

Construction Employers Terms and Conditions

Please read these Terms and Conditions (“Terms”) carefully prior to applying to become a CBH construction employer Member. By applying to become registered, you agree to abide by these Terms as amended from time to time.

You will be notified of any changes to the Terms, the most recent version of which will be available on the CBH Website.

Definitions

In these Terms–

“CBH”, “we”, “us” or “our” means Constructing Better Health (CBH), a company registered in England No. 05086859 with its registered office address at Manor Royal, Crawley, West Sussex RH10 9QP.

“Member”, “you” and “your” means the construction industry employer applying for Membership.

“CBH Application” means the application for Membership completed and submitted by you.

“CBH Database” means the industry database of employee data maintained by CBH and sourced from OHSPs and Members using the CBH Construction Health Action Tool (CHAT) software tool for the purposes of uploading Member's individual employees' data, including clinical data and “fit for task” data of individual employees.

“CBH Membership Mark” means the membership logo which you will be permitted to use or associate yourself with following commencement of Membership, a copy of which is attached to these Terms at Schedule 1.

“CBH Website” means the website maintained and operated by CBH, through which limited access to the CBH Database will be provided.

“Company” means any company, limited by shares or guarantee, public company, publicly listed company, partnership, limited liability partnership, firm, body incorporated under the Friendly Societies Act 1974, registered or unregistered charity, other body corporate or any equivalent of the foregoing in any other national jurisdiction.

“Data Protection Laws” means all applicable laws relating to the processing, privacy and use of personal data including the General Data Protection Regulation (“GDPR”) (EU) 2016/679; the Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PECR”); the Data Protection Act 2018 (“DPA”); and any laws or regulations implementing, transposing or replacing the GDPR or the PECR or the DPA.

“OHSP” means Occupational Health Service Provider.

“Membership” means a decision made by CBH to permit a construction industry employer to become a Member.

“Membership Decision” means any decision made by CBH to grant, restrict, limit, curtail, suspend or withdraw Membership to or from a construction industry employer.

“Services” means the services provided by CBH to Members following grant of Membership including an annual user license to provide full access to and use of the CBH Website, limited access to the CBH Database and access to a telephone helpline for the provision of CBH Database support at Schedule 2 and online support for occupational health related issues and the provision of training for one (1) day for a Member's selected personnel notified to CBH and where applicable, the provision of additional training or services agreed by you and CBH.

Except where the context otherwise requires words denoting the singular shall include the plural and vice versa.

1 Purpose

- 1.1 CBH will provide to you the Services in return for the payments set out in term 6 below.

2 Obligations upon applying for Membership

- 2.1 You agree to disclose in full all material information regarding your business including full details of annual turnover on the application forms for Membership and you agree to notify CBH fully in writing of any material changes to your business details or of any other material changes which may affect your Membership or Membership status.
- 2.2 If you fail to disclose any material information, or provide any inaccurate information, this may, at the sole discretion of CBH, provide grounds for immediate termination or suspension of your Membership under terms 4.1 or 4.2 below with no refund payable of any fees already paid by you pursuant to term 6 below.

3 Obligations while a Member

Once you become a Member you agree:

- 3.1 Not to use your Membership in such a manner as to bring CBH, the CBH Database, the CBH Website or its Membership process into disrepute, or to take any other action which may do so, and to take full and appropriate steps to correct any statement or action made or undertaken by you, your personnel, your employees or any of your clients which CBH considers in its sole discretion to be misleading, damaging or potentially damaging to CBH, the CBH Database, the CBH Website or the Membership process;
- 3.2 To inform CBH promptly in writing of any proposed changes to your business which may have a material impact upon your Membership or your compliance with these Terms. These include:
- 3.2.1 any change in legal or beneficial ownership;
- 3.2.2 any change in legal, commercial or organisational status;
- 3.2.3 any change in key organisational or management capabilities; or
- 3.2.4 any change in contact details;
- 3.2 To further provide CBH with an update of your business details or any other material changes as above annually in writing or at any other time upon request by CBH;
- 3.4 To immediately inform CBH of (and provide full details of) any claims brought against you or litigation threatened against you, your employees, personnel or representatives or of any other material issue which may, in CBH's sole discretion, bring your name or the name of CBH into disrepute;
- 3.5 To take full and proper care and control of the user name and password provided to you by CBH when you are granted Membership and to keep the same confidential at all times. You accept that you will bear full responsibility for all and any activities which are carried out under the ambit of your user name and password. You agree to notify CBH immediately of any unauthorised use which is made of your user name or password or if you believe or suspect that your user name or password are no longer confidential. CBH reserves the right in its absolute discretion, to require you to alter your username and password if it believes, that they are no longer secure. If any other third parties requires access to the CBH Database, you will notify CBH in writing immediately, before such access is provided. CBH reserves the right to

refuse access to the CBH Website or CBH Database to any personnel, employee or any other third party. Grant of access to any third party without the consent of CBH shall be considered a material breach of these Terms allowing for termination under term 4.1 below. It is your responsibility to ensure the security and confidentiality of any user names provided by CBH. If any employee /user leaves your employment it is your responsibility to ensure they no longer have access to the CBH Database, failure to comply with which shall again be considered a material breach of these Terms.

4 Withdrawal or Suspension of Membership

- 4.1 Your Membership may be immediately withdrawn by CBH upon notice to you where the any of the following events have occurred:
- 4.1.1 you or we make any composition or voluntary arrangement with your or our creditors, as the case may be, or (being an individual or firm) become bankrupt or (being a Company) enter into administration or go into liquidation (other than for the purpose of amalgamation or reconstruction), or a moratorium comes into force in respect of you or us (within the meaning of the Insolvency Act 1986);
 - 4.1.2 any breach of any of these Terms;
 - 4.1.3 any change of control of you (being a Company) with the meaning of section 840 of the Income and Corporation Taxes Act 1988; or
 - 4.1.4 any failure to keep your password and user name secure including any unauthorised use of them by any third party without the consent of CBH pursuant to term 3.5 above.
- 4.2 Your Membership may, at CBH's sole discretion, be immediately suspended by CBH upon notice to you for failure to comply with the provisions for payment under term 6 below, pending payment in full to CBH's satisfaction of any outstanding payment or the settlement of a complaint. CBH reserves the right to withdraw your Membership at any time for non-payment under term 6.

5 Consequences of Withdrawal

Upon withdrawal of your Membership you agree to:

- 5.1 Immediately cease making any reference to your CBH Membership, whether in written form or otherwise, or otherwise associating yourself in any way with CBH;
- 5.2 Immediately refrain from using any and all materials provided to you by CBH or obtained from the CBH Website;
- 5.3 Immediately refrain from using or associating yourself with the CBH Membership Mark and to destroy any documents or materials in your possession displaying the CBH Membership Mark;
- 5.4 Immediately return or at CBH's discretion destroy the certificate of membership, provided to you by CBH and provide confirmation to CBH that you have done so; and
- 5.5 Refrain from sharing with any third party and keep confidential any information obtained by you from CBH, the CBH Website or the CBH Database during the course of your Membership or at any time prior thereto.

6 Payment to CBH

- 6.1 In consideration of you receiving the Services, you agree to pay CBH an annual sum to be specified to you in writing by CBH on the basis of your annual turnover in respect of your preceding financial year, full and accurate details of which you agree to provide in your CBH Application and upon request at each annual renewal. You will pay such sum within 14 days of your Membership being notified to you by CBH and within 14 days of every anniversary

thereafter or as otherwise varied by CBH upon the basis of the turnover figures provided by you. If you disagree with the annual sum notified to you, you may notify your disagreement to CBH in writing within 14 days of receipt by you of notice of the annual sum to be paid for the forthcoming year or otherwise at any time prior to the anniversary of your Membership. CBH may then, at its sole discretion, either suspend or terminate your Membership in respect of the forthcoming year or agree to vary the annual sum to be paid by you.

- 6.2 You agree to pay a further transaction charge for any additional training or services provided to you by CBH (in accordance with the fee scale notified to you by CBH). CBH's transaction charges are £250.00 per day, plus reasonable travel and subsistence expenses.
- 6.3 Invoices are payable in sterling and are due and payable in full without deduction or set-off.
- 6.4 CBH reserves the right to change at any time upon one months' notice in writing to you the amounts payable under term 6.1 above for the following year of Membership or under term 6.2 above for the provision of additional training or services agreed by you and CBH.
- 6.5 Payment shall be made by cheque, (payable to Constructing Better Health) or electronic bank transfer.

7 Use of Data

- 7.1 You agree not to request or download any more information from the CBH Database than that which may be reasonably required by you for the purpose of assessing an individual's fitness to carry out tasks anticipated by you. You will use all information obtained by you responsibly at all times and will not divulge or disclose the information to third parties without the consent of CBH.
- 7.2 You agree to upload promptly all relevant employee data onto the CBH Database using the Construction Health Action Tool (CHAT) licensed to you under an annual user license by CBH.

8 Intellectual Property

- 8.1 You agree and acknowledge that all intellectual property rights, including but not limited to copyright, database rights, the CBH Membership Mark or any other registered or unregistered trademarks, in the CBH Database, the CBH Website, any materials obtained by you from the CBH Website or the CBH name is licensed to you under an annual user license by CBH and shall remain the exclusive property of CBH or, if applicable, its agents and you shall have no right or claim thereto.
- 8.2 If you become aware of any infringement, suspected infringement or threatened infringement of any intellectual property rights in the CBH Database, the CBH Website, any materials on the CBH Website, the CBH name, or of the CBH Membership Mark, whether registered as a trademark or unregistered at the time, you will notify CBH immediately in writing giving full details of the same.
- 8.3 You further agree to provide such further assistance as CBH may request to enable it to:
 - 8.3.1 Bring proceedings or take any other action to prevent any unauthorised use or infringement, suspected unauthorised use or infringement or threatened unauthorised use or infringement of its intellectual property rights, including the CBH Membership Mark; or
 - 8.3.2 Register any intellectual property right, including the CBH Membership Mark, at an official registry; or
 - 8.3.3 Use the CBH Membership Mark.

- 8.4 You will comply with such further directions as CBH may from time to time notify to you with respect to the use by you where applicable of the CBH Membership Mark (including, but not limited to, required size, quality or colour).

9 Indemnity

- 9.1 You will indemnify CBH in full against any and all losses claims or other liabilities arising from any breach of these Terms by you or any inaccurate information provided by you.

10 Privacy

- 10.1 You and we acknowledge and agree that in respect of any personal data that we each collect or receive in relation to your Membership, that both you and CBH are each a data controller in respect of that personal data. You and we agree that each party shall comply with all data protection requirements and determine their respective obligations under the Data Protection Laws.

- 10.2 CBH will treat your details and all other information and data (including personal data) obtained from you in accordance with its privacy policy. For more information on CBH's collection, use, disclosure, retention and protection of personal data, please visit www.cbhscheme.com/privacy-policy.

11 Law and Jurisdiction

- 11.1 These Terms shall be governed by and construed in accordance with the laws of England and Wales, and any dispute arising under these Terms shall be subject to the exclusive jurisdiction of the courts of England and Wales.

12 Withdrawal of Membership

- 12.1 You may withdraw your application for Membership at any time in writing to CBH or you may terminate your Membership, once accepted by CBH, only in writing to CBH by giving 28 days' notice.
- 12.2 CBH may terminate your Membership at any time in accordance with terms 5 and 6 above or otherwise upon 28 days' notice in writing to you.
- 12.3 For the avoidance of doubt, in the event of any termination under terms 12.1 or 12.2 above or terms 5 or 6 above, CBH shall not be liable to refund to you any monies or charges paid by you up until the date of termination.

13 Complaints/Appeals Procedure

- 13.1 Any complaint regarding the service provided by CBH shall be made by you in writing to: Constructing Better Health, Manor Royal, Crawley, West Sussex, RH10 9QP or by telephoning 0345 873 7726. We will use reasonable endeavours to resolve your complaint speedily and as promptly as possible.
- 13.2 If it is not possible to resolve your complaint promptly then we will send you a written acknowledgement indicating the name of the person considering your complaint. That person will then write to you to confirm his or her resolution of your complaint when it has been fully and properly considered.
- 13.3 In the event that the complaint has not been dealt with to your satisfaction you may contact the Director of Customer Services in writing at the address below, setting out in full the details of your complaint with supporting evidence, who will then review your complaint or appeal and send you their final decision in writing. The address of the Director of Construction Services is Constructing Better Health, Manor Royal, Crawley, West Sussex, RH10 9QP. The decision of the Director of Customer Services concerning your complaint shall be final.

14 Our Liability to You

- 14.1 In providing the Services, including giving information and telephone or online advice to you, neither CBH nor any of its officers, employees or agents warrants or represents the accuracy or completeness of any information, data (including personal data), third party details or advice provided to you or contained on the CBH Website or CBH Database and shall bear no liability or responsibility for any and all losses (including loss of data and loss of personal data), damages, costs, claims and other liabilities arising from the same, other than for death or serious personal injury arising directly from the proven negligence of CBH in the provision of any occupational health advice by CBH or any other liability which cannot be excluded or limited under applicable law.

15 Notices

- 15.1 All notices to CBH shall be sent in writing by registered post to its registered office address.
- 15.2 All notices to you will be sent in writing to the address indicated by you in the CBH Application or to such other address as may from time to time be notified by you.

16 General Provisions

- 16.1 No other party has any rights under these terms other than you and CBH. Any agreement made in accordance with these Terms of Use cannot be assigned or transferred to anyone else and no rights shall be imputed to any third party by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 16.2 A failure or delay by you or CBH to enforce any right under these Terms is not an implied waiver of the same or of any other right in the future.

17 Entire Agreement

- 17.1 These Terms and the schedules attached hereto represent the entire agreement between the parties and supersede any previous terms or agreements, whether written or oral, which the parties may have entered into. You acknowledge that you have not relied upon any previous representation or understanding when agreeing to these Terms. For the avoidance of any doubt, the schedules attached hereto shall form an inclusive part of these Terms.

Schedule 1

Logos

Contractor Corporate Member Logo



Colour



Pantone 3308

Schedule 2

CBH Software Support

CBH will provide a help desk for software maintenance (“HelpDesk”) support for the CBH Database software, Check-a-Card software and the Construction Health Action Tool (CHAT) software tool through its software providers as set out in this Schedule 2.

1. HelpDesk Support Hours

1.1 CBH Database software, Check-a –Card software and CHAT software tool HelpDesk support shall be provided on business days i.e. Monday to Friday 9:00am- 5.00pm (excluding English bank holidays).

2. Response Times

2.1 Where a call from a user concerning a software fault is received by the HelpDesk during the specified software support hours, the following response time shall apply:

2.1.1 Major system fault: restoration by the end of the next business day.

2.1.2 Minor system fault: restoration by the end of the next business day.

2.2 Where a call concerning a software fault is received by the HelpDesk voicemail from a user outside the specified software support times, the user shall be contacted by the HelpDesk on the morning of the following business day following receipt of notification of the fault and the following response times shall apply:

2.2.1 Major system fault: restoration by the end of the next business day.

2.2.2 Minor system faults which do not affect the satisfactory operation of the CBH Database software, the Check-a-Card software or the CHAT software tool, as the case may be, shall be corrected within two (2) business days of notification by the user.

2.3 The HelpDesk contact telephone number for the reporting of software faults is 0345 873 7726.

2.4 A user reporting a software fault is requested to provide full and comprehensive details of any fault identified in the CBH Database software or Check-a-Card or CHAT software tool. The details provided should include the contact number of the user reporting the fault so that the appropriate software provider of the CBH Database software, Check-a-Card or CHAT software tool may provide a prompt service to the user.