice to its other rights and remedies under this Agreement) to temporarily cease providing all or any of the Products and / or Services with the possible resulting delay in their completion or delivery.
- 6.9 Unless otherwise stated, Fees are exclusive of VAT, or other such relevant local tax, which shall be applied at the prevailing rate.
- 6.10 Interest shall accrue on any sums payable pursuant to this Agreement and remaining unpaid at the due date for payment at a rate of four per cent (4%) above the Barclays Bank PLC base rate for the time being in force. Such interest shall accrue from day to day from the due date until the date of actual payment in full.

7. WARRANTIES AND INDEMNITIES

- 7.1 Both Parties warrant that they will comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and comply with such codes of conduct and anti-bribery and anti-corruption policies as are notified to the Client from time to time from the Company.
- 7.2 the Company warrants and undertakes to the Client that:
 - 7.2.1 the Company shall provide the Products and / or Services with reasonable skill and care as an experienced and diligent provider of similar Products and Services; and
 - 7.2.2 the Company shall provide the Products and / or Services in accordance with the relevant Service Specifications and the Order.
- 7.3 The Client warrants and undertakes that:
 - 7.3.1 it is authorised to enter into this Agreement; and
 - 7.3.2 the Company's use of the Client's Materials and any related trade or service marks will not breach the intellectual property rights of any third party anywhere in the world;
 - 7.3.3 it will comply, without limitation, with all relevant laws and regulations in force including Data Protection Laws;
 - 7.3.4 it will comply with any instructions or directions issued by or on behalf of the Company;
 - 7.3.5 it will not publish any inaccuracies of fact; and
 - 7.3.6 will include any legal or good practice notices as required by the Company from time to time.
 - 7.3.7 it will not do, or omit to do, (their employees, agents or contractors will not do, or omit to do) anything which may bring the Company into disrepute;
 - 7.3.8 it will not disparage the Company or any event that the Company is running;
 - 7.3.9 it will not damage the Company's goodwill; or
 - 7.3.10 otherwise prejudice the Company's image or reputation.
- 7.4 In the event that you change your name, trading style, identity or address or any other of the details disclosed by you to the Company, you will give the Company written notification of the change in question as soon as reasonably possible after becoming aware that the change will take place and in any event within five (5) working days of the change taking effect.
- 7.5 The Client will not use Company intellectual property in any way that, in our reasonable opinion, suggests that we are forming a partnership or any trading arrangement (other than the sponsorship of the event), or that we endorse any part of your business, trading name or style.

- 7.6 The Client hereby agrees to indemnify and keep the Company fully indemnified on demand against all damages, costs, expenses, demands or liabilities (including reasonable legal fees) incurred by the Company as a result of any breach by the Client of the Agreement. For the avoidance of doubt this shall include any claim that the Company's use of the Client Material infringes the intellectual property or other proprietary rights of any third party.
- 7.7 If during the Term of this Agreement, either party becomes aware of any threatened or actual unauthorised use or any misuse of the other's intellectual property or other proprietary rights then it will promptly notify the same to the other in writing. The non-owner of the intellectual property rights will, at the owning party's reasonable request and cost, provide all reasonable co-operation (including the provision or completion of any documentation) in any action, claim or proceedings brought or threatened in respect of such intellectual property rights, but will not be obliged to take any further action.
- 7.8 The provisions of this clause shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason.

8. LIMITATIONS ON LIABILITY

- 8.1 Nothing in this Agreement excludes either party's liability for:
- 8.1.1 death or personal injury caused by that party's negligence or wilful default;
 - 8.1.2 any fraudulent misrepresentations made by that party on which the other party can be shown to have relied; and
 - 8.1.3 any other liability which cannot be excluded by law.
- 8.2 the Company shall have no liability to the Client in relation to delays caused by the Client under clause 5.1. For the avoidance of doubt, unless otherwise specified and agreed between the Parties, time shall not be of the essence of the Agreement.
- 8.3 The Company shall not be liable to the Client for any consequential or indirect loss, including (but not limited to) any loss of profits revenues or business, anticipated savings, whether or not in the contemplation of the Parties at the time of entering into this Agreement.
- 8.4 Subject to Clause 8.1, notwithstanding anything contained in this Agreement the Company's total liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising by reason or in connection with this Agreement shall be limited to the Fees for the Products and / or Services payable during the 12-month period preceding the event giving rise to the Company's liability.
- 8.5 The provisions of this clause shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason.

9. ASSIGNMENT, SUB-CONTRACTING AND CHANGE CONTROL

- 9.1 The Company may at any time and without limitation, assign all, or part of its rights and benefits under this Agreement.
- 9.2 The Client shall not be entitled to assign, novate or otherwise transfer this Agreement, in whole or in part, without prior written consent and at the sole discretion of the Company.
- 9.3 If, following a Change of Control Event, the Client ceases to use the Products and / or Services (due to their staff being transferred, the company being dormant, or otherwise) the entity acquiring the Client shall be jointly and severally liable for all obligations of such Client under their Agreement, including the continuing obligation to pay the Fees (or, if applicable, the acquiring entity's subscription agreement shall be automatically amended to include such Fees).

10. TERM AND TERMINATION

- 10.1 This Agreement shall continue for the Term as set out in the Order and any subsequent renewal term.

- 10.2 Either party may by notice in writing terminate this Agreement with immediate effect if:
- 10.2.1 the other party commits a breach of any of the provisions of this Agreement, and:
 - (a) the breach is capable of remedy and the other party fails to remedy the breach within 30 days of receipt of a written notice;
 - (b) the breach is not capable of remedy; or
 - (c) the breach is a material breach;
 - 10.2.2 the other party is subject to an act of insolvency, is unable to pay its debts as or when they fall due or makes any composition or arrangement with its creditors, goes into liquidation or if any order is made or a resolution is passed for the winding up of the other party (except for the purpose of a solvent amalgamation or reconstruction), or if it ceases or prepares to cease trading, or if it suffers the appointment of a receiver, administrative receiver, administrator or similar officer over the whole or part of any of its assets; or
 - 10.2.3 the continued performance thereof is prevented by reason of a Force Majeure Event as defined (and in accordance with sub-clause 14.1) and the Parties are not able to rescue this Agreement pursuant to sub-clause 14.2.
- 10.3 the Company shall be entitled to terminate this Agreement with immediate effect by notice in writing if at any time during the Term or any renewal term:
- 10.3.1 the Client fails to make any payment due under this Agreement in full in accordance with Clause 6;
 - 10.3.2 the Client commits a breach of this Agreement, and the breach is a minor breach which individually would not cause termination but has continued persistently; or
 - 10.3.3 The Client is subject to a Change of Control Event; and / or
 - 10.3.4 Specific provisions set out in the relevant Service Specifications apply.
- 10.4 Termination of this Agreement for any reason is without prejudice to any rights or obligations that may have accrued to either party as at the date of such termination.

11. CONFIDENTIALITY

- 11.1 Each party expressly undertakes to retain in confidence the terms of this Agreement, all information (inclusive of Fees) and know-how transmitted to the other that the disclosing party has identified as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential and will make no use of such information either in whole or in part, for any purpose other than for the purposes set out within this Agreement. Either party may disclose the terms of this Agreement to its employees and legal and financial advisers in the ordinary course of business.
- 11.2 The provisions of this clause shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason.

12. DATA PROTECTION

- 12.1 In the provision of the Products and / or Services the Parties will comply with Data Protection Laws.
- 12.2 Subject to the Products and / or Services purchased by the Client, the Company and Client's roles under the Data Protection Laws may change. The relevant roles shall be set out in the Order Form.
- 12.3 Where the Company is acting as a Data Processor on the Client's behalf, the Client shall enter into the Data Processing Agreement set out in the relevant Services Specification at the time of the Order.
- 12.4 In all circumstances, the Client is responsible for determining its own legal basis for processing data and compliance with applicable Data Protection Law. This shall include, where applicable, obtaining any relevant consents from data subjects.

- 12.5 Where the Company processes any personal data in relation to the Products and / or Services under this Agreement, it does so as a data controller on its own behalf (including in order to comply with its obligations and exercise its rights under this Agreement) and shall comply with Data Protection Law in respect of such processing.
- 12.6 Where the Client pays the Fees using a credit or debit card pursuant to clause 6.3, such card details are not stored on the Company's servers. Accordingly, the Company takes no responsibility for the security of your payment card information.
- 12.7 The Company's Privacy Notice and Cookies Policy can be accessed <https://wilmingtonhealthcare.com/privacy-policy/> and <https://wilmingtonhealthcare.com/cookie-policy/>
For further information about data protection and how We use Your data please contact dataprotection@wilmingtonplc.com.
- 12.8 As part of delivering Our Products and / or Services, the Company will send Product and / or Service communications.
- 12.9 On completion of the Order, the Company will contact You about relevant Products and / or Services based on legitimate interest via telephone or email. You will be able to opt out in all future communications at any time.
- 12.10 The provisions of this clause shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason.

13. DISPUTE RESOLUTION

- 13.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who shall have the authority to settle such disputes.
- 13.2 If negotiations under sub-Clause 13.1 do not resolve the matter within 14 days of receipt of a written invitation to negotiate, the Parties shall attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.
- 13.3 If the ADR procedure under sub-Clause 13.2 does not resolve the matter within 14 days of the initiation of that procedure, or if either Party refuses to participate in the ADR procedure, the dispute may be referred to arbitration by either Party.
- 13.4 The seat of the arbitration under sub-Clause 13.3 shall be London. The arbitration shall be governed by the Arbitration Act 1996 and rules for arbitration as agreed between the Parties.
- 13.5 Nothing in this Clause 13 shall prohibit either party from applying to a court for interim injunctive relief.
- 13.6 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 13 shall be final and binding on both Parties.

14. FORCE MAJEURE

- 14.1 Neither party will be liable for delay or failure to perform its obligations in the event of a Force Majeure Event.
- 14.2 Where any Force Majeure Event continues or is expected to continue for a period of more than 30 days, either party shall have the right to terminate this Agreement without penalty.

15. NOTICE AND WAIVER

- 15.1 Notices required under this Agreement will be sent by email to the email address on the Order or as otherwise agreed in writing for such purpose. Notice by email is deemed effective on the business day following transmission.

15.2 The failure by the Company to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right.

16. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Agreement shall be deemed to constitute either party as the agent of the other or create a partnership or joint venture between the Parties and neither party shall have power to bind the other party or to contract in the name of or create a liability against the other party in any matter whatsoever.

17. SEVERABILITY

The unenforceability of any single provision of this Agreement shall not affect any other provision which shall remain valid and enforceable. Where such a provision is held to be unenforceable, the Parties shall use their best endeavours to negotiate and agree upon an enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the unenforceable provision.

18. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the Parties and supersedes all prior contracts, negotiations and discussions between the Parties.

19. THIRD PARTY RIGHTS

This Agreement does not create or infer any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to this Agreement.

20. GOVERNING LAW

This Agreement shall be governed in accordance with English Law and the Courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.