

# Terms of Service

Please read the following terms and conditions carefully as the conditions will form the basis of the contract for advertising on our App and Website. If you do not understand anything contained within these terms, we recommend you consult a solicitor for advice before entering in to an Agreement with Wellbeing Finder as you will then be legally bound by the Agreement.

If you do not agree to these terms, please refrain from using our Service. These terms set out the basis on which Clients may use the Service. By using the Service, Clients accept these terms, concluded between Wellbeing Finder and the Client and agree to be bound by them.

Any individual that processes an online application to have business particulars published on the Wellbeing Finder App and Website on behalf of themselves, a business, company, firm or organisation they represent, agrees to comply and be legally bound by the following terms and conditions as set out in this document by Wellbeing Finder.

## Definitions

In these conditions:

The term “**Wellbeing Finder**” or “**Service Provider**” and the terms “**our**” and “**we**” will be construed accordingly and refers to any parties legally responsible for the Wellbeing Finder App and Website.

The following term “**Client**”, “**You**” or “**Your**” refers to any individual and the business they represent that processes an online application in any capacity to publish a listing on the Wellbeing Finder App and Website.

Within this agreement, Wellbeing Finder shall be the ‘Service Provider’ and the individual and business they represent that processes an application to get a listing uploaded on to the Wellbeing Finder App and Website shall be the ‘Client’.

“**App**” is defined as a self-contained program and piece of software designed to fulfill a particular purpose; an application, especially as downloaded from an App Store by a User to a mobile device. Specifically in this case; Wellbeing Finder App.

“**Business**” is defined as an individual trading as a Sole Trader or Firm, two individuals or more trading as a Business Partnership or Firm, a limited company, PLC, Organisation or a Charity.

**“Business Particulars”** is defined as a trading name, trading address, telephone and fax numbers, email and website addresses and any other contact details as may be relevant to a business to advertise its contact details.

**“Broadcasted”** is defined as business particulars published and transmitted online from our database through the Wellbeing Finder App and Website interfaces on Users mobile device screens and computer monitors.

**“Category”** is defined as one of a range of trade categories we have created to group together businesses that provide the same skills, products and services and to separate businesses that provide different skills, products and services; Physiotherapist, Beauticians, Gyms, Health Shop etc.

**“Computer”** is defined as a PC, Mac, Desktop, Laptop, Workstation, Netbook, iPad, Tablet, iPod Touch, iPhone, Smartphone and any other device that can access the internet and browse and use websites.

**“Database”** is defined as a structured set of data held in a computer, especially one that is accessible in various ways known as a Database Management System (DMS). A DMS is a specially designed application providing the interface that interacts with the User, other applications and the database itself to capture and analyze data. A general purpose Database Management System is a software system designed to allow the definition, creation, querying, updating and administration of a database. Specifically in this case, a ‘MySQL’ Database. For the purpose of this Agreement, it is the Wellbeing Finder Database.

**“GPS”** is defined as a ‘Global Positioning System’. It is a space-based satellite navigation system that provides location information anywhere on or near the Earth where there is an unobstructed line of sight to four or more GPS satellites.

**“Interface”** is defined as a device or program enabling a user to communicate with a computer.

**“Listing”** is defined as an individual entry uploaded in to our database displaying a particular Client’s business particulars programmed to be broadcasted at which time the listing meets a User’s search criteria in accordance with the Client’s specifications.

**“Platform”** is defined as the iOS mobile operating system developed and distributed by Apple Inc for the iPhone and the Android mobile operating system distributed by Google for touchscreen mobile device Smartphones.

**“Range”** is defined as a distance in mileage starting from a GPS starting point travelling outwards in the radius of a circle and is the length of a line segment from the center, in this case being the GPS starting point, to the radius perimeter and includes every possible line of

segment to every direction of the perimeter. For the purpose of this Agreement, the geographical area within any radius is the total range of area.

“**Rate**” is defined as the listed price in UK pounds sterling required to be paid by the Client to the Service Provider to then receive Service over a particular range.

“**Rate Card**” is defined as one of the various rectangular banners published on the ‘Get Listed’ page of our Website that contains the radius and price details of listing range options.

“**Smartphone**” is defined as a mobile phone device that is able to perform many of the functions of a computer, typically having a relatively large screen and an operating system capable of running general-purpose apps and Websites.

“**Upload or Uploaded**” is defined as a specific set of businesses particulars and related specific search criteria being inputted in to our database that will be broadcasted online to Users when they enter database search requirements through an interface that matches the criteria of the listing to generate the business particulars to appear on screen.

“**User or Users**” is defined as any individual that uses a mobile device or computer to access the Wellbeing Finder App or Website and uses the search engine to broadcast specific listings from the database.

“**Website**” is defined as the Wellbeing Finder Website; [Wellbeingfinder.co.uk.com](http://Wellbeingfinder.co.uk.com)

## **SERVICES**

1. The Service Provider agrees to upload the Client’s business particulars on to the Wellbeing Finder App and Website database for the term of the Agreement. The database is housed on a server and broadcasted online 24 hours per day, 7 days per week, 365 days per year. The database is linked to the Wellbeing Finder App and Website platforms to allow Users to search the database through these platforms from their iPhones, Smartphones and other computer devices to generate lists of businesses, utilising specific search criteria using our search engine. The criteria programmed in to the database are Business Category, GPS Radius Point and a GPS Radius. The database is programmed to utilise GPS technology built in to iPhones and Smartphones when it is accessed from such mobile devices in concurrence with its other functionalities.

2. At the point of sale, the Client will be required to provide the business particulars they wish to be uploaded on to the database and will need to nominate a business category(s) that they require their business particulars to be uploaded in to. The various categories available will be provided to the Client at the point of sale by the Service Provider for the Client to choose from. The Client will be required to nominate a geographical starting position (GPS Radius Point) to be linked with their business particulars defined by the nomination of a

specific Postcode. This can be any Postcode within the UK of the Client's choice. The exact Latitude and Longitude points of that Postcode location will be entered in to the Service Providers database linked to the Client's business particulars. The Client will also be required to elect a radius from their chosen geographical starting position from various mileage distances made available by the Service Provider at the point of sale to establish a radius range around their GPS Radius Point. The nominated criteria will then be stored in to the database by the Service Provider linked to the Client's business particulars.

3. The Service Provider agrees to broadcast the Clients business particulars through its App and Website platforms to Users each time Users of the Service Providers App and Website software carry out specific searches to broadcast on an interface a list of businesses within the particular business category(s) that the Clients business particulars are listed in providing the Clients business particulars are automated to be broadcasted within the GPS radius that Users are specifically requiring to find lists of businesses geographically located in within that category.

4. The Service Provider only agrees to upload the Clients business particulars on to its database at which point the Client makes the minimum required payment in full as defined by the Service Provider's Rate Card in UK pounds sterling unless the Service Provider offers a free upload period in accordance with the Service Provider's Terms of Service.

5. Upon submitting an application online or entering in to a verbal agreement over the telephone, the Client agrees to be bound by the terms of this Agreement and also the Service Provider's Terms of Use policies and confirms they have read, understood and agree to these policies and terms.

6. The specific order requirements submitted by the Client that will be adhered to by the Service Provider will be defined by an order form completed online by the Client setting out the Client's specific requirements or will be defined when provided to the Service Provider by way of telephone if the Client enters in to a verbal agreement with the Service Provider over the telephone.

7. The Service Provider will upload the Client's business particulars on to the Wellbeing Finder App and Website database within two working days of receiving a processed online application or verbal order by way of telephone from the Client providing any required payment has been received in full. There may be a delay in uploading the Client's business particulars on to the database until which time payment is received in full if the Service Provider has not agreed special payment terms with the Client.

8. The Service Provider agrees to be available from Monday – Friday, 9am – 5:00pm, excluding bank and public holidays for the Client should the Client need assistance from the Service Provider regarding Service. Contact details of how to reach the Service Provider at all times will be provided to the Client. Service will start at which time the Service Provider

receives a completed online application form from the Client or at which time the Client enters in to a verbal agreement over the telephone with the Service Provider.

9. The Client can view the published business particulars by downloading the Wellbeing Finder App from the App Store or Play Store to an iPhone or Smartphone device that will display the Client's business particulars providing the Client enters the relevant search criteria to display the Client's business particulars on screen. It is the responsibility of the Client to ensure the listing contains no errors and is displaying accurately within the required category(s) and geographical radius the Client has requested their listing to appear in. If the Client does not inform the Service Provider of any failings with the listing, the Service Provider will understand that the Client has performed checks on the listing and the listing is being broadcasted accurately. The Service Provider accepts no responsibility for any errors within the Client's business particulars if the Client does not notify the Service Provider of any errors.

10. It is the responsibility of the Client to perform geographical radius checks from time-to-time to ensure the business particulars listed on the Wellbeing Finder App and Website continue to be broadcasted within the agreed geographical radius and category(s). As the Service relies on a range of technology, software, internet and mobile connectivity on a continual basis, there may be technical failings from time-to-time that cause listings to not display as they should do. It is the responsibility of the Client to bring any technical problems to the attention of the Service Provider so that any such issues can be resolved within a reasonable time frame.

11. Any listing ordered by the Client from the Service Provider shall be for a period of 12 months. The rate paid by the Client to the Service Provider at the initial point of sale shall be for a listing period of 12 months. After this period has expired from the date the listing is uploaded, the Service Provider reserves the right to remove the Client's business particulars after the initial period of 12 months if an additional payment is not received to subsidise a further annual premium. Rates will be subject to the Service Provider's current rate cards and discretion at the time of renewal that are subject to change. If the Client wishes its business particulars to remain uploaded on to the database, the Client will need to pay an additional rate for an additional minimum period of 12 months for a rate amount agreed between the Service Provider and the Client.

12. All Rate Card's and their tariffs are for listings to be advertised in one business category only as nominated by the Client as per the radius offered by each Rate Card for a minimum term of 12 months. Should the Client wish for a listing to be advertised in any additional business categories or for an extended period, the listing will be subject to an additional rate to be agreed by the Service Provider and the Client.

13. The Service Provider will provide telephone and online support where necessary to the Client for the duration of the Agreement period. The Client can amend the listing as many

times as required by way of telephone or online during the Agreement period without incurring any additional costs.

14. The Client can elect any Postcode location to select where the geographical radius coverage area begins from. The Service Provider will use the longitude and latitude points of the Client's chosen Postcode location entered on to the online application that is processed unless an alternative starting location is requested.

15. The Service Provider allows reviews to be uploaded by Users of our App and Website platforms regarding alleged services they have received from the Client. The Client is permitted to have any reviews removed from the database that they choose by the Service Provider without incurring any additional fees or providing any explanation regarding any such request at any time. All reviews submitted through our platforms are subject to being reviewed by the Service Provider prior to being published on Client's listings. The Service Provider will not knowingly upload any negative reviews about the Client on to their listing.

#### **MINIMUM TERM AND PAYMENT**

16. This rolling Agreement shall be for a minimum period of 12 months from the Agreement Date. By processing an online application or entering in to a verbal agreement over the telephone, the Client agrees to be bound by the terms and conditions of this Agreement. The Contract shall come into existence at which time an online application is processed by the Client or a verbal agreement is entered in to over the telephone. If the Client name, address or other particulars in this Agreement are entered incorrectly by the Client by way of error or deliberate act, this does not act as a waiver or provide any release from this Agreement. In the event that the Client uses a third party to make initial payment on behalf of the Client, the payee will become jointly and severally liable for any sums due to the Service Provider for costs, expenses and VAT.

17. The Client agrees to be bound by the Service Provider's Terms of Use policies and the Client confirms they have read, understood and agree to be bound by our Terms of Use policies prior to entering in to this Agreement with the Service Provider.

18. The Client's billing cycle will be specified at the point of sale. The first annual or monthly fee is due in advance on the Agreement Date followed by the same date as the Agreement Date each proceeding year (the "Rolling Date") unless alternative specified payment terms are agreed with the Service Provider at the time of order. The Rolling Date may fluctuate depending on non-working days and public holidays in each calendar year. The Service Provider will debit the annual / monthly fee from the credit / debit card that the Client uses to pay the initial term. The Service Provider will continue to provide Service to the Client after the minimum Agreement period has expired and will continue to debit the annual / monthly fee due by way of credit / debit card until which time the Client provides written notice to the

Service Provider that the Client wishes to terminate this Agreement in accordance with clause 37.

19. The Client shall make payment of the agreed rate to the Service Provider at the time of processing an online application or placing a verbal order by way of telephone for Service on the Agreement Date by way of credit / debit card payment or by way of BACS / CHAPS transfer to subsidise all associated time, stationary and utility costs, any postage and packaging of documentation and any other costs that may be incurred by the Service Provider in processing a new Client order unless special alternative payment terms are agreed between both parties.

20. The Service Provider reserves the right to suspend the services offered if the Client fails to make payment until the arrears are cleared. If the Service Provider suspends Service, the Client will still be liable to pay the minimum agreed contract period in full in accordance with this Agreement.

21. Payments are non-refundable and no refunds will be given for any alleged expressed dissatisfaction of the Service offered by the Service Provider to the Client. The Service Provider offers no warranty or guarantee to the number of enquiries the Client may or may not receive as a result of uploading their business details on to the Service Provider's database. The Client understands that if no enquiries are received within the Agreement period, the Service Provider shall not be deemed liable as a result or be contractually bound to make a refund, part or in full to the Client and the Client shall be liable to pay the Service Provider in full in accordance with the terms of this Agreement.

#### **AMENDMENTS & CANCELLATION**

22. No variation or amendment to this Contract shall be valid unless committed to writing and signed by or on behalf of both parties in accordance with clause 37.

23. Cancellation of the Contract will be by way of writing to the Service Provider providing at least 30 days notice from the next Rolling Date in accordance with clause 37 or alternatively by way of email. At which time the Agreement has ended, the Service Provider will remove the Clients business particulars from the database.

24. Should the Client decide to terminate the Contract prior to the completion of the minimum period of twelve months through no fault or error by the Service Provider then the arrears due including the payment due until the minimum period is satisfied will still remain due from the Client.

25. Unless the Client advises the Service Provider otherwise, the contract will automatically renew for an additional twelve months at the end of each twelve month cycle if the Client does not inform the Service Provider in writing in accordance with Clause 37 or by way of

email that the Client wishes to cancel Service. It is the responsibility of the Client to notify the Service Provider if they do not wish to renew the Agreement.

26. If this Contract is cancelled by either party in accordance with this Agreement then Service from the Service Provider will not be deemed liable by the Service Provider and the Client's business particulars will be removed from the database.

27. The Service Provider can cancel this Contract at any time in writing to the address provided in this Agreement subject to clause 37. Should the Service Provider cancel the Contract, the Client will not be liable for any payment due for any Services provided from the date of the termination of the Contract.

28. The Client has 7 days from the Agreement Date to cancel the Agreement in accordance with their statutory cancellation rights unless special extended cancellation terms have been agreed between the Service Provider and the Client at the time of an order being placed. In such circumstances, the Client will have the full extended period agreed to cancel the Agreement in accordance with these terms and conditions.

29. No failure or delay by either party to exercise any right or remedy will be construed or operate as a waiver of the Agreement.

30. In the event of a refund due to the Client as a result of non-fault by the Service Provider, the Client will be liable for an administration fee of £5.00 for the refunded transaction.

31. Interest will be charged at the Court's rate, which is 8%, plus base rate should any payments be outstanding for more than 30 days in accordance with section 69 of the County Courts Act 1984. The Service Provider reserves the right to also claim compensation under the Late Payment of Commercial Debts Interest Act 1998, set at £40 on each late payment outstanding for more than 30 days.

32. The Service Provider may increase the annual payment due after expiry of the minimum period of 12 months of this Agreement providing he gives notice to the Client. Such increase would be provided in writing to the Client and the Client retains the right to cancel the Service at this stage if requested in accordance with clause 37.

#### **JURISDICTION AND NOTICE**

33. Contracts between the Client and the Service Provider will be concluded in the English language and our relationship with the Client will be governed by English and Welsh law and will be subject to the exclusive jurisdiction of the English and Welsh Courts.

34. These Terms and any claim under them (whether contractual or non-contractual) shall be governed by English and Welsh law and is subject to the exclusive jurisdiction of the Courts of England and Wales.

35. The invalidity or unenforceability of any provision in this Agreement will not affect the validity or enforceability of any other provision and any invalid or unenforceable provision will be severable.

36. Under English and Welsh law, if a contract has been formed orally between the Client and the Service Provider by both parties agreeing terms on the telephone, the Client will be legally bound by these terms and conditions. The Service Provider will provide to the Client a copy of these terms and conditions at the time of booking and payment being received by the Service Provider or the Client will be informed that our terms and conditions are available on our website at all times for reference and also available on request. By making payment and not cancelling this agreement within our cancellations terms of 7 days, the Client agrees to be bound by these terms and conditions. Failure to sign an agreement with the Service Provider will not act as a waiver to these terms and conditions by the Client. Failure to request a copy of these terms and conditions or failure to browse these terms and conditions on our website will not act as a waiver to these terms and conditions.

37. Any notice under or in connection with this Agreement shall be in writing and shall be served by being sent by recorded delivery at or to the address of the party set out on the invoice or to such other address as may be subsequently notified by one party to the other.

38. Notice is deemed to be served 2 working days after posting. The Service Provider accepts no liability for any notices that it does not receive that were not sent in accordance with this clause. It is the responsibility of the Client to ensure that the Service Provider receives any such notice. The Client should contact the Service Provider to confirm that the Service Provider has received any correspondence that the Client has sent to the Service Provider. The Service Provider will then issue written confirmation by way of email or by way of post to the Client to confirm receipt of any correspondence.

39. A person who is not party to this contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

40. We may change these terms and conditions from time to time. A change will be effective immediately upon publication of the modified terms and conditions on this application.

41. We have a policy of continuously improving our products and services. We may change any aspect of the Service from time to time. Such changes may include new radius distances, the title, font, format, type, look and feel of our App and Website, our Terms of

Use and Service, the range of available advertisement types and search facilities. If we believe any such change is likely to have a detrimental or financial effect on the Client, the Service Provider will notify the Client of such a change but shall not otherwise be obliged to inform the Client.

## **MISCELLANEOUS**

42. The Service Provider provides and guarantees its Services only on the basis that the Client provides the Service Provider with all proper, necessary and timely instructions, authority and information to enable the Service Provider to undertake lawfully and effectively the business instructed and that the Client indemnifies the Service Provider accordingly.

43. As the App and Website relies on GPS Mapping technology provided by Google, the Service is limited to the limitations of this software and cannot determine where the software begins and ends and the geographical radius coverage. Radius settings are approximate and the Service Provider is reliant on this software and any changes that is made to it at any time.

44. The Client must ensure his advert complies with all ASA codes and laws regarding content, promotions, images and language. The Service Provider can refuse any illegal content and cannot be responsible for verbal amends requested by way of telephone. The Client must provide all amends in writing. The Service Provider does not have a duty to publish any material the Client requests. The Service Provider has the right to reject or refuse to post any material the Client has provided or remove any material from the Service whether or not the material goes against any of these conditions and can restrict, suspend or stop access to all or any part of the Service at any time by the Client.

45. The Client is responsible for the content of any material provided. The Client must choose carefully any information posted on to the Service as it will be available for public viewing. By providing any material to the Service and for the Service Provider to be able to use it, the Client confirms they and the material comply with all obligations set out in these conditions and that the material is the Client's own original work or is authorised to provide it to the Service and the material is not defamatory to a third party's reputation, does not contain any material which is harassing, threatening, obscene, offensive, hateful, abusive or inflammatory. The Client must ensure material does not take away or affect any other person's privacy rights, contract rights or any other rights and does not otherwise break any laws of England and Wales. The Client must ensure material does not promote any illegal activity or discrimination and that they have the right to give the Service Provider permission to use it for purposes specified above and that such use will not infringe the copyright, database right, trademark, privacy or other rights of a third party. Material must not in any way be liable to mislead others or otherwise be detrimental to or inconsistent with our good name or reputation and the material does not contain any virus or other code that may

damage, interfere with or otherwise adversely affect the operation of the Service. If submitted material is intended to promote the Client's own business or services, the Client will clearly and openly state their association with the particular business and will not falsify or delete any author attributions, legal or other proprietary notices, designations or labels and the material does not contain any form of mass-mailing or spam.

46. After uploading the Client's material, the Client continues to own that material and can continue to have the right to use that material in any way they choose. If the Client provides any material to the Service, the Client agrees to grant the Service Provider permission, irrevocably and free of charge to use the material in any way we want on any Service or otherwise in any media worldwide including syndication of the material.

47. The Service Provider is reliant on various technologies and software and cannot guarantee search results every time. If the Client believes their listing is not appearing on searches correctly, the Client must inform the Service Provider to allow a reasonable period to rectify any issues. Technical services sometimes need maintenance or encounter problems which may result in listings experiencing down time. In this rare event, the Service Provider will carry out the necessary work to immediately resolve the problem. The Service is subject to the limitations of the enabling technology on which the application is reliant and may be adversely affected by network performance and other operational factors including without limitation, congestion, network coverage, dropped connections, the performance of your mobile device and the maintenance of secure network connections. We shall not be liable for any error, delay or failure in connection with transmission of the Service. We may suspend access to the Service if we need to or close it for an indefinite period.

48. The Service Provider shall not be liable for non-performance if this is due wholly or in part to an act of God, war, strikes, fire, flood or any cause beyond the Service Provider's control.

49. The Service Provider is not responsible for the instruction of marketing sources for the Client or to advise marketing strategies.

50. The Service Provider is an independent profit-making private firm. The Service Provider is not associated and does not work in partnership with Apple Inc or Google. The Client agrees to not hold the Service Provider responsible for any legal judgement.

51. The Service Provider is not a charity and has no association, link, partnership or involvement with any charity and does not donate any money to any charity.

52. The Service Provider accepts no liability for loss or damage (direct, indirect or consequential) including all loss of profit or business arising out of any single claim, event, or series of related claims or events (including claims based on negligence).

53. The Client represents and warrants that they are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting” country and is not listed on any U.S. Government list of prohibited or restricted parties.

54. The Service Provider will use personal information which we hold about the Client to provide our Services and products to the Client, for credit control and market research purposes and to inform the Client about our other Services, products or events we provide that we believe may be of interest to the Client. The associated costs involved with other Services that the Service Provider offers will be advised in writing. The Service Provider may only share the Clients information with staff or other specialist networks with the sole purpose of undertaking the task provided and stated in section: – Services. The Client has the right, by written request, to a copy of any personal data (as defined in the Data Protection Act 1998) which the Service Provider holds about the Client.

55. Any personal data the Client provides to the Service Provider will be processed in accordance with our Privacy Policy. By using the Service, the Client consents to such processing.

56. The Service Provider reserves the right to make changes to these terms and conditions from time to time. Any changes will be notified in writing to the Client.

57. Contracts from a limited company are accepted on condition that all the directors of the company are personally, jointly and severally liable for any sums due to the Service Provider for costs, expenses and VAT.

58. If the Client is unhappy with any aspect of the Service provided by the Service Provider, the Client should contact our Head of Client Services. Any complaints will be dealt with sympathetically and the Service Provider will work with the Client to reach a satisfactory conclusion.

