

WCB Legal Terms and Conditions - Physiotherapy Services

Effective January 1, 2022

1.00 DEFINITIONS

- 1.01** Undefined, capitalized terms within these terms and conditions shall have the same meaning as defined in the services agreement you have executed with the WCB (the "**Agreement**"). The person, corporation or entity providing the Services shall be referred to herein to as "**Service Provider**" or "**you**". Any applicable professional, governing or regulatory associations which you are governed by shall be referred to as "**Governing Agencies**". "**Representatives**" shall mean the directors, officers, shareholders, employees, subcontractors, partners, volunteers, affiliates, agents, delegates and other representatives of a party. The "**Services**" and "**Term**" shall be the same as defined in the Agreement.

2.00 SCOPE OF AGREEMENT

- 2.01** If you are unable or unwilling to comply with any of these terms and conditions, please contact the WCB immediately. By performing the Services you agree to be bound solely by the Agreement.
- 2.02** The WCB agrees to retain you to perform the Services as more particularly described in the Agreement. You agree to perform such Services during the Term, on the terms and conditions set out in the Agreement and as directed by the WCB, to its reasonable satisfaction.
- 2.03** You and the WCB agree that any work performed by you outside the scope of the Services without prior written approval of the WCB shall be deemed to be gratuitous on your part, and the WCB has no liability with respect to such work.
- 2.04** The WCB reserves the right to change, modify, delete, or add to the Services, if necessary. In addition to the foregoing, you shall provide to the WCB any other further services, documentation, or data related to the Services as maybe reasonably required by the WCB, including, but not limited to, (i) providing the WCB timely information regarding the requested information when requested by the WCB, and (ii) providing testimony in legal proceedings or hearings as required.
- 2.05** Unless specifically stated to the contrary, nothing in the Agreement grants you exclusivity in providing the Services to the WCB.

3.00 FEES

- 3.01** Subject to the following subsections, in consideration of the Services performed to the reasonable satisfaction of the WCB during the Term, the WCB agrees to pay to you the fees agreed to between the parties or as outlined in the Agreement.
- 3.02** Notwithstanding any other term in the Agreement, the WCB reserves the right at any time to: change, modify, delete, or add to the fees in the WCB's Physiotherapy Service Code Fee Schedule. The WCB will try to provide thirty (30) days' notice of any changes but is not required to do so.
- 3.03** Invoices shall include:
- (a) name, registration number, and credentials of the person[s] providing the Services;
 - (b) injured worker name, claim number, date of birth, PHIN, and mailing address;
 - (c) date of injury, diagnosis, and/or area of injury;
 - (d) date(s) when the Services were performed;
 - (e) service codes, detailed description, and costs of the Services;
 - (f) total amount due; and
 - (g) Service Provider's WCB account number, including address, phone, and fax numbers.

- 3.04** You shall submit invoices to the WCB. All Services listed on an invoice must have been completed by you prior to that invoice being submitted to the WCB. All invoices shall be in writing and satisfactory to the WCB, acting reasonably, in both form and content. You shall also provide to the WCB such supporting documents, vouchers, statements, and receipts as may be requested by the WCB acting reasonably
- 3.05** The WCB will strive to pay your invoices due within forty-five (45) days after the receipt and approval of an invoice and any supporting materials requested under Sections 3.03 and 3.04 but is not required to do so. In the event any invoice is not satisfactory, the WCB shall notify you of the problem within a reasonable amount of time. For clarity, without limiting the foregoing, approval means ensuring that the invoicing requirements of the Agreement have been met.
- 3.06** The WCB is exempt from the Goods and Services Tax and its exemption number is 107863847RT0013.
- 3.07** Unless explicitly stated otherwise in the Agreement, the WCB shall not be responsible for payment of any other expenses incurred by you in the performance of the Agreement.
- 3.08** You shall advise the WCB if any non-resident of Canada will be, or has performed any of the Services in Canada. The WCB may withhold and/or remit any taxes or duties required by federal, provincial, or municipal law in relation to purchase or performance of the Services.
- 3.09** If the WCB in good faith (i) disputes any invoice on the grounds that there is an objectively verifiable error in any invoice; or (ii) disputes the adequacy or correctness of any supporting documentation provided in connection with any invoice, or (iii) you have materially breached the Agreement, then the WCB may withhold, in the case of (i) and (ii), the disputed portion of the invoice until the dispute is resolved, and in the case of (iii), all outstanding balances of the invoice until the dispute is resolved. The parties shall work promptly to resolve any such disputes. The WCB will advise you of the amount of the invoice the WCB considers to be in dispute and the basis for such dispute, and will pay any undisputed portion in accordance with this Article 3.00. Payment by the WCB shall not preclude the WCB from questioning any fees or charges the WCB believes to be improper or incorrect.
- 3.10** The parties agree that the WCB incurs costs when it takes actions to correct Service Provider persistent billing errors, or to correct Service Provider persistent incorrect application of, or deviation from the requirements of the Agreement. Accordingly, the WCB may recover amounts from you by making adjustments to correct the errors made by you, by setting off the discrepancy against future payments made to you.
- 4.00 CANCELLATIONS/NO SHOWS**
- 4.01** The WCB will not be responsible for the failure of an injured worker to adhere to your cancellation policy or any associated costs thereto including, but not limited to, fees associated with no shows, missed appointments, or late charges for an injured worker to attend for the Services.
- 5.00 PERFORMANCE OF YOUR OBLIGATIONS**
- 5.01** You represent and warrant that:
- (a) you possess the necessary skills, expertise and experience to perform the Services in accordance with the Agreement;
 - (b) the Services shall be provided in a professional manner and as outlined in the Agreement unless you and the WCB agree otherwise in writing;
 - (c) the Services shall be provided in compliance with every federal, provincial, and municipal law which is or could be applicable to the Services;
 - (d) the Representatives designated to perform the Services shall devote the time, attention, abilities, and expertise necessary to properly perform your obligations;
 - (e) you shall comply with all reasonable directions and requests of the WCB within the scope of the Services asset out in the Agreement;
 - (f) all representations and warranties contained in the Agreement are true and correct and shall so remain throughout the Term of the Agreement;

- (g) the WCB shall have the right of prior approval of any Representatives designated to provide the Services. The WCB shall have the right to request the removal of any Representative so designated and you shall immediately comply with all such requests for removal;
- (h) you shall conduct yourself in a manner that does not negatively affect the public perception, business reputation, community standing, or business operations of the WCB (collectively, "**Reputation**");
- (i) you have full right and authority to enter into the Agreement; and
- (j) you and your Representatives are a "trustee" as defined in *The Personal Health Information Act*, C.C.S.M., c. P33.5 ("**PHIA**").

5.02 You shall provide written progress reports at such intervals as the WCB may reasonably request. Such progress reports shall be in form and content satisfactory to the WCB acting reasonably.

6.00 CONFLICT OF INTEREST

6.01 A "**Conflict of Interest**" means:

- (a) any conflict of interest as determined by your Governing Agencies; or,
- (b) that the injured worker is either:
 - (i) a relative of yours;
 - (ii) a close personal friend of yours; or
 - (iii) any other person whom a reasonable person would believe you would have a reasonable apprehension of bias towards or against in providing the Services,

and you believe that you would not be able to objectively provide the Services to such person.

6.02 You are prohibited from providing the Services when there could be a Conflict of Interest, unless prior written approval has been provided by the WCB. If you have any doubt whether there is, or could be, a Conflict of Interest, or whether you can objectively provide the Services, you shall immediately advise the WCB with full details. The WCB reserves the sole right to determine whether a Conflict of Interest exists.

6.03 You shall provide the Services in compliance with all applicable legislation (including regulations) and professional rules and directives of any Governing Agencies related to all aspects of your practice (collectively referred to as "**Practice Standards**"). In addition to exercising any other rights or remedies available to it under law or the Agreement, the WCB may report any breach or violation by you of the Agreement or the Practice Standards to the applicable Governing Agencies.

7.00 INDEPENDENT CONTRACTOR

7.01 You are an independent contractor and the Agreement does not create the relationship of employer and employee, of principal and agent, of joint venture, or of partnership between you and the WCB or between the WCB and any of your Representatives.

7.02 The Representatives of one party shall not be deemed or construed to be the Representatives of the other party for any purpose whatsoever.

7.03 You are responsible for any deductions or remittances, which may be required by law.

7.04 Except as authorized in the Agreement, you shall not incur any expenses or debts on behalf of, nor make any commitments for the WCB without first obtaining written permission from the WCB.

8.00 CONFIDENTIALITY AND INFORMATION SECURITY

8.01 You acknowledge that *The Freedom of Information and Protection of Privacy Act* ("**FIPPA**") and PHIA

each impose obligations on the WCB to collect, use or disclose "personal information" and "personal health information", as those terms are defined in FIPPA and PHIA (collectively called "**Personal Information**"), in the strictest of confidence, and in accordance with those Acts. In performing the Services under the Agreement, you acknowledge that you may collect, use, or have access to Personal Information.

- 8.02** While the Agreement is in effect, and at all times thereafter, you agree to treat as confidential all information and materials acquired by you, or to which you have been given access, in the course of the performance of the Agreement (collectively called "**Confidential Information**"), excluding information that is in the public domain (for greater certainty, this does not include information in the public domain which was made public as a result of an unauthorized disclosure by a third party). For the purposes of the Agreement, Personal Information shall be considered to be Confidential Information.
- 8.03** You agree that during the Term of the Agreement and at all times thereafter:
- (a) the Personal Information disclosed to you by the WCB may only be used by you in a manner expressly permitted by FIPPA or PHIA (as the case may be);
 - (b) you shall not disclose or permit the disclosure of Confidential Information, or any copies of it, in any format, to any third party without the express prior written consent of the WCB;
 - (c) you shall comply with all directives given to you by the WCB with respect to safeguarding, or otherwise ensuring the confidentiality, of any Confidential Information disclosed to you by the WCB;
 - (d) you shall ensure that access to the Confidential Information by your Representatives is on a "need-to-know" basis, and that access, when given, shall be to the minimum amount of Confidential Information necessary to accomplish the task;
 - (e) you shall use the Confidential Information only for those purposes that have been expressly permitted by the WCB;
 - (f) you shall not reproduce Confidential Information, in any format, without the express prior written consent of the WCB, provided that you shall be able to reasonably reproduce the Confidential Information for internal use only in the normal performance of the Services;
 - (g) you shall ensure that you and your Representatives do not transport or store any Confidential Information outside of Canada without the express prior written consent of the WCB; and,
 - (h) upon termination of the Agreement, or after the Confidential Information has been used for its authorized purpose, or where destruction of the Confidential Information is requested by the WCB or is required by the Agreement, you shall destroy the Confidential Information (and all copies of the Confidential Information in any form) in a manner which adequately protects the confidentiality of the Confidential Information, provided that you can retain as many copies of the Confidential Information as required by your Governing Agencies, or by law, and such copies shall be protected in accordance with the requirements of the Agreement. You shall ensure that the Confidential Information that is destroyed cannot be reconstructed (whether physical or electronic, or any other form).
- 8.04** You represent and warrant that you have established an information security management practice that follows industry standards and best practices. During the Term of the Agreement and at all times thereafter, you shall take reasonable precautions to prevent any unauthorized disclosure of the Confidential Information. The standard of such precautions taken by you shall be the greater of:
- (a) the standards you have in place to protect your own confidential information; or,
 - (b) the standards imposed on you by the WCB.
- 8.05** You shall immediately notify the WCB in writing upon becoming aware of any actual or suspected unauthorized use, disclosure, or destruction of, or any unauthorized access to, Confidential Information (a "**Confidentiality Breach**"). The written notification must include full details of the Confidentiality Breach. You shall immediately take all reasonable steps to prevent the recurrence of any such Confidentiality Breach and shall notify the WCB in writing of the steps taken. In the event of a Confidentiality Breach, the WCB may do any combination of the following (i) impose increased standards on you related to your treatment of the Confidential Information and you shall comply with

such increased standards, and/or (ii) if applicable, limit your access to the WCB's systems, and/or (iii) enforce or use any other applicable section of the Agreement.

- 8.06** You shall inform your Representatives of the obligations imposed upon you in the Agreement with respect to Confidential Information, and you shall take whatever steps are necessary to ensure that all of your applicable Representatives comply with those obligations.
- 8.07** You acknowledge that monetary damages may not be a sufficient remedy for a Confidentiality Breach, and that the WCB may, without waiving any other rights or remedies, seek appropriate injunctive or equitable relief from a court of competent jurisdiction.
- 8.08** If you receive a subpoena, or other validly issued administrative or judicial order seeking Confidential Information, you shall provide prompt notice to the WCB and deliver to the WCB a copy of your proposed response to the demand. Unless the demand has been time-limited, quashed, or extended, you shall thereafter be entitled to comply with the demand to the extent permitted or required by law. If so requested by the WCB, you shall cooperate with the WCB in the defence of the demand, at the WCB's expense.
- 8.09** Notwithstanding any other part of the Agreement, if you receive a request from an injured worker under PHIA for access to Confidential Information, you shall notify the WCB of such request as well as your decision with respect to the request, prior to providing the Confidential Information to the injured worker. Under PHIA, you may transfer such request to the WCB and then the WCB shall attempt to complete such request in accordance with PHIA. The WCB will notify you when the Confidential Information has been provided to the injured worker. Alternatively, if you decide to respond to the access request and provide a copy of the Confidential Information, you shall notify the WCB of this decision prior to sending the Confidential Information to the injured worker. You will also notify the WCB when the Confidential Information has been sent to the injured worker.
- 8.10** You undertake not to publish any public statement or advertisement with respect to the Agreement and further undertake not to seek publicity of the Agreement without the express prior written consent of the WCB, except as otherwise required by law, by the Agreement, or to communicate the obligations of the Agreement to your Governing Agency or the WCB's injured workers.
- 8.11** In the event that you or your Representatives use any of the WCB's premises, you and your Representatives shall comply with all of such premises' security regulations in effect from time to time.
- 8.12** You shall cooperate with the WCB so that the WCB can verify that you have complied, and are complying with the provisions of this Article 8.00, including that the WCB's Representatives may access your records, as authorized by *The Workers Compensation Act* and in accordance with its obligations under FIPPA and PHIA.

9.00 ACCESSIBILITY

- 9.01** You acknowledge that *The Accessibility for Manitobans Act ("AMA")* imposes obligations on the WCB to provide accessible customer service to all persons in accordance with the Customer Service Standard Regulation ("**CSSR**"), and that the WCB has an Accessible Customer Service policy in place that outlines the steps it will take to comply with the CSSR.
- 9.02** For the purposes of the Agreement, "accessible customer service" shall mean service which ensures that all persons who are reasonably expected to seek to obtain, use, or benefit from a good or service have the same opportunity to obtain, use, or benefit from the good or service.
- 9.03** Throughout the Term of the Agreement, you agree to comply with the accessible customer service obligations under the CSSR, and further agree that when providing the Services or otherwise acting on the WCB's behalf, you shall comply with all obligations under AMA applicable to public sector bodies.
- 9.04** The accessible customer service obligations include, but are not limited to:

- (a) identify barriers that prevent persons disabled by barriers from accessing goods and services, working to remove these barriers, and preventing new barriers from being created;
- (b) ensuring access to goods and services by alternate means, if the barrier cannot be removed;
- (c) making reasonable efforts to ensure that any communication with individuals who self-identify as being disabled by a barrier takes into account said barrier;
- (d) reasonably accommodating assistive devices, support persons, and support animals;
- (e) facilitating barrier-free access to build environments;
- (f) providing adequate training of staff and documentation of same; and
- (g) providing a mechanism or process for receiving and responding to public feedback on the accessibility of all goods and services.

10.00 OWNERSHIP OF REQUESTED INFORMATION

10.01 Unless otherwise explicitly stated in the Agreement, upon payment of all amounts due, the requested information and all goods, data, and materials that are submitted or required to be submitted by you or any of your Representatives to the WCB in the performance of the Agreement, and all copyright therein (collectively referred to as "**Submitted Materials**") shall be the exclusive property of the WCB and shall be forthwith delivered to the WCB, at no cost to the WCB. You agree to execute all documents that may be necessary to transfer ownership of, or waive moral rights to the Submitted Materials to the WCB. Notwithstanding the foregoing you are permitted to retain and use copies of the Submitted Materials if required by your Governing Agencies or by law only for such purposes.

10.02 Any property provided by the WCB to you under the Agreement is only provided for the limited use in the performance of the Services, shall remain the property of the WCB, and shall be returned, without cost, to the request or upon termination of the Agreement. The foregoing shall not give you or your Representatives any rights in any of the WCB's intellectual property.

11.00 INDEMNIFICATION OF THE WCB

11.01 You shall indemnify and save harmless the WCB and its Representatives from all losses, damages, costs, causes of action, claims, liabilities, or demands of any kind with respect to any injury to persons (including, without limitation, death), damage to or loss of property, economic loss, incidental or consequential damages, or infringement of rights (including, without limitation, privacy rights) caused by, or arising directly or indirectly from:

- (a) you or your Representatives' default of any term of the Agreement; or
- (b) any negligent or willful act or omission of you or your Representatives.

The above includes all costs and expenses associated therewith, including reasonable solicitors' fees.

12.00 SUSPENSION

12.01 The WCB may, at its sole option, from time to time, delay or suspend the Services being provided under the Agreement, in whole or in part, for such period of time as may, in the opinion of the WCB, be necessary. Unless another notice period has been provided elsewhere in the Agreement, the WCB shall provide three (3) days' prior written notice to you of its intention to delay or suspend the Services. The WCB shall not be obliged to make payments to you except with respect to those Services already satisfactorily performed prior to such delay or suspension.

12.02 Where there is a delay or suspension under Section 12.01 all terms and conditions of the Agreement shall continue in full force and effect against you. You shall not be entitled to make any claim for damages by reason of the delay or suspension.

13.00 TERMINATION

13.01 Either party may terminate the Agreement at any time for any reason by giving the other party thirty (30) days' prior written notice.

13.02 Neither party shall be responsible for any failure to comply with, or for any delay in performance of,

the terms of the Agreement where such failure or delay is directly or indirectly caused by or results from events of force majeure beyond the control of either party. The time in which the Services are to be provided shall be extended by a period of time at least equal to the length of the force majeure event, provided that in the event the extended period of time exceeds, or is reasonably anticipated to exceed a period of fourteen (14) days, then the WCB may terminate the Agreement and pay you for all Services performed to the date of the force majeure event.

13.03 In addition to its rights under Sections 12.01, 13.01 and 13.02 above, and without restricting any other remedies available, the WCB may immediately terminate or immediately suspend the Agreement in writing if:

- (a) the WCB reasonably determines that there is, or has been, a Conflict of Interest;
- (b) you make an assignment for the benefit of creditors or take any other action for the benefit of creditors, become bankrupt or insolvent, or take the benefit of or become subject to any legislation in force relating to bankruptcy and insolvency;
- (c) in the opinion of the WCB, the Services provided by you or your Representatives are unsatisfactory, inadequate, or otherwise improperly performed;
- (d) in the opinion of the WCB, you or your Representatives have failed to comply with or breached any term or condition of the Agreement; or
- (e) in the opinion of the WCB, continuing to engage you under the Agreement may adversely affect its Reputation.

13.04 Upon termination of the Agreement, you shall cease to perform any further Services, provided that the injured worker may choose to continue to use your services. If an injured worker continues to use your services on or after the date of termination you shall be responsible for charging and collecting any fees for your services from the injured worker on or after the date of termination of the Agreement. The WCB shall be under no obligation to you other than to pay, upon receipt of an invoice or statement and supporting documentation satisfactory to the WCB acting reasonably, such compensation as you may be entitled to receive under the Agreement for Services satisfactorily completed up to the date of termination.

14.00 GENERAL TERMS

14.01 The terms and conditions contained in the Agreement that by their sense and context are intended to survive the performance of the Agreement by the parties shall so survive the completion and performance, suspension or termination of the Agreement. Without limiting the foregoing, Section 2.04, Article 8.00 Confidentiality and Information Security, Article 10.00 ownership of Requested Information, and Article 11.00 Indemnification of the WCB, shall survive the completion and performance, suspension or termination of the Agreement.

14.02 You shall not assign or transfer the Agreement or any of its rights or obligations under the Agreement without first obtaining written permission from the WCB. The Agreement shall be binding upon the executors, administrators, heirs, successors, and any permitted assigns of the parties. The WCB reserves the right to require such party to execute a new agreement under its own name.

14.03 The Agreement contains the entire agreement between the parties with respect to the subject matter hereof. There are no undertakings, representations, or promises, express or implied, other than those contained in the Agreement and none have been relied on.

14.04 The WCB reserves the right to update and amend these legal terms without notice. The WCB will try to provide thirty (30) days' notice of any changes but is not required to do so.

14.05 The Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba and the laws of Canada applicable therein. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the Province of Manitoba and all courts competent to hear appeals therefrom.

14.06 Any failure or delay by either party to exercise or partially exercise any right hereunder shall not be deemed a waiver of any of the rights under the Agreement. A waiver by either party of a breach of

any provision of the Agreement shall not operate as, or be construed as, a waiver of any subsequent breach thereof.

14.07 The election of any one or more remedies by either party shall not constitute a waiver of that party's right to pursue other available remedies.

14.08 You agree to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of the Agreement.

15.00 NOTICES

15.01 Any notice or other communication under the Agreement shall be delivered to you at your address or e-mail address provided to the WCB on the Signing Page of the Agreement, or as updated by you in writing from time to time, and to the WCB at:

The Workers Compensation Board of Manitoba
Attention: Medical Aid Department
333 Broadway
Winnipeg, MB R3C 4W3
E-mail: WCBprovideraccounts@wcb.mb.ca
Fax: 1-204-954-4167

15.02 Any notice or communication:

- (a) sent by registered mail shall be deemed to have been received on the third business day following the date of mailing;
- (b) sent by fax or other electronic transmission (including e-mail) shall be deemed to have been received on the day of transmission; and
- (c) sent by courier or personal delivery shall be deemed to have been received on day that it was delivered.