

Standard Terms of Business

1.0 Definitions

In these Standard Terms of Business, the following definitions shall apply:

'Background IP'	means any Intellectual Property Rights owned by WHWB or generated or developed by WHWB during the provision of the Services, except the results.
'Controller'	shall have the same meaning as set out in the GDPR.
'the Customer'	the company or person who WHWB are providing the Services to.
'Data Protection Legislation'	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing law as amended from time to time; and (iii) all applicable law about the processing or personal data and privacy.
'Data Protection Officer'	shall have the same meaning as set out in the GDPR.
'the Documents'	includes, without limitation, in addition to an document in writing, any photograph, drawing, map, plan, diagram, design, picture or other image, tape, disc or other device or record embodying information in any form.
the 'Due Date'	the final date for payment of invoices submitted by WHWB; 30 days from submission to the Customer.
'OPAS G2'	central database of all employees of the Customer requiring occupational health services administered by WHWB.
'the Fee'	the charges payable by the Customer to WHWB for the provision of the Services, plus any additional fees agreed arising from additional services.
'Force Majeure'	means an event beyond the reasonable control of either Party including, but not limited to; strikes, lock-outs or other industrial disputes (whether involving the workforce of either Party, or any other associated Party); failure of a utility service or transport network; act of God; war; riot; civil commotion; malicious damage; compliance with any law or governmental order, rule, regulation or direction; medical pandemic; accident; fire; flood; adverse weather conditions or default of suppliers and / or subcontractors.
'GDPR'	means the General Data Protection Regulation (Regulation (EU) 2016/679).
'the Input Material'	all Documents, information and materials provided by WHWB relating to the Services.

'Intellectual Property Rights'	all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in design, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
'Party'	means singularly either WHWB or the Customer, collectively the Parties.
'Personal Data'	shall have the same meaning as set out in the GDPR.
'Process'	shall have the same meaning as set out in the GDPR; Processed and Processing shall be construed accordingly.
'Processor'	shall have the same meaning as set out in the GDPR.
'Records'	occupational health records relating to employees of the Customer who have received occupational health services.
'the Services'	shall mean the occupational health services which are to be provided by WHWB along with any additional services to be provided as agreed with the Customer from time to time.
'Special Category Data'	shall have the same meaning as set out in the GDPR.
'WHWB'	Norfolk and Norwich University Hospitals NHS Foundation Trust, Workplace Health & Wellbeing; the company to be providing the Services to the Customer, pursuant to these Standard Terms of Business.

2.0 General Obligations

- 2.1 WHWB shall exercise reasonable skill, care and diligence in the carrying out of the Services upon the terms and conditions set out here and in accordance with all legal and regulatory requirements.
- 2.2 When required, the Customer shall:
 - 2.2.1 provide all facilities reasonably required by WHWB, including an appropriate area for WHWB staff to operate and internet connectivity, to allow it to perform the Services at locations under the control of the Customer, free of charge; and
 - 2.2.2 use all reasonable endeavours to secure the attendance of its employees at the relevant location for the provision of the Services.
- 2.3 Neither Party shall have any authority to act as agent for, or to bind, the other Party in any way.

- 2.4 It is the Customer's obligation to understand and adhere to any responsibility assigned to them for the duration of any service provision under which these standard terms apply. Non-adherences will be presented to the Customer; continued non-adherence may constitute a breach of these clauses and cessation of services in accordance with Clause 9.

3.0 Programme of Services

- 3.1 WHWB shall provide the Services as agreed in writing between the Customer and WHWB.
- 3.2 WHWB shall commit such resources and sufficient personnel with the necessary experience and qualifications to meet its agreed obligations.
- 3.3 If the Customer wishes to change the scope or execution of the Services, it shall submit details of the requested change to WHWB in writing. WHWB shall, within a reasonable time (and in any event not more than 14 days after receipt of the Customer's request), provide a written estimate to the Customer of:
- 3.3.1 the likely time required to implement the change;
 - 3.3.2 any necessary variations to the Fee for the Services arising from the change; and
 - 3.3.3 any other impact of the change on these Standard Terms of Business.

Unless both Parties consent to a proposed change, there shall be no change to the agreed provision of Services.

4.0 Terms of Payment

- 4.1 The charges payable by the Customer to WHWB for the provision of the Services shall be agreed in writing.
- 4.2 In consideration of the provision of the Services, the Customer shall pay the Fee to WHWB in accordance with this Clause 4.
- 4.3 The Fee shall be invoiced at monthly intervals in arrears, and each shall contain all appropriate references and a breakdown of the Services provided within the invoice period.
- 4.4 The invoice shall be due for payment on the date of submission and the final date for payment shall be 30 days after issue by WHWB (the '**Due Date**').
- 4.5 Without limiting any other right or remedy of WHWB, if the Customer fails to make any payment due to WHWB under these Standard Terms of Business by the Due Date, WHWB shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment.
- 4.6 The Parties agree that WHWB's standard pricing structure for the provision of Services shall be reviewed with effect from the first day of April each year of this Agreement; WHWB reserves the right to increase the rates in its standard pricing structure after this review date, provided that such rates cannot be increased more than once in any 12 month period.

5.0 Taxes

- 5.1 Value Added Tax (VAT) may be chargeable on certain services provided by WHWB.

6.0 Insurance

- 6.1 Without prejudice to the obligations under these Standard Terms of Business or otherwise at law, WHWB shall maintain, for as long as may be necessary to cover its obligations and liabilities in connection with providing the Services and for so long as such insurance is available in the market from reputable companies based in the UK on reasonable terms, insurances with limits of indemnity of not less than £5,000,000.00 for any one occurrence or series of occurrences arising out of any one event in respect of any negligence, omission or default on the part of WHWB in the performance of the Services.
- 6.2 WHWB hereby undertakes to the Customer that all such policies taken out in accordance with clause 6.1 shall remain in force at all times during the contract term and for 12 months thereafter.
- 6.3 WHWB shall upon request produce to the Customer evidence to show it has complied with the provisions set out in this Clause 6.

7.0 Liability

- 7.1 Nothing in this Agreement shall limit or exclude either Party's liability for:
- 7.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 7.1.2 fraud or fraudulent misrepresentation; or
 - 7.1.3 any incidents of data loss and breach of confidence in accordance with the Data Protection Legislation.
- 7.2 Subject to Clause 7.1:
- 7.2.1 WHWB shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 7.2.2 WHWB's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the greater of:
 - i) the Fee payable under the Contract; and
 - ii) £5,000,000.00 (WHWB's Maximum Liability).
- 7.3 The Customer agrees to indemnify and keep indemnified WHWB against all costs, claims, demands, liabilities, damages incurred or suffered by WHWB as a result of any act or omission of the Customer, its employees or agents.
- 7.4 Except as set out in these Standard Terms of Business, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Standard Terms of Business.
- ## **8.0 Termination**
- 8.1 Without limiting its other rights or remedies, each Party may terminate any service provision agreed between the Parties with immediate effect by giving written notice to the other Party.

- 8.2 Without limiting its other rights or remedies, WHWB may terminate any agreement between the Parties with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under said agreement on the Due Date.

9.0 Obligations on Termination

- 9.1 Upon termination of any agreement between the two Parties for any reason:

- 9.1.1 the Customer shall immediately pay to WHWB all outstanding unpaid invoices and interest and, in the respected of Services supplied but for which no invoice has been submitted, WHWB shall submit an invoice which shall be payable by the Customer immediately on receipt.
- 9.1.2 the accrued rights, remedies, obligations and liabilities of the Parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of these Standard Terms of Business which existed at or before the date of termination or expiry.
- 9.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 9.1.4 all confidential information including patient records relating to employees of the Customer who have received occupational health services shall be transferred or destroyed in accordance with the provisions set out in Clause 11.

10.0 Data Protection

- 10.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties For the avoidance of any doubt, WHWB shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 10.2 Where WHWB is Processing Personal Data under or in connection with this Agreement, it shall be named the Processor under the GDPR. Where WHWB is Processing Special Category Data under or in connection with this Agreement, it shall be named the Controller under the GDPR.
- 10.3 Where, as a requirement of any service provision, WHWB is Processing Personal and Special Category Data relating to service users as part of the Services, WHWB will:
- 10.3.1 only collect Personal and Special Category Data for specified, explicit and legitimate purposes, not further Processing any Personal and Special Category Data collected in a manner that is incompatible with the completion of the Services provided to the Customer;
 - 10.3.2 put in place and maintain policies that describe individual personal responsibilities for handling Personal and Special Category Data and apply those policies vigorously;
 - 10.3.3 put in place and maintain agreed protocols for the lawful sharing of Personal and Special Category Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under the contract;

- 10.3.4 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful Processing of Personal or Special Category Data and against accidental loss or destruction of, or damage to, Personal or Special Category Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage to Personal or Special Category Data;
- 10.3.5 complete and publish a Data Security Protection toolkit assessment using the NHS DSPT website;
- 10.3.6 achieve a standards met DSPT or have agreed improvement plan with NHSE;
- 10.3.7 nominate a Data Protection Officer able to communicate with WHWBs business management team or equivalent governance body, who will be responsible for information governance and from whom WHWBs business management team or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence. The Data Protection Officer for WHWB is Mark Northcott, Head of Information Governance & Cyber Security;
- 10.3.8 report all incidents of data loss and breach of confidence to the Customer in accordance with the Data Protection Legislation;
- 10.3.9 not transfer any Personal or Special Category Data outside of the UK without the prior written consent of the Customer, and only if appropriate safeguards are in place as directed under the Data Protection Legislation;
- 10.3.10 comply with any new and / or updated requirements, guidance and / or policies notified to WHWB by the Customer from time to time (acting reasonably) relating to the Processing and / or protection of Personal and Special Category Data;
- 10.3.10 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer, excluding such Personal Data that is required to link Special Category Data, in which WHWB is joint Controller of the data (under the GDPR);
- 10.4 The Parties shall ensure that all Personal and Special Category Data (as defined in the GDPR) acquired by them in connection with this Agreement shall be processed in accordance with the provisions of the regulation, and the NHS Code of Practice; Confidentiality (Department of Health 2003).
- 10.5 Where any Personal or Special Category Data is processed by a sub-contractor of WHWB in connection with this Agreement, WHWB shall procure that such sub-contractor shall comply with the relevant obligations set out in this Clause 10.
- 10.5 The provisions of this Clause 10 shall survive the expiry or termination of any service provision howsoever caused and shall continue thereafter in full force and effect.
- 11.0 Occupational Health Records**
- 11.1 All occupational health records ("**Records**") relating to current employees of the Customer who have received occupational health services prior to any service provision coming into effect should be transferred to WHWB on or as soon as possible after the Commencement Date, at the Customer's cost.

- 11.2 The Records shall be held by WHWB in a secure and confidential manner in accordance with current and relevant guidance and Data Protection Legislation, as well as the Faculty of Occupational Medicine of the Royal College of Physicians' guidelines on the storage of clinical records, and the Department of Health: Records Management Code of Practice. Both Parties acknowledge storage duration of the Records is subject to change upon guidance and legislation review.
- 11.3 All Records relating to ex-employees of the Customer who have received occupational health services prior to any service provision coming into effect, and under the assumption that those Records have been audited and any relevant records destroyed in accordance with Data Protection Legislation, shall either:
- 11.3.1 stay with the outgoing occupational health provider until the required destruction date under Data Protection Legislation whereby all relevant data will be destroyed accordingly;
- 11.3.2 if the records are in paper format & are stored on the customer site; stay on-site at the Customer's premises stored in tamper-proof boxes organised by date of destruction, whereby at the date of destruction the current supplier will destroy in accordance with the Data Protection Legislation;
- or
- be transferred to WHWB from the outgoing provider in tamper-proof boxes, organised by date of destruction and stored by WHWB. In both cases charges for periodic destruction audits (and site visits if necessary) will apply; in the case files are transferred to WHWB, storage charges will also apply.
- 11.3.3 if in electronic format; be transferred to WHWB on a media accessible only to the outgoing provider, organised by date of destruction. Charges for periodic destruction audits will apply.
- 11.4 In the event the Records relating to ex-employees have not been audited and destroyed in accordance with Data Protection Legislation, or are transferred to WHWB not in tamper-proof boxes / not in an inaccessible electronic format, or not organised by date of destruction, then WHWB will organise the Records as such and recharge the Customer for time spent and resources used.
- 11.5 According to Data Protection Legislation, audit and disposal of Personal Data and / or Records considered past the 'period of retention' shall be the periodic responsibility of WHWB. It is the responsibility of the Customer to provide WHWB with information of staff leavers on a quarterly basis to ensure compliance to this Clause 11.5.
- 11.6 WHWB will administer a central database of all employees of the Customer requiring occupational health services ('**OPAS G2**'). On expiry or termination of any service provision between the two Parties:
- 11.6.1 the Records held of current and ex-employees of the Customer shall be transferred to any new service provider for storage according to guidance and legislation listed in Clauses 11.2 and 11.3;
- 11.6.2 in the event the new service provider does not take the Records of ex-employees of the Customer, then WHWB will store the Records in tamper-free boxes until they are destroyed in accordance with Data Protection Legislation. Charges for storage and periodic destruction audits will apply.

- 11.6.3 the Customer shall be responsible for any associated costs of extraction of Records from OPAS G2;
 - 11.6.4 the new service provider shall be responsible for transfer of any physical Records to the new service provider; any associated costs will not be the responsibility of WHWB;
 - 11.6.5 in accordance with guidance and legislation listed in Clause 11.2; the Customer will be required to inform the data subjects of any proposed transfer of Records and ascertain their wishes as to the distribution of the Records.
- 11.7 If the Customer fails to comply with its obligations under this Clause 11, WHWB shall transfer the Records on to such media WHWB shall consider appropriate and store the Records at the Customer's cost for such a period as is required by applicable guidance and law.

12.0 Intellectual Property Rights

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by WHWB.
- 12.2 Each Party hereby grants to the other Party a non-exclusive, non-transferable, royalty free license to use its Intellectual Property Rights for the purposes and duration of any agreement between the two Parties.
- 12.3 Each Party agrees that it will not use the other Party's Intellectual Property Rights for any purpose other than the performance of its obligations under the agreement between the two Parties.
- 12.4 The provisions of this Clause 12 shall survive expiry or termination of any agreement between the two Parties howsoever caused and shall continue thereafter in full force and effect.

13.0 Disputes

- 13.1 In the event of a dispute or disagreement arising out of or in connection with the agreement between the two Parties, the Parties shall consult with each other and use reasonable endeavours to negotiate in a good faith a resolution of the dispute.
- 13.2 If the dispute is not resolved under Clause 13.1 then the Parties shall refer the matter to their respective chief executives who shall also use their reasonable endeavours to resolve the dispute.
- 13.3 If the dispute is not resolved under Clause 13.2 then the Parties shall refer the matter for resolution to a single arbitrator to be agreed upon by both Parties.
- 13.4 Nothing in this Clause 13 shall prevent either Party from exercising their right to terminate the agreement between the two Parties under Clause 8 or issue immediate legal proceedings where necessary.

14.0 Governing Law and Jurisdiction

- 14.1 These Standard Terms of Business, any agreement between the two Parties and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in

accordance with English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

15.0 Force Majeure

- 15.1 For the purposes of these Standard Terms of Business, a force majeure event means an event beyond the reasonable control of either Party including, but not limited to; strikes, lock-outs or other industrial disputes (whether involving the workforce of either Party, or any other associated Party); failure of a utility service or transport network; act of God; war; riot; civil commotion; malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; fire; flood; adverse weather conditions or default of suppliers and / or subcontractors ('**Force Majeure**').
- 15.2 Subject to Clause 15.3, WHWB shall not be liable to the Customer for any delay or failure to perform its obligations under this Contract, nor any consequential losses, damages or loss of earnings or anticipated savings arising as a result of a Force Majeure.
- 15.3 WHWB shall only be entitled to rely on a Force Majeure and the relief set out in this Clause 15, and will not be considered to be in default or liable for breach of any obligations hereunder if:
- 15.3.1 The Force Majeure does not arise directly or indirectly as a result of any wilful or negligent act or default of WHWB; and
- 15.3.2 WHWB has complied with the procedural requirements set out in this Clause 15.
- 15.4 If WHWB is prevented or delayed in the performance of its obligations under any agreement between the two Parties by a Force Majeure, WHWB shall immediately serve notice in writing to the Customer specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 15.5 Where WHWB is (or claims to be) affected by a Force Majeure it shall use all reasonable endeavours to mitigate the consequences of such a Force Majeure upon the performance of its obligations under the agreement between the two Parties, and to resume the performance of its obligations affected by the Force Majeure as soon as practicable.
- 15.6 If the Force Majeure prevents WHWB from providing any of the Services for more than 12 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate the agreement between the two Parties immediately by giving written notice to the other party.

16.0 Variation

- 16.1 In the event of a change in law or other requirement imposed on WHWB that requires it to amend the terms and conditions of these Standard Terms of Business, WHWB shall in writing describe and cost the necessary change and the Customer shall authorise the change unless it reasonably believes that the cost or scope of the change is unreasonable in the circumstances.
- 16.2 No variation to these Standard Terms of Business shall be effective unless made in writing and signed by both parties. Such variations shall form an addendum to these Standard Terms of Business.

17.0 Severability

- 17.1 If any provision of these Standard Terms of Business is declared void or unenforceable, such provision shall be severed from these Standard Terms of Business, which shall otherwise remain in full force and effect. In such a case, the Parties shall use reasonable endeavours to reach mutually agreeable terms for a replacement provision that as far as possible actualises the purpose and effect of the original provision in an enforceable manner.

18.0 Waiver

- 18.1 No failure, delay, relaxation or indulgence on the part of either Party in exercising or partial exercise of any right hereunder shall operate as a waiver of such rights.

19.0 Policies and Procedures

- 19.1 WHWB are governed by NHS policies and procedures, as well as specific departmental policies, including Business Continuity, Approved Sub-Contractor, Confidentiality, Consent etc.

- 19.2 Should the Customer wish to view these procedures, an appointment can be made to review these at our business premises.

20.0 Cancellations

- 20.1 Please note that once an appointment has been made, a full appointment charge is payable if the individual does not attend without notice, or provides less than 24 hours' notice of a cancellation.

- 20.2 If an on-site clinic is cancelled less than 5 working days from the arranged date, the full clinic charge will still be payable.