

# THE HEALTH OWL LIMITED ('THO')

## TERMS AND CONDITIONS ('T&C')

At THO, we guide you to a healthier, more balanced life through personalised coaching, expert nutrition plans and tailored fitness programmes ('the **Programme**'). These T&C set out the basis upon which we provide the Programme. The current version of these T&C is available on our website the [www.thehealthowl.org](http://www.thehealthowl.org) with the version date in the top right-hand corner with the version applicable to you being the version in force at the time you entered into the Programme.

**We do not provide medical advice or guidance. We advise that where you are suffering with any health problems at the outset or during the course of the Programme that you seek medical advice from your doctor or other relevant health-care professional.**

**We do not provide any guarantee of weight loss or health improvements by you engaging on the Programme.**

### 1. Interpretation

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

#### 1.1 Definitions:

**Acceptance Email:** the email sent to you upon your Order being accepted by the Supplier in accordance with clause 2.2.

**Blood Test:** a test ordered by the Client directly from a Phlebotomy Service, if not being a service offered by the Supplier, however the results of a blood test may be considered by the Supplier as part of the Programme.

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

**Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 6.

**Coaching Plan:** the coaching plan provided to the Client in accordance with clause 10.

**Commencement Date:** has the meaning given in clause 2.2.

**Contract:** the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Client:** the person or firm who purchases Services from the Supplier.

**Client Default:** has the meaning set out in clause 5.2.

**Deliverables:** the Coaching, Nutrition Plan and Fitness Programme produced by the Supplier for the Client.

**Eligibility Criteria:** as set out in clause 3.

**Fitness Programme:** as defined in clause 9.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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.

**Materials:** any guidance documentation howsoever communicated to you by the Supplier during the course of the Programme.

**Nutrition Plan:** means the plan prepared by the Supplier in accordance with clause 8.

**Order:** the Client's order for Services as set out in the Client's purchase order form.

**Phlebotomy Service:** the third party and licensed clinic that a client may order a Blood Test from but which is not offered by the Supplier.

**Price:** the price paid for the Services at the time of the Order and set out in the Specification.

**Services:** the services, comprising the Personalised Coaching, the Nutrition Plan supplied by the Supplier to the Client and the option of a Blood Test as ordered by the Client from a Phlebotomy Service.

**Specification:** the description or specification of the Services to be provided to the Client provided in writing by the Supplier to the Client.

**Supplier:** THO registered in England and Wales with company number 16076828 with registered office at 1386 London Road, Leigh on Sea, Essex, SS9 2UJ.

**T&C:** these terms and conditions as are amended from time to time in accordance with clause 23.2.

**Technological Advances:** during the course of the Programme we may provide updates to the THO Website and launch new options for running the Programme.

**THO:** The Health Owl Limited, with registered office at 1386 London Road, Leigh on Sea, Essex, SS9 2UT and registered number: 16076828.

**Testing Service:** the Blood Test service that may form part of the Programme and Services as further detailed in clause 10.

**Termination Date:** the date set out in the Acceptance Email.

**THO App:** means an application that may be developed during the course of the Programme with Technological Advances.

**THO Website:** means [www.thehealthowl.org](http://www.thehealthowl.org).

**URN:** means unique reference number found on the Test Pack containing the Blood Test.

## 1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
  - (i) is a reference to it as amended, extended or re-enacted from time to time; and
  - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) 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.
- (c) A reference to **writing** or **written** includes email.

## 2. Basis of contract

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these T&C.

2.2 The Order shall only be deemed to be accepted when the Supplier issues you with an

Acceptance Email, 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 the Supplier, and any descriptions or illustrations contained in the Supplier's materials or website, 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 T&C apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 The Supplier reserves the right to accept or reject an order placed for any reason and at its absolute discretion.
- 2.6 Your Programme will start on the date of your Order (or any other date agreed in writing between the parties) and will continue until the Termination Date set out in the Acceptance Email.

### **3. Eligibility**

3.1 In order to use our service, you must meet the following Eligibility Criteria:

- (a) You are at least 18 years of age.
- (b) You are not pregnant.
- (c) You have not had a heart attack (myocardial infarction), stroke/transient ischemic attack, or major surgery in the last two months.
- (d) You have a body mass index (BMI) of at least 16.5 kg/m<sup>2</sup>.
- (e) Your shipping address is in the United Kingdom.
- (f) You can safely eat a gluten-free, dairy-free and vegetarian meal.
- (g) You do not have an active eating disorder (e.g. anorexia nervosa or bulimia nervosa).
- (h) If you are being treated for any chronic medical condition (including Type 1 diabetes or Type 2 diabetes), you have checked with your treating physician that the Programme is safe for you.

3.2 You may not enter the Programme unless you meet these Eligibility Criteria

### **4. Supply of Services**

- 4.1 The Supplier shall supply the Services to the Client in accordance with the Specification in all material respects.
- 4.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 The Supplier 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 the Supplier shall notify the Client in any such event.
- 4.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

### **5. Client's obligations**

5.1 The Client shall:

- (a) ensure that the terms of the Order and any information that the Client provides in the Specification and in response to questions raised by the Supplier are complete and accurate.
- (b) co-operate with the Supplier in all matters relating to the Services.

- (c) provide the Supplier with such information as the Supplier may reasonably require in order for the Supplier to supply the Services, and must ensure that such information is complete and accurate in all material respects; and
  - (d) comply with any additional obligations as set out in the Specification.
- 5.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ('**Client Default**'):
  - (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 5.2; and
  - (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

## **6. Charges and payment**

- 6.1 The Charges for the Services are on a fixed basis and are typically a once off payment when you place the order and when the Acceptance Email is received which will confirm the payment to be made.
- 6.2 Payment for the Services is made by the Client to the Supplier by swipe or bank transfer and as set out in the Specification.
- 6.3 The Supplier reserves the right to increase the Charges for any subsequent Programme entered into by you and/or to provide promotions from time to time which may reduce subsequent charges.
- 6.4 If the Client fails to make a payment due to the Supplier under the Contract by the due date as set out in the Acceptance Email, then, without limiting the Supplier's remedies under clause 16, in the event that the Services have already commenced, the Client 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 6.3 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%.
- 6.5 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).

## **7. The THO Website**

- 7.1. You will be provided with access to the secure Client pages on the THO Website, into which all data relating to the Programme can be located and will be uploaded.
- 7.2. You will be able to record your personal information on the THO Website upon signing up and it will be possible for you to amend your details in the "Account" section of the THO website.
- 7.3. You will have access to the THO Website for the duration of the Programme and when the Programme is complete then the access will terminate, unless you place a further Order.
- 7.4. The Website will be updated from time to time with new features and services, in order to enhance and develop its Services it is therefore subject to change and you agree to the Supplier delivering such updates to you.
- 7.5. You will need to create a THO Website account to use the secure pages on the THO Website.

This provides access to you and you should not provide the details of your account to anyone else, save with our express written permission.

- 7.6. You are responsible for any use made of the THO Website.
- 7.7. You must ensure that the email address associated with your THO Website account is valid and capable of receiving email. We will assume that any email successfully sent to your email address has been received by you.
- 7.8. You are required to provide certain Client Data about yourself (e.g. name, email address, mailing address, password, and payment information) (collectively, "Client Data") when creating a THO Website account. You must provide accurate and complete Client Data and update such information from time to time using your account as necessary to keep your Client Data current and accurate. You are responsible for maintaining the confidentiality of your Client Data and password and for restricting access to such information and to your computer or other electronic devices. All activities that occur under your account or password will be your responsibility.
- 7.9. You agree to immediately notify the Supplier of any unauthorised use of your password or THO Website account or any other breach of security. You agree that the Supplier will not be liable for any loss or damage arising from your failure to comply with this section.

## **8. Nutrition Plans**

- 8.1. You will be provided with a Nutrition Plan by the Supplier once your Order and the Specification have been completed.
- 8.2. We will hold an online call, via Zoom, for you to discuss such matters with us, should you wish to do so and we may also send you a questionnaire to complete in order that we can fully understand your usual eating and drinking pattern and be advised of any dietary requirements or allergies that you have. We can discuss tailoring the Nutrition Plan with you to suit your particular needs.
- 8.3. Your Nutrition Plan will be monitored and updated as deemed appropriate.

## **9. Fitness Programme**

- 9.1. Upon receiving your Order and Specification, we will provide you with your Fitness Programme, the detail of which may be adjusted from time to time in accordance with our advice and your requirements.
- 9.2. The Fitness Programme will be configured to seek to meet your objectives which we will determine via an online call, via Zoom, to discuss matters alongside provide you with a questionnaire to enable us to understand your current fitness regime and to be advised of any injuries or medical conditions that we should be aware of. .
- 9.3. In the event that the Supplier considers that you should seek medical advice before progressing with the Fitness Programme or at any point during the Fitness Programme, you are obliged to obtain such advice and to then report back to the Supplier to ensure that you can continue, failing which the Supplier is entitled to terminate the Programme in accordance with clause 16.

## **10. Coaching Plan**

- 10.1. The Client will be provided with weekly mindset challenges and exercises on the THO Website;
- 10.2. The Client will receive bi-weekly nutritional information on the THO Website;
- 10.3. Access to the private Facebook page will be provided to the Client and regular Zoom meetings will be made available; and
- 10.4. The Client will be given helpline access to contact the Supplier by email.

## **11. Blood Testing**

- 11.1. The Client may elect to obtain a Blood Test from a Phlebotomy Service during the course of

the Programme in respect of which, the Supplier will have no involvement.

- 11.2. The Client may provide the Supplier with the results of the Blood Test that it obtains, which the Supplier may take into account in the Programme, but subject to the fact that the Supplier does not provide medical advice in respect of the Blood Test which is for the Client to obtain from the Phlebotomy Service or their GP.

## **12. Not Medical Advice**

- 12.1. As highlighted above, in the event that the Supplier considers that you should obtain medical advice either before the commencement of the Programme or during the course of the Programme, we will advise you do so and reserve the right to withdraw our services until you have confirmed that you are medically fit to continue with the Programme.
- 12.2. In the event that you refuse to take medical advice when requested by the Supplier, we reserve the right to terminate the Programme, as further detailed in clause 16 below.
- 12.3. The Supplier does not provide medical advice and nor does it provide medical services. No communications provided by the Supplier constitute medical advice or diagnosis, nor should you rely on it instead of obtaining medical advice.
- 12.4. For the avoidance of doubt, no relationship of “doctor/medical professional – patient” exists between the parties.
- 12.5. Prior to joining the Programme, if you have underlying health issues, are pregnant, have any intolerances or are taking medication, we advise that you consult your doctor prior to joining the Programme. You should follow your doctor’s advice at all times.

## **13. Disclaimer**

- 13.1. The Supplier seeks to provide you with Services and a Programme that will improve your health by virtue of the Fitness Programme, Nutrition Plan and where applicable, the Blood Test. The Supplier provides no guarantees that you will meet a desired outcome by following the Programme and has no liability in that respect.
- 13.2. The Supplier is not liable in the event that any pre-existing or unknown condition becomes worse.

## **14. Cancellation and Returns**

### **14.1. Cancelling within the first 14 days after the Acceptance Email**

You may cancel your order within 14 days of receiving the Acceptance Email. In those circumstances we will refund you in full and the Contract will be cancelled.

### **14.2. Cancelling more than 14 days after the Acceptance Email**

You may cancel the Programme at any point, but the cancellation of your Programme will be effective at the end of the period that you committed to in your Order. You may continue to use the Services included in your Programme.

### **14.3. Discretionary refunds / membership extensions**

- (a) In exceptional circumstances, the Supplier may, in its absolute discretion, refund some or all of the charges you have paid or add additional months to your membership. For example, if you are told by your doctor that you should not participate in THO, or you develop a health condition that means become permanently or temporarily ineligible.
- (b) Any requests for a discretionary refund or extension should be sent to THO.

## **15. Complaints procedure**

- 15.1. The Supplier always aims to provide its Clients with an excellent service. There may be times when you are not satisfied. In these cases, we encourage you to contact us via email at [help@thehealthowl.org](mailto:help@thehealthowl.org) with as much detail as possible about your complaint, including any steps you've already taken, so we can investigate thoroughly
- 15.2. Once we receive your complaint, we aim to acknowledge it within 48 hours by email.

- 15.3. Your complaint will be investigated and we will then provide you with a written outcome and proposed resolution.
- 15.4. If you are not satisfied with our proposed resolution, you should advise why and we will reconsider.
- 15.5. We will seek to resolve any complaints to the best of our ability.

**16. Unlawful and Prohibited Use Policy**

You must only use the Services for yourself and you must not:

- (a) distribute, put on public display any part of the Services;
- (b) copy, modify or create derivative works of any part of the Services;
- (c) use automated or similar means to download data from the Services, including without limitation crawlers, spiders, robots, or data mining tools;
- (d) download or copy (other than as part of the usual browsing of the web, including through page caching and the use of assistive technologies) of any part of the Service, except as expressly permitted by the Supplier and for your own use;
- (e) attempt to gain unauthorised access to the Supplier's servers or computer systems or to engage in any activity that disrupts, damages, disables, diminishes the quality of, interferes with the performance of, or impairs the functionality of, any part of the Services;
- (f) collect or harvest any personal information including, but not limited to, company and individual names, domain names or account names, from the service;
- (g) use any part of the Services for unauthorised commercial solicitation purposes;
- (h) impersonate anyone, falsify your identity, or misrepresent your affiliation with any person or entity;
- (i) use the Services where not permitted to do so;
- (j) use any content in the Services, or any promotional materials for the Services, for unauthorised advertising, or in connection with any offer to sell or buy any goods or service except as permitted by law;
- (k) use any trademark, trade name or other branding material or key word associated with the Services in online media that amounts to false association and/or cause consumer confusion;
- (l) engage in "framing", "mirroring", or otherwise simulating the appearance or function of THO or our Services;
- (m) upload or transmit any content that you do not have a legal right to transmit (such as proprietary and confidential information, private information about other people without their permission, or content that infringes intellectual property rights of a third party);
- (n) violate these terms, or other guidelines which may be applicable for a particular area of the service or have been provided or shared with you in connection with the Services;
- (o) use of the Services other than for its intended purpose; or
- (p) violate any local, state, national, or international law, or any regulations having the force of law.

**17. Termination**

- 17.1. We may terminate our agreement with you without notice if:
- (a) you breach any of these terms;
  - (b) the Supplier believes it is required to do so by law.

- 17.2. We may also terminate our agreement with you if during the course of your membership you no longer meet our Eligibility Criteria, or present complex nutritional, medical and/or psychological needs that we consider we appropriately cannot support. Will inform you if we do this.
- 17.3. If we terminate our agreement with you for any reason that is not your fault, we will repay pro rata for any period of your Programme.
- 17.4. Any termination of our agreement with you:
- (a) Ends all rights and licences granted to you under these terms, including entitlement to the service, your account and access to the THO app.
  - (b) Does not affect any obligations under these terms that accrued prior to termination or any terms which by their nature should survive termination including, without limitation, terms related to intellectual property ownership and restrictions, disclaimers, the user content Licence, governing law and jurisdiction.
- 17.5. After termination, the Supplier reserves the right to exercise whatever means it deems necessary to prevent your unauthorised use of the service and also to delete any information associated with your account. Please refer to our [Privacy Policy](#) to understand how we treat information you provide to us after you have stopped using our Service.

## **18. Termination due to harassment**

The Supplier reserves the right to immediately terminate its agreement with you and stop access to your account if you harass, intimidate or otherwise behave inappropriately toward any of our staff, members or anyone else you come into contact with through using our services.

## **19. Intellectual Property**

### **19.1. Trademarks**

- (a) All THO trademarks, service marks, trade names, logos, domain names, and any other features of the THO brand are the sole property of THO, THO's Affiliates, or THO's licensors. These terms do not grant you any rights to use any THO trademarks or brand features whether for commercial or non-commercial use. Unless you have specifically agreed otherwise in writing with THO, nothing in these terms or Services gives you a right to use any THO marks and you agree not to display or use THO marks in any manner.
- (b) You may not remove, obscure, or alter any proprietary rights, marks, or notices that may be affixed to or contained in the service.

### **19.2. Software**

- (a) The Services, and all designs, text, graphics, pictures, images, content, videos, information, data, and software contained in or comprising the service (including THO Website and the THO App), except for the user content as defined above, is the property of the Supplier and is protected by copyright, trademark laws, patent, and other intellectual property laws in applicable jurisdictions.
- (b) Your rights in any of the Supplier's software you use (including the THO Website and THO App) ("Software") that is not accompanied by a separate licence agreement are governed by and subjected to the licence granted in these terms. You may not copy, modify, create derivative works of, reverse engineer, reverse assemble, or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in, or otherwise transfer any right in the Software unless otherwise specifically agreed in writing between you and the Supplier. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including without limitation for the purpose of obtaining unauthorised access to the service. You agree not to access the service by any means other than through the interface that is

provided by the Supplier for use in accessing the service. Any rights not expressly granted herein are reserved.

**19.3. Licence to Use**

Subject to your compliance with these terms, the Supplier grants you a limited, non-exclusive, revocable licence to make personal, non-commercial use of the service and the Materials. This licence shall remain in effect until and unless terminated by you or the Supplier. You agree to use the service for your own personal, non-commercial use and will not redistribute or transfer the service or any of the Materials.

**19.4. Nutrition Plan and Fitness Programme**

You should not reproduce, copy, distribute, modify, sell, resell or use any of the Materials provided to you during the course of the Programme without the Supplier's express written confirmation.

**20. Data protection**

The parties shall comply with their data protection obligations as set out in Schedule 1.

**21. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

21.1. The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

21.2. References to liability in this clause 21 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

21.3. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

21.4. Nothing in this clause 21 shall limit the Client's payment obligations under the Contract.

21.5. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

21.6 Subject to clause 21.2 (No limitation in respect of deliberate default), and clause 21.4 (Liabilities which cannot legally be limited), the Supplier's total liability to the Client:

- (a) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 20 shall not exceed £5,000,000.00; and
- (b) for all [other] loss or damage shall not exceed £5,000,000.00.

21.7 Subject clause 21.2 (No limitation in respect of deliberate default), clause 21.3 (No limitation of Client's payment obligations) and clause 21.4 (Liabilities which cannot legally be limited), this clause 21.7 sets out the types of loss that are wholly excluded:

- (a) loss of profits.
- (b) loss of sales or business.
- (c) loss of agreements or contracts.
- (d) loss of anticipated savings.
- (e) loss of use or corruption of software, data or information.
- (f) loss of or damage to goodwill; and

- (g) indirect or consequential loss.
- 21.8 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 21.9 Unless the Client notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 21.10 This clause 21 shall survive termination of the Contract.

## **22 General**

- 22.1 **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. The Supplier shall not be liable for any failure to perform any of its obligations under these T&C if they are caused by circumstances beyond its reasonable control.
- 22.2 **Contacting each other**
  - (a) Where these terms require you to contact us (for example, where they require you to give us “notice”), you must do so by email to [help@thehealthowl.org](mailto:help@thehealthowl.org).
  - (b) We may give you notice by sending an email to the address registered to your account. You are responsible for ensuring that you are able to receive and check emails at that address.
- 22.3 **Variation of T&C**
  - (a) We may change these T&C by publishing the new T&C on our Website at least 30 days in advance of them becoming binding.
  - (b) For T&C which do not negatively affect your existing use of our Services, the new T&C will take effect after 30 days.
  - (c) Otherwise, the new terms will not take effect until you place a further Order, you can therefore terminate you’re the Contract if you do not want to continue under the new T&C.
  - (d) Except as set out in these T&C, no variation of the Contract shall be effective unless it is in writing and signed by the parties.
- 22.4 **Confidentiality**
  - (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the other party, except as permitted by clause 22.4(b).
  - (b) Each party may disclose the other party's confidential information:
    - i. to its employees, officers, representatives, contractors, 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 22.4; and
    - ii. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
    - iii. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

- 22.5 **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.
- 22.6 **Variation.** Except as set out in these T&C, no variation of the Contract shall be effective unless it is in writing and signed by the parties.
- 22.7 **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 right or remedy. 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.
- 22.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 22.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 22.9 **Third party rights.**
- 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.
- 22.10 **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.
- 22.11 **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.

## **Schedule 1     Data protection**

### **GDPR Privacy Notice**

THO is committed to protecting the privacy and security of your personal information.

This privacy notice describes how we collect and use personal information about you during and after your working relationship with us, in accordance with the General Data Protection Regulation (GDPR).

THO is a “data controller”. This means that we are responsible for deciding how we hold and use personal information about you. We are required under data protection legislation to notify you of the information contained in this privacy notice. We may update this notice at any time.

It is important that you read this notice, together with any other privacy notice we may provide on specific occasions when we are collecting or processing personal information about you, so that you are aware of how and why we are using such information.

#### **1. DATA PROTECTION PRINCIPLES**

We will comply with data protection law. This says that the personal information we hold about you must be:

1. Used lawfully, fairly and in a transparent way.
2. Collected only for valid purposes that we have clearly explained to you and not used in any way that is incompatible with those purposes.
3. Relevant to the purposes we have told you about and limited only to those purposes.
4. Accurate and kept up to date.
5. Kept only as long as necessary for the purposes we have told you about.
6. Kept securely.

#### **2. THE KIND OF INFORMATION WE HOLD ABOUT YOU**

We may collect, store, and use the following categories of personal information about you:

- Personal contact details such as name, title, addresses, telephone numbers, and personal email addresses.
- Date of birth.
- Gender.
- Marital status and dependants.
- Next of kin and emergency contact information.
- Bank account details and tax status information.
- Copy of passport, driving licence or any other documentation provided for the purposes of verifying your identification.
- Compensation history.
- CCTV footage and other information obtained through electronic means.
- Information about your use of our information and communications systems.

- Marketing and Communications data about your preferences in receiving marketing from us and your communication preferences.

We may also collect, store and use the following “special categories” of more sensitive personal information:

- Information about your race or ethnicity, religious beliefs, sexual orientation and political opinions.
- Trade union membership.
- Information about your health, including any medical condition, health and sickness records.
- Genetic information and biometric data.
- Information about criminal convictions and offences.

### **3. HOW IS YOUR PERSONAL INFORMATION COLLECTED?**

We will collect personal information about you either directly from you or as received from third parties throughout the period of your instruction of us.

### **4. HOW WE WILL USE INFORMATION ABOUT YOU**

We will only use your personal information when the law allows us to. Most commonly, we will use your personal information in the following circumstances:

1. Where we need to perform the contract we have entered into with you.
2. Where we need to comply with a legal obligation.
3. Where it is necessary for our legitimate interests (or those of a third party) and your interests and fundamental rights do not override those interests.

We may also use your personal information in the following situations, which are likely to be rare:

1. Where we need to protect your interests (or someone else’s interests).
2. Where it is needed in the public interest or for official purposes.

#### **Situations in which we will use your personal information**

We need all the categories of information listed at paragraph 2 primarily to allow us to perform our contract with you and to enable us to comply with legal obligations. In some cases we may use your personal information to pursue legitimate interests of our own or those of third parties, provided your interests and fundamental rights do not override those interests such as for marketing purposes. The situations in which we will process your personal information are listed below.

- Administering the contract we have entered into with you.
- Business management and planning, including accounting, auditing and marketing.
- Dealing with legal disputes involving you.
- To prevent fraud.

Some of the above grounds for processing will overlap and there may be several grounds which justify our use of your personal information.

#### **If you fail to provide personal information**

If you fail to provide certain information when requested, we may not be able to perform the contract we have entered into with you or we may be prevented from complying with our legal obligations.

### **Change of purpose**

We will only use your personal information for the purposes for which we collected it, unless we reasonably consider that we need to use it for another reason and that reason is compatible with the original purpose. If we need to use your personal information for an unrelated purpose, we will notify you and we will explain the legal basis which allows us to do so.

Please note that we may process your personal information without your knowledge or consent, in compliance with the above rules, where this is required or permitted by law.

## **5. MARKETING**

You will receive marketing communications from us if you have requested information from us or have used our services and you have not opted out of receiving marketing communications.

You can ask us to stop sending you marketing communications at any time by following the opt-out links on any marketing message sent to you or by contacting us at any time.

Where you opt out of receiving these marketing messages, this will not apply to personal data provided to us as a result of a service you have instructed us to provide.

## **6. HOW WE USE PARTICULARLY SENSITIVE PERSONAL INFORMATION**

"Special categories" of particularly sensitive personal information require higher levels of protection. We need to have further justification for collecting, storing and using this type of personal information. We may process special categories of personal information in the following circumstances:

1. In limited circumstances, with your explicit written consent.
2. Where we need to carry out our legal obligations or exercise rights in relation to your contract with us. We have in place an appropriate policy document and safeguards which we are required by law to maintain when processing such data.

Less commonly, we may process this type of information where it is needed in relation to legal claims or where it is needed to protect your interests (or someone else's interests) and you are not capable of giving your consent, or where you have already made the information public.

### **Do we need your consent?**

We do not need your consent if we use special categories of your personal information to carry out our legal obligations. In limited circumstances, we may approach you for your written consent to allow us to process certain particularly sensitive data. If we do so, we will provide you with full details of the information that we would like and the reason we need it, so that you can carefully consider whether you wish to consent. You should be aware that it is not a condition of your contract with us that you agree to any request for consent from us.

## **7. INFORMATION ABOUT CRIMINAL CONVICTIONS**

We will only use information about your criminal convictions where it is necessary for the purposes of the matter which you have instructed us in relation to.

## **8. DATA SHARING**

We may have to share your data with third parties, including third-party service providers. We require third parties to respect the security of your data and to treat it in accordance with the law.

If we do, you can expect the same degree of protection in respect of your personal information.

### **Why might you share my personal information with third parties?**

We will share your personal information with third parties where required by law, where it is necessary to administer the working relationship with you or where we have another legitimate interest in doing so.

### **Which third-party service providers process my personal information?**

"Third parties" includes third-party service providers (including but not limited to Barristers, Surveyors, Experts, Tracing Agents, Couriers, Courts, other Solicitors, Costs Draftsman, Insurers, IT service providers, contractors and designated agents). The activities carried out by third-party service providers include but are not limited to: administration, IT services, legal advice and representation, sector specialist advice and opinion, costs advice, tracing services and administration of justice.

### **How secure is my information with third-party service providers?**

All our third-party service providers and other entities in the group are required to take appropriate security measures to protect your personal information in line with our policies. We do not allow our third-party service providers to use your personal data for their own purposes. We only permit them to process your personal data for specified purposes and in accordance with our instructions.

### **When might you share my personal information with third-party service providers?**

We may share your personal information where it is required for the performance of the contract we have entered into with you and for progression of your matter, where we need to comply with a legal obligation, where it is necessary for our legitimate interests (or those of a third party) and your interests and fundamental rights do not override those interests or with your consent.

## **9. DATA SECURITY**

We have put in place measures to protect the security of your information. Details of these measures are available upon request.

Third parties will only process your personal information on our instructions and where they have agreed to treat the information confidentially and to keep it secure.

We have put in place appropriate security measures to prevent your personal information from being accidentally lost, used or accessed in an unauthorised way, altered or disclosed. In addition, we limit access to your personal information to those employees, agents, contractors and other third parties who have a business need to know. They will only process your personal information on our instructions and they are subject to a duty of confidentiality. Details of these measures may be obtained upon request.

We have put in place procedures to deal with any suspected data security breach and will notify you and any applicable regulator of a suspected breach where we are legally required to do so.

## 10. DATA RETENTION

### **How long will you use my information for?**

We will only retain your personal information for as long as necessary to fulfil the purposes we collected it for, including for the purposes of satisfying any legal, accounting, or reporting requirements. Details of retention periods for different aspects of your personal information are available upon request. To determine the appropriate retention period for personal data, we consider the amount, nature, and sensitivity of the personal data, the potential risk of harm from unauthorised use or disclosure of your personal data, the purposes for which we process your personal data and whether we can achieve those purposes through other means, and the applicable legal requirements.

In some circumstances we may anonymise your personal information so that it can no longer be associated with you, in which case we may use such information without further notice to you. Once you are no longer a client of the company we will retain and securely destroy your personal information in accordance with applicable laws and regulations.

## 11. RIGHTS OF ACCESS, CORRECTION, ERASURE, AND RESTRICTION

### **Your duty to inform us of changes**

It is important that the personal information we hold about you is accurate and current. Please keep us informed if your personal information changes during your working relationship with us.

### **Your rights in connection with personal information**

Under certain circumstances, by law you have the right to:

**Request access** to your personal information (commonly known as a “data subject access request”). This enables you to receive a copy of the personal information we hold about you and to check that we are lawfully processing it.

- **Request correction** of the personal information that we hold about you. This enables you to have any incomplete or inaccurate information we hold about you corrected.
- **Request erasure** of your personal information. This enables you to ask us to delete or remove personal information where there is no good reason for us continuing to process it. You also have the right to ask us to delete or remove your personal information where you have exercised your right to object to processing (see below).
- **Object to processing** of your personal information where we are relying on a legitimate interest (or those of a third party) and there is something about your particular situation which makes you want to object to processing on this ground. You also have the right to object where we are processing your personal information for direct marketing purposes.
- **Request the restriction of processing** of your personal information. This enables you to ask us to suspend the processing of personal information about you, for example if you want us to establish its accuracy or the reason for processing it.
- **Request the transfer** of your personal information to another party.

If you want to review, verify, correct or request erasure of your personal information, object to the processing of your personal data, or request that we transfer a copy of your personal information to another party, please contact us in writing.

**No fee usually required**

You will not have to pay a fee to access your personal information (or to exercise any of the other rights). However, we may charge a reasonable fee if your request for access is clearly unfounded or excessive. Alternatively, we may refuse to comply with the request in such circumstances.

**What we may need from you**

We may need to request specific information from you to help us confirm your identity and ensure your right to access the information (or to exercise any of your other rights). This is another appropriate security measure to ensure that personal information is not disclosed to any person who has no right to receive it.

**12. RIGHT TO WITHDRAW CONSENT**

In the limited circumstances where you may have provided your consent to the collection, processing and transfer of your personal information for a specific purpose, you have the right to withdraw your consent for that specific processing at any time. To withdraw your consent, please contact us. Once we have received notification that you have withdrawn your consent, we will no longer process your information for the purpose or purposes you originally agreed to, unless we have another legitimate basis for doing so in law.

**13. CHANGES TO THIS PRIVACY NOTICE**

We reserve the right to update this privacy notice at any time, and we will provide you with a new privacy notice when we make any substantial updates. We may also notify you in other ways from time to time about the processing of your personal information.

**14. CONTACT INFORMATION**

If you have any questions in relation to this notice please contact us at:  
Address: 1386 London Road, Leigh on Sea, Essex, SS9 2UJ  
Telephone: 07791761455  
Email: [info@spinalcarecentre.co.uk](mailto:info@spinalcarecentre.co.uk)

THO is registered with the UK Information Commissioner’s Office under the following ICO Registration Number: ZB764920.

All email messages sent to and from Paul Robinson Solicitors may be monitored to ensure compliance with internal policies and to protect our business.

I/We, \_\_\_\_\_, acknowledge that on \_\_\_\_\_ (date),  
I/We received a copy of THO’s Privacy Notice and that I/We have read and understood it.

Signature  
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Name  
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Signature  
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