

# Remote Health Assessment.

## Terms and Conditions.



These are the terms associated with the delivery of certain Bupa Occupational Health Limited services or functionality. By using these services or the functionality, or allowing your employees to use the same, you will be deemed to have accepted the relevant terms provided below.

- [Remote and Clinics Health Assessments Terms and Conditions of Service](#)
- [Video chat and Webchat Terms of Use](#)

### For the supply of remote and clinics health assessment services (“services”)

#### 1. Company details

Bupa Occupational Health Limited (company number 0631336) (Bupa, we and us) is a company registered in England and Wales and our registered office is at 1 Angel Court, London EC2R 7HJ.

#### 2. Our contract

2.1 These terms and conditions (**Terms**) apply to the order by you and supply of Services by us to you (**Contract**) until we notify you in writing to the contrary. They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Contract is the entire agreement between you and us in relation to its subject matter.

#### 3. Placing an order and its acceptance

3.1 Eligible Employees may request the Services via our bookings team. We will accept the offer to receive the Services when we provide a booking confirmation to them.

#### 4. Our services

4.1 We will supply the Services to you in accordance with the Services description as set out in our mailing on or about 26th May 2020 titled “Our health centres are starting to open”. We warrant to you that the Services will be provided using reasonable care and skill. We will use all reasonable endeavours to meet any

performance dates specified, but any such dates are estimates only and failure to perform the Services by such dates will not give you the right to terminate the Contract.

4.2 We reserve the right to amend the specification of the Services at any time without written notice to you including (without limitation) to address any applicable changes in law, regulation or Government guidance or to change or alter the Services provided that this does not materially reduce their functionality.

4.3 The Services will be provided to your chosen employees who are UK residents aged 18 years or over (“Eligible Employees”).

#### 5. Your obligations

5.1 It is your responsibility to ensure that:

- (a) you co-operate with us in all matters relating to the Services; and
- (b) you provide us with such information and materials we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects.

#### 6. Charges

6.1 In consideration of us providing the Services you must pay our charges (**Charges**). The Charges for the Services are as agreed between us in writing from time to time. The Charges are exclusive of VAT.

- 6.2 The Charges may be reviewed from time to time by us and any changes notified to you.
- 6.3 We will invoice you for the Charges monthly in arrears.
- 6.4 You shall pay all invoices submitted by us within thirty (30) days of the date of the invoice.
- 6.5 Payment shall be made in the manner described on our invoices
- 6.6 Without prejudice to any other right or remedy, if you fail to make any payment under the Contract on the due date for payment then you shall be liable to pay interest on the unpaid amount at the rate of three percent (3%) per annum above the then current base rate of HSBC Bank from the due date for payment until payment is received in full.
- 6.7 If you have a bona fide dispute in respect of any invoice issued by us for the Services, you shall notify us of the nature of such dispute in writing within 21 days of receipt of the invoice giving all relevant details. Any invoice not so disputed within the 21 day period shall be deemed to be agreed by you.

## 7. Intellectual property rights

- 7.1 All intellectual property rights in or arising out of or in connection with the Services will be owned by us. We grant you a non-exclusive license to such extent as is necessary to enable you to reasonably use and enjoy the benefit of the Services.

## 8. Privacy

- 8.1 For the purpose of this clause 8 (**Data Protection**), the following defined terms shall apply:
  - (a) **“Data Protection Law”** means the following legislation to the extent applicable from time to time: (a) national laws implementing the EU Privacy and Electronic Communications Directive (2002/58/EC); (b) the GDPR; and (c) the Data Protection Act 2018; and **“Controller”, “personal data” and “processing”** shall have the meanings ascribed to them in the Data Protection Law.
  - (b) **“Eligible Employee Data”** means all personal data in respect of any Eligible Employee which we receive, from time to time (whether directly or indirectly), from: (i) such Eligible Employee; (ii) you; or (iii) any third party including any healthcare professional or intermediary.
  - (c) **“GDPR”** means the General Data Protection Regulation (EU) 2016/679.

- (d) **“Privacy Notice”** means the Bupa fair processing notice sent to you by us, from time to time.

- 8.2 The parties acknowledge and agree that Bupa is an independent controller in respect of the Eligible Employee Data.
- 8.3 We shall comply with all applicable obligations in respect of the Eligible Employee Data imposed by, or made under, Data Protection Law, for so long as we process any such data.
- 8.4 If, and to the extent that, we provide Eligible Employee Data to you (for the purposes of providing the Services to the Eligible Employee pursuant to the terms of this Contract, and to the extent permitted by Data Protection Law), the parties agree and acknowledge that you receive such data in your capacity as an independent controller.
- 8.5 To the extent that the you provide us with any personal data, at or before the time at which an Eligible Employee seeks to avail of the Services, you shall ensure that you comply with the Data Protection Law in relation to providing such personal data, including ensuring that you have an appropriate lawful basis under Data Protection Law to provide the personal data to us.
- 8.6 Where applicable, you shall provide (or procure the same in relation thereto) each Eligible Employee with a copy (in hard copy and/or electronic form) of the Privacy Notice at or before the time we process the Eligible Employee Data.

## 9. Limitation of liability

- 9.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
  - (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2 Subject to clause 9.1, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for: any loss of revenue, loss of profits, loss of contracts, loss of use, loss or corruption of data or information, loss of anticipated savings, loss of business, loss of goodwill or any indirect, special or consequential loss or damage howsoever caused.

- 9.3 Subject to clauses 9.1 and 9.2, our total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to the total Charges paid under the Contract.
- 9.4 We have given commitments as to compliance of the Services with the relevant specification in clause 4.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.5 Subject to clauses 4.1 and 9.1, we shall not be responsible or liable for any loss or harm suffered by you or Eligible Employees travelling to or attending premises to receive the Services.
- 9.6 You must notify us that you intend to make a claim under this Contract within 1 month of the day on which you became, or ought reasonably to have become, aware of the claim.
- 9.7 This clause 9 will survive termination of the Contract.

## 10. Confidentiality

- 10.1 The parties acknowledge that this clause 10 shall not apply to the Employee Eligible Data, which shall be governed by clause 8 of this Contract.
- 10.2 Subject to clause 10.1, and except as permitted by clause 10.3, the parties each undertake that we will not at any time, disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers.
- 10.3 We each may disclose the other's confidential information:
- (a) to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 10; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.4 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

## 11. Termination

- 11.1 Without limiting any of our other rights, we may suspend the performance of the Services, or terminate the Contract with immediate effect by giving written notice to you if:
- (a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within seven days of you being notified in writing to do so;
  - (b) you fail to pay any amount due under the Contract on the due date for payment; or
  - (c) you become insolvent or undergo an analogous procedure.
- 11.2 We may suspend the performance of the Services or terminate the Contract for convenience at any time on 14 days prior written notice to you or by displaying such notice on our website.
- 11.3 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.
- 11.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

## 12. Events outside our control

- 12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (**Event Outside Our Control**).
- 12.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:
- (a) we will contact you as soon as reasonably possible to notify you; and
  - (b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.

## 13. Communications between us

- 13.1 Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.

A notice or other communication is deemed to have been received: if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9am on the second working day after posting; or if sent by email, at 9am the next working day after transmission. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

13.2 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

13.3 As part of the Services we may communicate with you and Eligible Employees using Meddbase Vidyo video conferencing, eGain webchat functionality, Microsoft Teams, Microsoft Skype or other third party communications functionality ("Tools"). To the extent permitted by law, the Tools are provided "as is" and we give no representation, assurance or warranty regarding the quality, use, availability, content, security, non-infringement or reliability of the Tools. We expressly exclude any warranties of this kind whether express or implied or statutory. You and your Eligible Employees are responsible for ensuring they have an internet connection and devices suitable, up to date and compatible in order to use the Tools.

13.4 To the extent permitted by law, we do not assume any liability for damage or loss of any kind resulting from access to or the use of the Tools. Your and Eligible Employees use of the Tools is at your own risk.

13.5 You shall and shall procure your Eligible Employees shall only use the Tools in connection with the provision of the Services by us. You must not and shall procure that your Eligible Employees do not (a) copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the Tools; (b) transmit any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libellous, invasive of another's privacy right or right of publicity, or racially or ethnically objectionable; (c) infringe the intellectual property rights of any entity or person; (d) interfere with or disrupt the Tools or systems used to provide the Tools, or other equipment or networks connected to the Tools; (e) circumvent or disclose the user authentication or security of the Tools or any host, network, or account related thereto;

(f) store or transmit "SPAM" (defined as unsolicited commercial email or "Malicious Code" (defined as viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents or programs); (g) interfere with or disrupt the integrity or performance of the Tools or third-party data contained therein, and/or (h) attempt to gain unauthorized access to the Tools or their related systems or networks; (i) impersonate another person; or (j) make any use of the Tools that violates any applicable law or regulation.

13.6 We reserve the right to vary the Tools or to suspend or withdraw access to the Tools immediately at any time without notice to you.

## 14. General

14.1 Third Party Materials. The Services may provide access or links to third party content or websites including the Tools. Such access or links are provided for your information only and we are not responsible for, and cannot guarantee, the completeness, reliability or accuracy of information or other content of such third party content or websites or that such information is up to date or will not be subject to change from time to time. We have no control over the contents of this content or those websites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. The inclusion of access or a link to third party content or a third party website should not be taken in itself to mean endorsement by us of the content, website, the site owner, or any specific content to which it points. We also cannot guarantee that any third party content, website or any service on that website will remain available. Please also be aware that when you leave our website, other websites may have different privacy policies and terms which are beyond our control and of which you should make yourself aware.

Where applicable, you shall ensure that each Eligible Employee given access to the Services shall keep a secure and confidential password for their use of the Services.

You shall use reasonable endeavours to prevent unauthorised access to all or any part of the Services and in the event that you become aware of any unauthorised access or use it shall notify us as soon as reasonably practicable and provide reasonable assistance to investigate and resolve such unauthorised access.

You shall not and shall procure that your Eligible Employees shall not attempt to copy, modify, duplicate, create derivative work from, frame, mirror, republish, download, display, transmit or distribute all or any part of the Services in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human perceivable form all or part of the Services.

#### 14.2 Assignment and transfer.

(a) We may assign or transfer our rights and obligations under the Contract to another entity. We may also use sub-contractors to perform all or part of the Services on our behalf.

(b) You may only assign or transfer your rights or your obligations under the Contract to another person if we agree in writing.

14.3 **Variation.** Except where expressly provided to the contrary, any variations to the Contract may only be made with both party's prior written approval.

14.4 **Waiver.** If we do not insist that you perform any of your obligations under the Contract, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you or that you do not have to comply with those obligations. If we do waive any rights, we will only do so in writing, and that will not mean that we will automatically waive any right related to any later default by you.

14.5 **Severance.** Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

14.6 **Third party rights.** The Contract is between you and us. No other person has any rights to enforce any of its terms.

14.7 **Governing law and jurisdiction.** The Contract is governed by English law and we each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.

## 15. Smart DNA

To the extent that the Services include the Bupa Smart DNA service for Eligible Employees, as specified in the Service Specification ("Smart DNA Service"), the following additional terms shall apply:

15.1 The Smart DNA test kit ("Product") must be returned for testing within 6 months of date of purchase.

15.2 The Product will be your responsibility from the time that Bupa delivers the Product to the address provided by you or the Eligible Employee.

15.3 You will own the Product once we have received payment in full.

15.4 If you can prove to our reasonable satisfaction that, due to our own act or omission, the Product is damaged or defective when we provide it to you or the Eligible Employee, then we shall remedy such breach by providing a new Product.

15.5 In the event that the Eligible Employee's sample cannot be properly analysed (and this is not due to your or the Eligible Employee's failure to comply with this Contract and/or our instructions) then we shall remedy such breach by providing a new Product.

15.6 Bupa may terminate the Smart DNA Service to individual Eligible Employees in the event that the Eligible Employee does not comply with the applicable terms of service.

15.7 You acknowledge and agree that the Smart DNA Service does not constitute health or medical treatment or advice, the information has not been clinically validated and the Smart DNA Services are only for the Eligible Employee's research, information and/or education. The Smart DNA Services do not provide any information about ancestry.

15.8 You will not, and shall procure that Eligible Employees will not, use the Smart DNA Service:

- for any unlawful or prohibited purposes including to take a sample from another person and submit it for testing without their full consent;
- to obtain information about an insured person or an employee;
- in a way that could damage or impair the product or interfere with someone else's use of the Smart DNA Service;
- to impersonate another person or misrepresent your affiliation with someone else; or
- to harm minors in any way.

15.9 You shall procure that the Eligible Employees register to use the Smart DNA Service via the Bupa Smart DNA webpages and accept the relevant terms and conditions, provide the relevant consent(s) to the processing of their personal information and acknowledge the privacy notices. In the event that the Eligible Employee does not wish to do so they will not be able to use the Smart DNA Service and must return the sealed test kit to you or us.

## Video chat and Webchat terms of Use

When you and/or your eligible employees (each and together, “Users”) use the Meddbase Vidyo video conferencing and/or eGain webchat functionality and/or Microsoft Teams and/or Microsoft Skype (“Tools”) these terms of use shall apply. You must ensure that your eligible employees accept and comply with these terms when using the Tools. If you do not agree to these terms please do not use the Tools and ensure that your employees do not use the Tools. The Users will be deemed to have accepted these terms by using the Tools in connection with the services provided by us.

- These terms are the entire between the Users and Bupa Occupational Health Limited (“us” or “we”) in respect of the use of the Tools. They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- We grant you a non-exclusive license to use the Tools to such extent as is necessary to enable you to reasonably use and enjoy the benefit of the services provided by us.
- We work with third party sub-contractors to provide the Tools. Users may also be subject to third party terms when using the Tools. Information provided to Users may contain links to third party websites or materials. We have no control over and are not responsible for the content, privacy policies or practices of any third party websites or materials.
- To the extent permitted by law, the Tools are provided “as is” and we give no representation, assurance or warranty regarding the quality, use, availability, content, security, non-infringement or reliability of the Tools. We expressly exclude any warranties of this kind whether express or implied or statutory.
- Users are responsible for ensuring they have an internet connection and devices suitable, up to date and compatible in order to use the Tools.
- To the extent permitted by law, we do not assume any liability for damage or loss of any kind resulting from access to or the use of the Tools. Each User’s use of the Tools is at their own risk.
- Subject to the above, to the extent we are found to be liable for damage or loss of any kind resulting from access to or use of the Tools our total liability to you shall not exceed £500.
- Users must only use the Tools in connection with the provision of services by us. You must ensure that all Users do not (a) copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the Tools; (b) transmit any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libellous, invasive of another’s privacy right or right of publicity, or racially or ethnically objectionable; (c) infringe the intellectual property rights of any entity or person; (d) interfere with or disrupt the Tools or systems used to provide the Tools, or other equipment or networks connected to the Tools; (e) circumvent or disclose the user authentication or security of the Tools or any host, network, or account related thereto; (f) store or transmit “SPAM” (defined as unsolicited commercial email or “Malicious Code” (defined as viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents or programs); (g) interfere with or disrupt the integrity or performance of the Tools or third-party data contained therein, and/or (h) attempt to gain unauthorized access to the Tools or their related systems or networks; (i) impersonate another person; or (j) make any use of the Tools that violates any applicable law or regulation.
- We shall be entitled to suspend or withdraw access to the Tools immediately at any time without notice to you.
- We reserve the right to vary these terms and/or change the Tools at any time without notice to you.
- Both parties shall comply with all applicable data protection law or regulation in connection with use of the Tools.
- Each paragraph of these terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- No person other than you and us has any rights to enforce any of these terms.
- These terms are subject to English law and the exclusive jurisdiction of the English courts.