

Practitioner Terms of Business

Last updated January 2019

SUMMARY

This is a summary of our Practitioner Terms of Business. It should not be a substitute for reading the full version, below. Capitalised terms used in this summary are defined in the Practitioner Terms of Business.

- TOM provides a platform, myTOM, on which you can advertise the Practitioner Services which you offer in your practice to a much wider range of potential customers, and it comes with a huge range of features which will be of great benefit to your business.
- We are responsible for arranging and concluding Bookings and are appointed under these Practitioner Terms of Business as your commercial agent to do so.
- TOM will collect payments from Practitioner's Clients on your behalf and successful receipt of payment by us will discharge their debt to you.
- We will send you an Invoice Statement on request outlining the Commission you paid to us.
- A Practitioner's Client will be identified using their name.
- You are responsible for the Practitioner Services which you provide to Practitioner's Clients in your practice and the contract for those Practitioner Services is between you and the Practitioner's Client.

We are in no way liable to Practitioner's Clients for the Practitioner Services they receive from you.

- You have a number of obligations to TOM in return for receiving the TOM Services. These are set out in detail in the full version but some important ones are as follows:
 - a) You agree to pay all applicable Charges. **Please note that VAT will be applied to all Charges.**
 - b) You agree not to solicit TOM or Practitioner's Clients to make Bookings otherwise than through myTOM.
 - c) You agree to process and supply the Practitioner Services to the highest industry standards.
 - d) You must at all times provide the Practitioner Services on myTOM at the same prices you offer on your own website. For the avoidance of doubt, you **are** permitted to offer lower prices or special offers to closed groups of individuals (both online and offline), directly in your practice and on alternative online sales platforms.
 - e) You must ensure that you have all licenses, consents, qualifications, authorities & insurance that are required for you to perform the Practitioner Services.
 - f) You must ensure that all Practitioner Content uploaded to your Page(s) is accurate, not misleading and legally compliant.
- Your cancellation and rescheduling terms in respect of Bookings, must comply with our Booking Terms and Conditions and with clause 5 of the full version of the Practitioner Terms of Business. In particular, you must include the following terms:

- **Bookings:** Practitioner's Clients may be allowed to reschedule or cancel before the time of the Booking at the timeframe to be decided by you, being either 30 days, 7 days, 2 days, or 0 days
- If you want to talk to us, please get in touch with our team and we'd be happy to help:
 - Email: connect@theonenessmovement.com
 - Post: Kemp House, 152-160 City Road, London EC1V 2NX
 - Tel: 0203 962 5784

FULL VERSION

The creation and use of a myTOM account is subject to your acceptance of these terms and conditions.

Please read these Practitioner Terms of Business, as well as the User Generated Content Agreement and the Privacy and Cookie Policy carefully before you create your account.

DEFINITIONS

"**Affiliate**" means in relation to TOM any entity that from time to time directly or indirectly controls, is controlled by, or is under common control with TOM;

"**Agreement**" or "**Practitioner Terms of Business**" means this agreement, together with our [Website & Platform Terms and Conditions of Use](#), our [Privacy and Cookie Policy](#), and our [User Generated Content Policy](#) which comes into effect on the Effective Date;

"**Booking**" means any booking made by a TOM Client for any of the Practitioner Services via myTOM;

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

"**Commission**" means the commission (+VAT) payable by the Practitioner to TOM and calculated based on the total amount payable by a TOM Client for a Booking;

"**Charges**" means the Commission and the Fees;

"**Data Protection Legislation**" means European Directives 95/46 and 2002/58/EC and any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them (including the General Data Protection Regulation) and all other applicable laws relating to processing of personal data and privacy that may exist in any relevant jurisdiction;

"**Distribution Channels**" means any third-party website or other media through which the TOM Services are from time to time advertised to TOM Clients;

"**Effective Date**" means the earlier of (a) the Practitioner beginning to receive the TOM Services, (b) the date on which the Practitioner ticks the box to confirm its acceptance of this Agreement on myTOM;

"**Fees**" means any other fees (+VAT) payable by the Practitioner in order to receive the TOM Services;

"**Fulfilled Booking**" means a Booking in respect of which the Practitioner has successfully provided the Practitioner Services to the Practitioner's Client;

"General Data Protection Regulation" or **"GDPR"** means Regulation (EU) 2016/679.

"Indemnified Third Party" has the meaning set out in clause 8.8;

"Intellectual Property Rights" means all intellectual property rights on a world-wide basis whether currently in existence or otherwise and whether vested or contingent including (without limitation) copyright (including foreign language translation rights), design rights, database rights, rights in any domain names, registered designs, patents, trade marks, trade names, signs and other designations provided the foregoing are of a proprietary nature and all similar rights whether registered or otherwise (including, without limitation, all extensions, reversions, revivals and renewals thereof). The above shall include, in relation to registerable rights, any applications made or rights to make applications in respect of any such rights;

"Material Breach" means a breach (including an anticipatory breach) which is not minimal or trivial in its consequences to TOM, including but not limited to a breach of clauses 4.1, 4.7, 4.11, 4.12, 5.2, 6 and 7.6. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding;

"Page(s)" means the myTOM business profile pages and pages containing details of the Practitioner's Services;

"Practitioner's Client" means a TOM Client who purchases or receives the Practitioner Services via myTOM;

"Practitioner Services" means the conscious wellbeing goods and services which the Practitioner is in the business of providing and supplying to Practitioner's Clients and which are marketed to TOM Clients by the Practitioner through use of the TOM Services;

"Practitioner Content" means any information, documentation, photographs, domain name, customised skin/theme or other material (which may include the Practitioner name, logo and any other brand features and Intellectual Property Rights) which may be published on the Page(s) pursuant to this Agreement;

"Pricing Change Notice" has the meaning set out in clause 2.5;

"The Oneness Movement" or **"TOM"** means The Oneness Movement Ltd, a company registered in England under company number 11356876 and whose registered office is at Kemp House, 152-160 City Road, London EC1V 2NX, with VAT registration number 311032280 ("**us**", "**we**" or "**our**" for short);

"TOM Client" means any person registered on myTOM;

"TOM Services" means the benefits and services a Practitioner may receive from TOM in return for paying the Charges to TOM;

"myTOM" means the TOM owned and managed service platform for which the Practitioner creates an account in order to advertise their Services and through which TOM Clients make Bookings.

1. TOM Services and Charges

- 1.1. In consideration of payment by the Practitioner of the Charges and the Practitioner performing all of its other obligations herein and subject to this Agreement, TOM shall provide the applicable TOM Services to the Practitioner.
- 1.2. In respect of all Bookings, TOM shall act and is hereby appointed as agent at law for the Practitioner to conclude those Bookings with a Practitioner's Client and (where applicable) collect and process payments on behalf of the Practitioner. Nothing herein shall prevent or limit the Practitioner from remaining fully responsible and liable for their provision and supply of Practitioner Services to Practitioner's Clients.

- 1.3. TOM may contact the Practitioner via e-mail, telephone, SMS or WhatsApp using the contact information provided in myTOM in connection with Bookings or other questions regarding TOM and / or the Practitioner Services.
- 1.4. Where a Practitioner has elected to receive TOM Services which attract Fees, if it wishes to cease receiving one or more of those TOM Services, the Practitioner must give TOM at least thirty (30) days' notice in writing and will remain liable to pay any applicable Fees for the duration of the notice period.
- 1.5. TOM may in its sole discretion, change the amount of any Fees and/or the rate of Commission at any time on thirty (30) days' notice to the Practitioner ("**Pricing Change Notice**"). The Practitioner's continued use of the TOM Services after receipt of such Pricing Change Notice will be deemed acceptance of the new Fees and/or rate of Commission.

2. myTOM

- 2.1. Subject to payment of applicable Charges, the Practitioner may use myTOM for the purpose of processing Bookings of Practitioner Services for and on behalf of itself only.
- 2.2. The Practitioner's use myTOM is at the Practitioner's sole risk. The service is provided on an "as is" and "as available" basis.
- 2.3. Technical support is provided by email primarily and is a benefit for the Practitioner, but is not a right of the Practitioner, and is available at support@theonenessmovement.com
- 2.4. The Practitioner understands and accepts that:
 - a) TOM uses third party vendors and hosting partners to provide the hardware, software, networking, storage, and related technology required to myTOM;
 - b) TOM shall have administrator access to all parts of myTOM, including those parts that have been specifically tailored for the Practitioner;
 - c) TOM will track, using third party tools such as Google Analytics, the Practitioner's use of, and the Practitioner's employees' use of, myTOM. The tracking will cover each single interaction the user has and the technical details of the browser and device being used and will include but not be limited to (a) Page creation, (b) Service creation, and (c) viewing the Booking. This tracking will assist TOM in understanding how myTOM is used by Practitioners and will allow TOM to develop and improve myTOM. The Practitioner is responsible for alerting its employees that such tracking will take place. References to the tracking are included in TOM's Privacy and Cookie Policy here <https://theonenessmovement.com/about-us/privacy-cookies>, which should be brought to the attention of Practitioner's employees.
- 2.5. The Practitioner shall not:
 - a) reproduce, duplicate, copy, sell, resell or exploit the whole or any part of myTOM;
 - b) allow any third party (including group companies of the Practitioner) to use or access myTOM without express prior written permission from TOM (which may be denied or granted on such terms as TOM in its sole discretion may determine);
 - c) send unsolicited emails, SMS or other electronic forms of marketing to Practitioner's Clients via myTOM (or otherwise); or
 - d) disclose, share or resell any myTOM login details.

- 2.6. TOM does not warrant:
- a) that myTOM, will meet the Practitioner's specific requirements;
 - b) that myTOM, will be uninterrupted, timely, secure, or error-free;
 - c) that any information or results that may be obtained from the use of myTOM will be accurate or reliable;
 - d) that the quality of any products, services, information, or other material purchased or obtained by the Practitioner through myTOM will meet the Practitioner's requirements or expectations; or
 - e) that any errors in myTOM, will be corrected.
- 2.7. The Practitioner expressly understands and agrees that, subject to clause 11.2, TOM shall not be liable for any loss of income or profits, loss of contracts, loss of goodwill, loss of data, or other intangible losses or for any indirect or consequential loss or damage (even if TOM has been advised by the Practitioner of the possibility of such loss or damage) resulting from:
- a) the Practitioner's use of, or inability to use, myTOM;
 - b) unauthorised access to or alteration of the Practitioner's transmissions or data;
 - c) statements or conduct of any third party on myTOM; or
 - d) any other matter relating to myTOM.
- 2.8. TOM will provide the Practitioner with a user account and password which allows the Practitioner to access myTOM. The Practitioner shall safeguard and keep the user account details and password confidential and safely stored and shall not disclose them to any person other than those who need to have access to myTOM and who are aware of the Practitioner's obligations to keep those details secure. The Practitioner shall immediately notify TOM of any suspected security breach or improper use, including any use which would breach this Agreement, TOM's reasonable instructions given from time to time and/or applicable law.

3. Practitioner Obligations

- 3.1. In consideration of receiving the TOM Services, the Practitioner agrees to pay all applicable Charges to TOM and to accept all Bookings and process and supply the Practitioner Services to the highest industry standards and in line with any specific terms and conditions set out in this Agreement generally, and particularly in this Clause 4. A breach of this Clause 4.1 will be a Material Breach of this Agreement.
- 3.2. The Practitioner shall accept all Bookings and may only cancel in exceptional circumstances, otherwise the Practitioner shall be considered to be in Material Breach of this Agreement and may forfeit any payments due to it in connection with this Agreement.
- 3.3. In respect of Bookings, the Practitioner is obliged to comply with the cancellation and rescheduling policy as follows:
- 3.4. TOM and/or the Practitioner will offer a refund in respect of Bookings which are cancelled (or unable to be rescheduled), provided the relevant appointment is not due to take place in the no-cancellation timeframe selected by the Practitioner for that Service.
- 3.5. If a Practitioner's Client wishes to change the date and/or time of a Booking, provided the Practitioner's Client contacts the Practitioner (via myTOM) or TOM to do so prior to the no-cancellation timeframe selected by the Practitioner for that Service, the

Practitioner must endeavour to offer the Practitioner's Client a suitable alternative booking time and/or date. In the event that a Practitioner is unable or unwilling to fulfil a Booking pursuant to a Practitioner's Client requesting such a change in accordance with this clause 4.3.2, TOM will treat the Booking as cancelled by the Practitioner's Client and will refund the Practitioner's Client the full amount.

- 3.6. If a Practitioner wishes to change the location, date and/or time of a Booking, in the event that the Practitioner's Client is unable or unwilling to agree to such change, TOM will treat the TOM Booking as cancelled by the Practitioner and will refund the Practitioner's Client the full amount. However, if TOM deems it reasonable to do so in the circumstances, and at TOM's sole discretion, TOM may still require the Practitioner to pay the applicable amount of Commission and/or Processing Fee that would have been due from the Practitioner in respect of that TOM Booking.
- 3.7. The Practitioner is responsible for ensuring that all Practitioner Content (especially details of and prices for the Practitioner Services) that it publishes or provides to TOM to publish on the Page(s) is accurate, correct and not misleading. The Practitioner should only upload photographs to its Page(s) which have been taken at the Practitioner's own venue and/or should always ensure that it has the right to use any such photographs uploaded. Any breach of this clause 4.5 is a Material Breach of this Agreement. If the Practitioner does not have any photographs available to upload, TOM is happy to upload some suitable photographs from its own database so please just let us know.
- 3.8. Practitioner is responsible and agrees to fulfil all statutory information obligations, including but not limited to the obligation to create and maintain and imprint.
- 3.9. The Practitioner acknowledges and agrees that its Page(s) on myTOM should not contain any contact details, direct references or links to the Practitioner or its website, app, platform, tool or other devices or to websites, apps, platforms, tools or other devices of third parties.
- 3.10. The Practitioner must at all times supply the Practitioner Services on myTOM at a price which is accurate and conforms with the best available rate offered on the Practitioner's own website. If a Practitioner's Client provides proof of a better price available on the Practitioner's own website for Practitioner Services booked through myTOM, TOM reserves the right to refund the Practitioner's Client the difference and to adjust the amount paid to the Practitioner in connection with those Practitioner Services accordingly. For the avoidance of doubt, the Practitioner is permitted to offer lower prices or special offers to closed groups of individuals, both online and offline, e.g. to members of its own loyalty scheme, or directly in the Practitioner's venue, and also on other alternative online sales platforms. A breach of this clause 4.7 shall be a Material Breach of this Agreement.
- 3.11. The Practitioner must ensure that it has obtained the consent of each of its employees and contractors to be advertised on myTOM to TOM Clients including but not limited to details such as name, expertise, contact details, availability and services offered.
- 3.12. The Practitioner is solely responsible for ensuring that the information on myTOM regarding location, time and date availability is kept completely up to date so that potential Practitioner's Clients are able to view the accurate location, time and date availability at the time of making a Booking.
- 3.13. The Practitioner shall not solicit either TOM or Practitioner's Clients to make Bookings otherwise than through myTOM.
- 3.14. Where a TOM or Practitioner's Client makes a Booking and the Practitioner encourages that TOM or Practitioner's Client to cancel their Booking and make a separate booking directly with the Practitioner, the Practitioner shall be in Material Breach of this Agreement.

- 3.15. If TOM has reasonable grounds to suspect that the Practitioner has made or makes any direct or indirect attempt to avoid paying any Charges, this shall be a Material Breach of this Agreement and shall give TOM the right, without limiting other remedies available to it, to withhold and retain any payments due to the Practitioner under this Agreement.

4. Customer Service and Complaints

- 4.1. The Practitioner shall use best endeavours to provide top quality Practitioner Services to all Practitioner's Clients and shall promptly deal with any sales enquiries, matters or issues relating to Bookings or potential Bookings including dealing with Practitioner's Client complaints.
- 4.2. The Practitioner shall be directly responsible to the Practitioner's Client for any failure to fulfil the Practitioner's Client's expectations or for any other legal liability which arises in respect of the Practitioner Services, save where such liability arises as a result of TOM's negligence.
- 4.3. TOM shall refer any Practitioner's Client complaints it receives to the Practitioner and the Practitioner shall acknowledge all complaints, and shall respond to the relevant Practitioner's Client within forty-eight (48) hours of the Practitioner's receipt of a complaint (whether the complaint has come directly from the Practitioner's Client or via TOM).
- 4.4. The Practitioner shall make all efforts to reach a resolution to any complaints within fourteen (14) days and must notify TOM of any correspondence between the Practitioner and the Practitioner's Client relating to the complaint and generally keep TOM apprised of its progress and the status of the complaint.
- 4.5. The Practitioner hereby acknowledges and accepts that myTOM includes a reviewing feature, upon which Practitioner's Clients may post publicly viewable reviews about their experiences with TOM and with the Practitioner (particularly in relation to the Practitioner Services) ("**User Generated Content**") and that a selection of reviews from preceding months will also be made available on the Practitioner Site (if applicable). The Practitioner should note that this feature may not be opted out from and may from time to time contain negative reviews and/or feedback from Practitioner's Clients, which is outside TOM's control. There may be an option for the Practitioner, if they are the subject of any User Generated Content, to reply to reviews about them. However, any content the Practitioner posts in response to User Generated Content must be polite and professional and non-threatening or confrontational, and it may be subject to review by TOM (and may be removed or amended in TOM's sole discretion if TOM deems it reasonably necessary to do so).
- 4.6. For the avoidance of doubt, the Practitioner shall have no right to any remedy (including without limitation, any right to terminate this Agreement) as a result of any User Generated Content naming or referring to the Practitioner. However, if the Practitioner, acting reasonably, feels that any User Generated Content is defamatory of the Practitioner or any person or in some other way is a violation of any person's legal rights, the Practitioner may flag and report that User Generated Content to TOM. In such case, TOM shall review the same and in its sole discretion take any action it deems necessary or desirable (including, for example, removing or amending the relevant piece of User Generated Content).

5. Customer Data

- 5.1. For the purposes of this clause, "data controller", "data processor", "data subject", "personal data", "process", "processing" and "appropriate technical and organisational measures" shall be interpreted in accordance with applicable Data Protection Legislation.

- 5.2. TOM and the Practitioner each acknowledge that, for the purposes of the Data Protection Legislation:
- a) in respect of Practitioner Practitioner's Clients' personal data, the Practitioner is the data controller and TOM is the data processor;
 - b) in respect of TOM Practitioner's Clients' personal data, the Practitioner and TOM each act as independent data controllers; and
- 5.3. Where TOM and the Practitioner are independent controllers, each acknowledge and agree that:
- a) save as is required by this clause 6, each party is responsible for its own compliance with Data Protection Legislation, including the GDPR;
 - b) the Practitioner must promptly (and in any event within twenty-four (24) hours of the Practitioner or its employees becoming aware of the matter) notify TOM of any accidental or intentional damage, alteration, destruction, unauthorised disclosure, loss, misuse or theft of or to the personal data of any TOM or Practitioner's Client which the Practitioner has access to ("**Security Incident**"). Practitioner shall provide full cooperation and prompt assistance to TOM in respect of its efforts to (i) investigate, remediate, and mitigate the effects of the Security Incident, and (ii) comply with notification obligations to individuals, clients or regulatory authorities;
 - c) Practitioner must not do, or omit to do, and must ensure that its personnel and other representatives do not do or omit to do, anything that would cause (or may be reasonably expected to cause) TOM or its Affiliates to be in breach of any provision of any Data Protection Legislation and take all reasonable steps to ensure the reliability of its employees and agents who may have access to the personal data and ensure that such staff and agents are informed of the confidential nature of the personal data and have undertaken training in the laws relating to handling personal data;
 - d) Practitioner agrees to implement and maintain appropriate technical and organisational measures in respect of its processing of the personal data sufficient to comply with the Data Protection Legislation and to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damages, theft, alteration or disclosure;
 - e) Practitioner agrees to only process personal data of TOM or Practitioner's Clients for the purpose of providing the Practitioner Services to such TOM or Practitioner's Clients and, in the case of TOM Clients who have expressly agreed by way of opt-in consent to receiving email marketing, for the purposes of email marketing and in all cases only whilst receiving the TOM Services; and
 - f) should Practitioner, its affiliates or its suppliers need to transfer the personal data of TOM or Practitioner's Clients to locations outside the European Economic Area, Practitioner takes full responsibility (and accepts full liability) for ensuring that such personal data is processed fully in compliance with Data Protection Legislation.
- 5.4. Where the Practitioner is data controller and TOM is data processor, in respect of Practitioner Practitioner's Clients' personal data and where the Practitioner and TOM are independent data controllers), such personal data shall be processed by TOM in accordance with the obligations of Article 28 of the GDPR, subject to the provisions of clause 69 below and subject to TOM being able to charge the Practitioner for providing any assistance not expressly specified as a service requirement of TOM under this Agreement.

- 5.5. TOM reserves the right to process Practitioner's Client personal data as set out in its Privacy and Cookie Policy (as may be updated from time to time) and the Practitioner hereby irrevocably and unconditionally agrees and consents to the processing of such personal data by TOM and further warrants that each Practitioner's Client has been informed how TOM will process their personal data. Without limiting Practitioner's obligations elsewhere in this Agreement, the Practitioner undertakes promptly to include any information reasonably requested by TOM in its website privacy policy or other Practitioner's Client literature to assist each party in compliance with Data Protection Legislation.
- 5.6. The Practitioner acknowledges that ownership of all Intellectual Property Rights in TOM Client and Practitioner's Client personal data in myTOM shall vest in TOM or its Affiliates and Practitioner irrevocably and unconditionally assigns with full title guarantee all such rights to TOM. TOM grants the Practitioner a non-exclusive license to use such personal data to operate its business subject to Practitioner's ongoing compliance with the provisions of this Agreement.
- 5.7. The Practitioner undertakes and warrants that it will only process the personal data of Practitioner's Clients in compliance with Data Protection Legislation and in particular that it, its employees, its partners and its suppliers will only send marketing or promotional communications to Practitioner's Clients who have given their consent to receive the same. The Practitioner's use of the personal data of Practitioner's Clients is undertaken at the Practitioner's sole risk with Practitioner being responsible and liable for ensuring it, its employees', its partners' and its suppliers' use fully complies with all applicable Data Protection Legislation.
- 5.8. In the event that a Practitioner's Client notifies the Practitioner or one of its employees that it does not wish to receive further marketing materials from TOM and/or its Affiliates, the Practitioner shall promptly (and in any event no later than forty eight (48) hours from being so informed) notify TOM with full details of the same in writing so that TOM can honour such request.
- 5.9. In the event that a data subject makes a request to either party to exercise one or more of the rights afforded to data subjects under Data Protection Legislation then to the extent that either party reasonably requires input or assistance from the other party in order to give effect to any of the rights afforded, that other party shall provide all such input or assistance within a reasonable timeframe with each party meeting their own costs in doing so.
- 5.10. In the event that either party receives a request from a data protection authority for information relating to this Agreement or the relationship between the parties, that party shall promptly notify the other unless prohibited by law.
- 5.11. Any breach of this Clause 6 by the Practitioner will be a Material Breach of this Agreement.
- 5.12. The Practitioner will indemnify and hold TOM and its Affiliates harmless against all losses, claims, costs, damages or proceedings suffered or incurred by TOM and/or its Affiliates arising out of or in connection with the Practitioner's breach of this clause 6.
- 5.13. This Clause 6 in its entirety shall survive the termination or expiry of this Agreement.

6. Practitioner Warranties, License to TOM And Indemnity

- 6.1. The Practitioner shall provide TOM with any Practitioner Content it reasonably requires to be provided with in order to supply the TOM Services.
- 6.2. The Practitioner hereby grants TOM a non-exclusive, royalty free, irrevocable and worldwide right and license (or sublicense as applicable) to use, reproduce, distribute, sublicense, communicate and make available the Practitioner Content on myTOM, and any and all other Distribution Channels, and for any other purposes which are

necessary for TOM or required by TOM to exercise its rights and perform its obligations under this Agreement.

- 6.3. TOM may sublicense, make available, disclose and/or offer the Practitioner Content to Affiliates and third parties (**Third Party Platforms**). In no event shall TOM be liable to the Practitioner for any acts or omissions on the part of any Third Party Platforms. The sole remedy available to the Practitioner in respect of such Third Party Platforms is to (a) request TOM (which has the right and not the obligation) to disable and disconnect with such Third Party Platform in respect of the Practitioner; or (b) terminate this Agreement in accordance with Clause 9.
- 6.4. The Practitioner hereby grants TOM the right to:
 - a) remove, edit, cut-down or otherwise amend Practitioner Content published on any Pages, including without limitation where such Practitioner Content does not, in TOM's reasonable opinion, comply with the warranties at Clause 7.5 or is otherwise in breach of the terms of this Agreement; and
 - b) make use of search engine optimisation services, pay-per-click advertising, and other mechanisms that embody, incorporate or quote (in whole or part) the trading name of the Practitioner or any brands used in connection with the Practitioner Services.
- 6.5. The Practitioner warrants, represents and undertakes that:
 - a) all Practitioner Content it supplies to TOM in connection with this Agreement and/or publishes (or provides to TOM for publication) on myTOM (and the Distribution Channels, if applicable) will be accurate in all material respects and shall not infringe any other person's rights (including Intellectual Property Rights) or be defamatory, unlawful, offensive, threatening, or pornographic or otherwise falling below general standards of taste and decency; and
 - b) it shall comply with all applicable laws and advertising regulations in the marketing, sale and provision of the Practitioner Services and shall obtain all licences, consents, authorities, qualifications and insurance it is either necessary or reasonably prudent for the Practitioner to obtain in respect of all its business activities and personnel (but especially in connection with the provision of Practitioner Services).
- 6.6. Any breach of the warranties in clause 7.5 will be a Material Breach of this Agreement.
- 6.7. The Practitioner hereby agrees to indemnify, keep indemnified and hold harmless TOM and its officers, directors and employees, from and against any and all claims, demands, obligations, actual or alleged causes of action and lawsuits and all damages, liabilities, fines, judgments, costs (including settlement costs), expenses associated therewith (including the payment of reasonable legal charges and disbursements) and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis)) and all other reasonable professional costs and expenses arising out of or in connection with any breach by the Practitioner of any term of this Agreement or arising out of any action brought by any third party relating to the Practitioner Services provided (or not provided), or actions (or failures to act), of the Practitioner or any person (other than TOM) acting on its behalf, including, without limitation any action brought in connection with any Data Protection Legislation, Practitioner Content or a Practitioner's Client visit to the Practitioner's venue.
- 6.8. The Practitioner acknowledges that TOM enters into this Agreement for its own benefit but also as an agent for the benefit and on behalf of each of its officers, directors and employees (each an "**Indemnified Third Party**" and, collectively, the "**Indemnified Third Parties**") and that the rights in respect of indemnification set out in Clause 7.7 shall be rights and benefits of each such Indemnified Third Party (as if, in each case, a

party to this Agreement in its own right). Such rights shall be enforceable under this Agreement by TOM as agent for each such Indemnified Third Party. Notwithstanding the foregoing, the Practitioner and TOM may agree in writing to amend any provision of this Agreement without the consent of any of the Indemnified Third Parties, even if that amendment affects or will affect the rights conferred on any Indemnified Third Party hereunder.

6.9. This Clause shall survive the termination or expiry of this Agreement.

7. Payment Terms

7.1. Payment for all Services delivered by either Party to the other shall be made in pounds sterling by using the third party online payment facility ("**Payment Facility**"). You will be redirected to their site to create an account and will be subject to their terms and conditions, privacy policy and other terms of use. **Please check those carefully before creating your account.** Any currency conversion costs or other charges incurred by you in receiving or making payment of your Charges will be borne by you in addition to the price due to us.

7.2. Payments made through the Payment Facility are processed by third party payment services providers. TOM takes reasonable care to ensure that the Payment Facility is available and functioning at all times, but cannot guarantee continuous, uninterrupted or secure access to such Payment Facility, nor can we guarantee that the facility is virus or error free. We use third party payment service providers to process payments and because there are many factors beyond our control (such as delays in the banking system or in card networks), we cannot predict or guarantee the amount of time needed to complete the processing of your payment. Access to the Payment Facility may be occasionally restricted to allow for repairs, maintenance or the introduction of new facilities or services. We will attempt to provide reasonable notice of any scheduled interruptions to such Payment Facility and will do what we can to restore the facility as soon as reasonably possible.

7.3. The Payment Facility shall deduct all applicable Charges due to TOM and shall make payment to the Practitioner directly.

7.4. TOM will issue an Invoice Statement to the Practitioner when the Practitioner has incurred Fees or purchased additional TOM Services. Payment of such invoice shall be within fourteen (14) days.

7.5. TOM will issue a Statement of Account on request and will also itemise all categories of Bookings and Charges including:

- a) Fulfilled Bookings where the Practitioner's Client prepays the total amount payable;
- b) Charges payable to TOM by the Practitioner which are not directly tied to a collection by TOM of payment for a specific Booking from a Practitioner's Client (that is, where such other Charges or amounts are from time to time payable by the Practitioner to TOM); and
- c) Cancellations.

7.6. In respect of Bookings, the following terms and conditions shall apply:

- a) TOM receives pre-payments from Practitioner's Clients as the Practitioner's commercial agent and the Practitioner's Client's debt to the Practitioner in respect of that shall be discharged when the pre-payment is received by TOM;
- b) unless otherwise agreed in writing between TOM and the Practitioner, any onward payment of amounts collected by TOM and due to the Practitioner will be strictly subject to the Practitioner having provided the Practitioner Services pursuant to a Booking in accordance with this Agreement;

- c) subject to clause 8.5(b) above being satisfied by the Practitioner, onward payment of any Closing Balance will be payable by TOM or the Practitioner, as applicable, in accordance with clause 8.3 above.
- 7.7. The Practitioner shall make all payments due to TOM in accordance with clause 9.1 without any deduction whether by way of set-off, withholding, counterclaim, discount or otherwise. If any sum due from the Practitioner to TOM under these terms is not paid on or before the due date for payment, all sums owing by the Practitioner to TOM shall become due and payable immediately and without prejudice to any other right or remedy available to TOM, TOM shall be entitled to:
 - a) suspend or terminate its provision of the TOM Services and this Agreement, including disabling the Practitioner's listing on myTOM, until arrangements as to payment or credit have been established which are satisfactory to TOM;
 - b) charge the Practitioner the cost of obtaining judgment or payment, to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure; and
- 7.8. The Practitioner shall be responsible for any refunds, chargebacks, banking charges or other administrative expenses ("**Payment Facility Charges**") incurred by TOM as a result of Practitioner's failure to provide the Services
- 7.9. TOM reserves the right to deduct any sums payable to TOM by the Practitioner and any such Payment Facility Charges, from any balance collected by TOM on behalf of the Practitioner, prior to onward payment of any Closing Balance to the Practitioner.
- 7.10. TOM reserves the right to charge interest on all amounts payable to TOM from the Practitioner which are not paid by the relevant due date at the annual rate of 4% above the official base rate from time to time of the Bank of England. Such interest will accrue on a daily basis from the date on which payment became overdue up to the date on which TOM receives the full outstanding amount together with all accrued interest.
- 7.11. In the event of a dispute between TOM and the Practitioner, any undisputed amount of Charges will be paid in accordance with this clause 8 to TOM. The Practitioner must notify TOM of its disagreement within fourteen (14) days of receipt of the Invoice Statement setting out in detail the reason. If the Practitioner fails to do so, the Invoice Statement shall be deemed accepted by the Practitioner.
- 7.12. The Practitioner is responsible for withholding and reporting taxes applicable to the Charges in accordance with all applicable laws and the requests of the relevant tax authorities, including for any interest and penalties imposed for late payment or failure to withhold. If required, the Practitioner shall be solely responsible for agreeing with the relevant tax authorities on the tax treatment of the Charges. The Practitioner shall on the request of TOM provide copies of tax payment certificates and/or tax exemption certificates. The Practitioner represents and warrants that it is duly registered with all relevant tax authorities, where applicable.
- 7.13. The Practitioner understands and acknowledges that TOM is a commercial booking agent and does not provide the Practitioner Services to the Practitioner's Client. The contract for the Practitioner Services is between the Practitioner and the Practitioner's Client and as a result, it is the Practitioner's responsibility, if the Practitioner is VAT registered, to charge VAT on the total value of the Booking and to provide a VAT receipt to the Practitioner's Client, if requested. TOM only charges VAT to the Practitioner on the Commission, in consideration for the provision of the TOM Services.
- 7.14. In the event of fraudulent or alleged fraudulent activities by the Practitioner or if TOM is required by law, court order, governmental instruction, arbitrational decision or by its cancellation policy to make a refund, of all or part of a Booking, TOM reserves the

right to claim repayment from the Practitioner of any amount required to be repaid by TOM to the Practitioner's Client and for any Payment Facility Charges relating thereto.

8. Term of Agreement

- 8.1. This Agreement commences on the Effective Date and will continue in effect unless terminated in writing on not less than thirty (30) days' written notice by either party.
- 8.2. Either party shall be entitled to terminate this Agreement with immediate effect by written notice to the other if:
 - a) the other party commits a Material Breach of any of the provisions of this Agreement (including but not limited to a breach of clauses 4.1, 4.7, 4.11, 4.12, 5.2, 6 and 7.6) and either that breach is not capable of being remedied or, in the case of a breach capable of remedy, that party fails to remedy the same within seven (7) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
 - b) the other party is in persistent non-material breach (whether remediable or not) of any of the provisions of this Agreement;
 - c) an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;
 - d) that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
 - e) that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);
 - f) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
 - g) the other party ceases, or threatens to cease, to carry on business.
- 8.3. Termination of this Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

9. Confidentiality

- 9.1. Each party acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it may receive or otherwise become aware of information relating to the other party, their marketing plans, their clients, customers, businesses, business plans, finances, technology or affairs, which is proprietary and confidential to the other party ("**Confidential Information**").
- 9.2. Each party undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information at all times and to keep and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorised access, and not at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the owner of the Confidential Information, directly or indirectly, use, disclose, exploit, copy or modify any Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations hereunder.
- 9.3. The terms of and obligations imposed by this Clause 10 shall not apply to any Confidential Information which:
 - a) at the time of receipt by the recipient is in the public domain;

- b) subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents;
- c) is lawfully received by the recipient from a third party on an unrestricted basis; or
- d) is already known to the recipient before receipt hereunder.

9.4. The recipient may disclose Confidential Information in confidence to a professional adviser of the recipient or if it is required to do so by law, regulation or order of a competent authority.

9.5. This Clause shall survive the termination or expiry of this Agreement.

10. Liability

10.1. Subject to Clause 11.2, TOM's maximum aggregate liability under or in connection with this Agreement, or any related contract, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the Charges due and payable to TOM hereunder on the date of the event giving rise to the relevant claim. Further, TOM shall not be liable for any loss of income or profits, loss of contracts, goodwill, or other intangible losses or for any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise (even if TOM has been advised by the Practitioner of the possibility of such loss or damage).

10.2. Nothing in this Agreement shall exclude or in any way limit TOM's liability for fraud or for death or personal injury caused by its negligence or for its wilful default or any other liability to the extent the same may not be excluded or limited as a matter of law.

10.3. This Clause 11 in its entirety shall survive the termination or expiry of this Agreement.

11. Miscellaneous

11.1. All rights to myTOM, Practitioner Pages and the content on it (save for Practitioner Content) (and all other Intellectual Property Rights belonging to or licensed to TOM) remain vested in TOM at all times. Nothing in this Agreement shall give the Practitioner any rights in respect of any such Intellectual Property Rights or of the goodwill associated therewith. In order to streamline the Website and the content on it (including the Practitioner Content), TOM may, at its absolute discretion and from time to time, amend the format, content and style of venue page descriptions, photos and menus.

11.2. In the event of a change of control or senior management of the Practitioner, the Practitioner must bring the existence and terms of this Agreement to the new owner or manager's attention and inform TOM of the relevant new personnel's contact details.

11.3. Any notice, invoice or other communication which either party is required to serve on the other party shall be sufficiently served if sent to the other party at the address specified in this Agreement (or such other address as is notified to the other party in writing or by email). Notices sent by registered post or recorded delivery shall be deemed to be served three (3) Business Days following the day of posting. In all other cases, notices are deemed to be served on the day when they are actually received.

11.4. We have the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities, so please review our terms regularly.

- 11.5. The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Agreement, nothing in this Agreement shall constitute the parties as partners, joint venturers or co-owners.
- 11.6. Neither party may assign, transfer, charge, sub-contract or otherwise deal with any part or all of this Agreement without the prior written consent of the other party (not to be unreasonably withheld, conditioned or delayed).
- 11.7. Subject only to the provisions of clause 7.7 and 7.8, a person who is not a party to this Agreement has no right to enforce any term of this Agreement.
- 11.8. The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.
- 11.9. If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 11.10. This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.
- 11.11. This Agreement shall be governed and interpreted in accordance with the laws of England and Wales. The parties submit to the exclusive jurisdiction of the English courts to settle any dispute arising out of or in connection with this Agreement.