



TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. INTERPRETATION

The following definitions and rules of interpretation apply in these conditions.

1.1

Definitions:

Booking: an Order which is accepted by the Supplier under the terms of clause 2.2

Booking Form: the booking form used by the Customer to place an order with the Supplier

Business Day: a day other than a Saturday, Sunday school holiday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment).

Commencement Date: has the meaning set out in clause 2.2.

Completion Date: the date on which the last agreed 2 hour session as set out in the Specification is completed.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract: the contract between LHT Wellbeing Limited and the Customer for the supply of Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Customer: the person, establishment, Local Authority, Local Education Authority, business or firm who purchases Services from LHT Wellbeing Limited.

Customer Default: has the meaning set out in clause 4.2.

Correspondence: all communications between the Customer and Supplier by telephone, fax, email, text or letter

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject: an individual who is the subject of Personal Data.

Deliverables: Wellbeing Warriors produced by LHT Wellbeing Limited for the Customer.

Intellectual Property Rights: Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for Services as set out in the Customer's Booking Form.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which LHT Wellbeing Limited is providing Services under the Contract.

Processing and process: have the meaning set out section 1(1) of the Data Protection Act 1998.

Services: the services, including the Deliverables, supplied by LHT Wellbeing Limited to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by LHT Wellbeing Limited to the Customer as set out in the Order.

Supplier: LHT Wellbeing Limited registered in England and Wales with company number 10813466.

Supplier Materials: has the meaning set out in clause 4.1(h).

1.2

Interpretation:

1.3

A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.4

Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.5

A reference to **writing or written** includes faxes.

These Terms and Conditions apply to the entire contents of the websites of LHT Wellbeing and to all correspondence and emails between the supplier and the Customer and by placing an order with the Supplier you are agreeing to comply with and to be bound by these terms and conditions.

2.

BASIS OF CONTRACT

2.1

The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2

The Order shall only be deemed to be accepted when LHT Wellbeing Limited issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3

Any samples, drawings, descriptive matter or advertising issued by LHT Wellbeing Limited, and any descriptions or illustrations contained in the LHT Wellbeing Limited's information or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5

Any quotation given by LHT Wellbeing Limited shall not constitute an offer, and is only valid for a period of 28 Business Days from its date of issue.

2.6

Once the Order is deemed accepted the Customer will not be allowed to change the terms of the Order

3.

SUPPLY OF SERVICES

3.1

LHT Wellbeing Limited shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2

LHT Wellbeing Limited shall use all reasonable endeavours to meet any performance dates specified in the Booking Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3

LHT Wellbeing Limited reserves the right to amend the specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and LHT Wellbeing Limited shall notify the Customer in any such event.

3.4

LHT Wellbeing Limited warrants to the Customer that the Services will be provided using reasonable care and skill by staff who have received DBS clearance and up to date safeguarding training.

3.5

Any additional services or reports provided by LHT Wellbeing Limited must be agreed between the parties in writing and will be charged separately at a rate agreed in writing between the parties

3.6

The Booking will be for a group of children of a minimum of 6 children and a maximum of 10 children in years 2-6

4. CUSTOMER'S OBLIGATIONS

4.1

The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with LHT Wellbeing Limited in all matters relating to the Services;
- (c) provide LHT Wellbeing Limited, its employees, agents, consultants and subcontractors, with access to the Customer's premises and provide a room for a period of 2 hours (30 minutes before the scheduled session and 30 minutes after the scheduled session) free from interruption and equipped with tables and chairs suitable for and in sufficient numbers to accommodate the number of children and Suppliers in attendance and other facilities as reasonably required by LHT Wellbeing Limited;
- (d) provide the Supplier with such information and materials as LHT Wellbeing Limited may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services including those required for the taking of photographs of the children involved in the provision of the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws and risk assessments;
- (h) keep all materials, equipment, documents and other property of LHT Wellbeing Limited (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to LHT Wellbeing Limited, and not dispose of or use LHT Wellbeing Limited Materials other than in accordance with LHT Wellbeing Limited's written instructions or authorisation;
- (i) comply with any additional obligations as set out in the Specification;
- (j) complete and provide to the Supplier all forms and documents sent to you at least 48 hours before the commencement of the Commencement Date and;
- (k) complete and return to the Supplier the final evaluation form provided to the Customer within 7 days of the services provided by the Supplier.

4.2

If LHT Wellbeing Limited's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, LHT Wellbeing Limited shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays LHT Wellbeing Limited's performance of any of its obligations;
- (b) LHT Wellbeing Limited shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from LHT Wellbeing Limited's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse LHT Wellbeing Limited on written demand for any costs or losses sustained or incurred by LHT Wellbeing Limited arising directly or indirectly from the Customer Default.

5.

CHARGES AND PAYMENT

5.1

The Charges for the Services shall be calculated on a basis of 10 consecutive workshops of 1 hour duration:

- (a) the Charges shall be calculated in accordance with LHT Wellbeing Limited's fee rates, as set out in the Order form;
- (b) LHT Wellbeing Limited's fee rates are calculated on the basis of a two hour session carried out in term time only in the school setting in school hours worked on Business Days; and
- (c) The Customer will pay 50% of the fees which is non-refundable on booking the Services in full and in cleared funds to a bank account nominated in writing by LHT Wellbeing Limited and 50% on completion of the Service. The supplier will allow payment of any money due by the customer by cheque provided that has been formally agreed between the supplier and the customer.

5.2

LHT Wellbeing Limited reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

5.3

LHT Wellbeing Limited shall invoice the Customer on completion of the Services on or after the Completion Date.

5.4

The Customer shall pay each invoice submitted by LHT Wellbeing Limited:

- (a) within 14 days of the date of the invoice or in accordance with any credit terms agreed by LHT Wellbeing Limited and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by LHT Wellbeing Limited, and time for payment shall be of the essence of the Contract.

5.5

All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by LHT Wellbeing Limited to the Customer, the Customer shall, on receipt of a valid VAT invoice from LHT Wellbeing Limited, pay to LHT Wellbeing Limited such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6

If the Customer fails to make a payment due to LHT Wellbeing Limited under the Contract by the due date, then, without limiting LHT Wellbeing Limited's remedies under Clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5.7

All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.

INTELLECTUAL PROPERTY RIGHTS

6.1

All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) including information, reports, images, ideas and photographs shall be owned by LHT Wellbeing Limited.

6.2

The Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 6.2.

6.3

The Customer grants LHT Wellbeing Limited a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials information or photographs provided by the Customer to LHT Wellbeing Limited for the term of the Contract for the purpose of providing the Services to the Customer.

7.

DATA PROTECTION AND DATA PROCESSING

7.1

The Customer and LHT Wellbeing Limited acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the Data Controller and LHT Wellbeing Limited is the data processor in respect of any Personal Data.

7.2

LHT Wellbeing Limited shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.

7.3

LHT Wellbeing Limited shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

7.4

Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

7.5

LHT Wellbeing Limited warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:

- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - (ii) the nature of the data to be protected; and
 - (b) take reasonable steps to ensure compliance with those measures.
- 7.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 7.
- 7.7 The Customer acknowledges that LHT Wellbeing Limited is reliant on the Customer for direction as to the extent to which LHT Wellbeing Limited is entitled to use and process the Personal Data. Consequently, LHT Wellbeing Limited will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.
- 7.8 LHT Wellbeing Limited may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
 - (a) is on terms which are substantially the same as those set out in the Contract; and
 - (b) terminates automatically on termination of the Contract for any reason.
- 8. LIMITATION OF LIABILITY:**
- 8.1 Nothing in the Contract shall limit or exclude LHT Wellbeing Limited's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, LHT Wellbeing Limited shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
 - (a) the emotional state of the children outside the sessions provided in the course of the Service; and
 - (b) any indirect or consequential loss.
- 8.3 Subject to clause 8.1, LHT Wellbeing Limited's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to [...].
- 8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 This clause 8 shall survive termination of the Contract.
- 8.6 The Supplier has indemnity insurance cover is for professional indemnity of £250,000 and public liability is £2,000,000.
- 9. TERMINATION**
- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 30 days written notice.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3 Without affecting any other right or remedy available to it, LHT Wellbeing Limited may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 Without affecting any other right or remedy available to it, LHT Wellbeing Limited may suspend the supply of Services under the Contract or any other contract between the Customer and LHT Wellbeing Limited if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(d) or LHT Wellbeing Limited reasonably believes that the Customer is about to become subject to any of them.
- 9.5 Without affecting any other right or remedy available to it, LHT Wellbeing Limited will retain the 50% of the fee paid on booking the Service in the event that the Customer terminates the Contract as a non-refundable fee.
- 10. CONSEQUENCES OF TERMINATION**
- On termination of the Contract:
 - (a) the Customer shall immediately pay to LHT Wellbeing Limited all of LHT Wellbeing Limited's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, LHT Wellbeing Limited shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of LHT Wellbeing Limited Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then LHT Wellbeing Limited may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
 - (c) the Customer accepts the provisions of 9.5
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 11. GENERAL**
- 11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 **Assignment and other dealings.**
 - (a) LHT Wellbeing Limited may at any time assign, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - (b) If LHT Wellbeing Limited are unable to fulfil their obligations under the terms of the Contract they reserve the right to re-schedule the Service at a time mutually convenient to and agreed between the parties in writing
 - (c) The Customer shall not assign, transfer, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of LHT Wellbeing Limited.

- (d) LHT Wellbeing Limited will not be under any obligation to re-schedule any Service provided under the Contract if the Customer is unable to fulfil their obligations under the terms of the Contract and any agreement to do so must be agreed between the parties in writing
- 11.3 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11.4 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.8 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax, at LHT Wellbeing Ltd, PO Box 652, Blackburn, BB2 9PF on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.9 **Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.