

# TERMS AND CONDITIONS FOR USE

This page (together with our Privacy Policy) tells you information about us and the legal terms and conditions (Conditions) on which you may make use of our application Doctaly and the connected website (<http://doctaly.com>) and App (for iOS and Android), whether as a guest or a registered user. Use of our App includes accessing, browsing, or registering to use our App and booking an appointment through our App.

Please read these Conditions carefully before you start to use our App, as these will apply to your use of our App. We recommend that you print a copy of this for future reference.

By using our App, you confirm that you accept these Conditions and that you agree to comply with them. If you do not agree to these Conditions, you must not use our App.

We amend these Conditions from time to time as set out in clause 18.7. Every time you wish to book an Appointment (as defined in clause 5.1 below), please check these Conditions to ensure you understand the terms which will apply at that time. These Conditions were most recently updated on 24.02.2017.

## 1 Information about us

We are BDM Medical Limited, a company registered in England and Wales under company number 09305354 and with our registered office at Fifth Floor, 11 Leadenhall Street, London, EC3V 1LP (BDM Medical). Our VAT number is 218 254 418.

## 2 Terms of Service

- 2.1 Our App is an online platform allowing you and anyone you are using the app on behalf of (the User) to book directly a face-to-face private consultation with an independent local general practitioner who is GMC registered and whose services are regulated by the CQC (the Doctor). Our App provides the technology facilitating the connection between the User and the Doctor. Our App is not a health service provider. The User understands that by booking an appointment through the platform, the User is seeing a Doctor who is solely responsible for the medical advice and medical services that the Doctor offers to the User.
- 2.2 The User understands our App acts as an agent, enabling the User to conveniently access a Doctor. In addition the User understands, accepts and agrees that BDM Medical are not liable in anyway whatsoever for any damages, losses or claims resulting from any aspect of the User's care initiated by the Doctor the User has connected with, including diagnosis, treatment, professional advice, prescriptions, recommendations, or referral.

## 3 Use of our App

- 3.1 BDM Medical does not guarantee that the App, or any content on it, will be free from errors or omissions.
- 3.2 Our App is made available free of charge.
- 3.3 BDM Medical do not guarantee that our App, or any content on it, will always be available or be uninterrupted. Access to our App is permitted on a temporary basis. BDM Medical may, at its discretion, suspend, withdraw, discontinue or change all or any part of our App without notice. BDM Medical will not be liable to the User if for any reason our App is unavailable at any time or for any period.
- 3.4 The User is responsible for making all arrangements necessary to have access to our App.

## 4 Exceptions of Use

- 4.1 Our App is designed to enable the User to book an appointment with a Doctor on a private and self pay basis for a non emergency medical consultation. If the User feels that the situation is either an accident or emergency or a situation that may imminently escalate to that of an emergency situation, the User should seek immediate emergency medical services such as dialing 999 or attending the local A&E department. The User should not book an appointment with a Doctor through our App if suffering with chest pain, difficulty in breathing, severe bleeding or have suffered with loss of consciousness, confusion or fitting.
- 4.2 Doctaly is not suitable for acute psychiatric problems such as if the User is suffering with severe depression with active suicidal thoughts, auditory or visual hallucinations. Doctaly is not suitable if the User has taken an, intentional or unintentional, overdose of medication.

## 5 Booking an Appointment

- 5.1 Our App allows the User to book an appointment with a Doctor at a time and location that suits the User (an Appointment). The User may only book an Appointment through our App if the User is at least 18 years old and possesses the legal right and ability for themselves or any child of whom they are a parent or legal guardian to agree to these terms and conditions. It is the Users responsibility to carefully read the booking pages and check their booking at each page of the booking process.
- 5.2 After the User has placed a booking, they will receive an e-mail from BDM Medical acknowledging and confirming the booking.

- 5.3 The User accepts that it is their responsibility to ensure that the patient details they provide are at all times accurate and up-to-date. BDM Medical and the Doctors engaged through our App hold no responsibility for incorrect medication prescribed due to inaccurate details provided by the User.

### **Charges and payment**

- 5.4 The charges for the Appointment are as specified on the App at the time the User books an Appointment. We use our best efforts to ensure that the charges are correct at the time when the relevant information was entered onto the system.
- 5.5 The consultation with the Doctor will last 15 minutes. Charges for Appointments may change from time to time, but changes will not affect any Appointments the User has already booked. The cost allows a pre-booked 15 minute appointment with a Doctor which the User has chosen. The User is aware that the cost does not include any further investigations, private medication cost, medical procedures, insurance claim forms, onward referral and private letters.
- 5.6 The User can only pay for Appointments using a debit card or credit card.
- 5.7 Payment for the Appointment must be made at the time of booking.
- 5.8 All amounts payable by the User under these Conditions are inclusive of amounts in respect of value added tax chargeable for the time being (VAT).
- 5.9 If the User fails to make any payment due to BDM Medical or the Doctor under these Conditions by the due date for payment, then the User shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclay's Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The User shall pay the interest together with the overdue amount.
- 5.10 The User shall pay all amounts due under these Conditions in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). BDM Medical may at any time, without limiting its other rights or remedies, set off any amount owing to it by the User against any amount payable by BDM Medical to the User.

### **6 Account and password**

- 6.1 If the User chooses, or is provided with, a user identification code, password or any other piece of information as part of our security procedures, the User must treat such information as confidential. The User must not disclose it to any third party.
- 6.2 BDM Medical have the right to disable any user identification code or password, whether chosen by the User or allocated by us, at any time, if in our reasonable opinion the User has failed to comply with any of the provisions of these Conditions.
- 6.3 If the User knows or suspects that anyone other than himself/herself knows their user identification code or password, the User must promptly notify us at support@doctaly.com.

### **7 Intellectual property rights**

- 7.1 BDM Medical are the owners and licensees of all intellectual property rights in our App, and any material published on it. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.
- 7.2 The User may print off one copy, and may download extracts, of any page(s) from our App for the User's personal use and may draw the attention of others to content posted on our App.
- 7.3 The User must not modify the paper or digital copies of any materials the User has printed off or downloaded in any way, and must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.
- 7.4 Our status (and that of any identified contributors) as the authors of content on our App must always be acknowledged.
- 7.5 The User must not use any part of the content on our App for commercial purposes without obtaining a licence to do so from us or our licensors.
- 7.6 If the User prints off, copies or downloads any part of our App in breach of these Conditions, their right to use our App will cease immediately and the User must, at our option, return or destroy any copies of the materials they have made.

### **8 Uploading content to our App**

- 8.1 Whenever the User makes use of a feature that allows them to upload content to our App, or to make contact with other users of our App, the User must comply with the content standards set out in our privacy policy.
- 8.2 The User warrants that any such contribution does comply with those standards, and they will be liable to us and indemnify us for any breach of that warranty. This means the User will be responsible for any loss or damage we suffer as a result of their breach of warranty.
- 8.3 Any content uploaded to our App will be considered non-confidential and non-proprietary. The User retains all of their ownership rights in their content, but the User is required to grant us a non-exclusive licence to use, store and copy that content and to distribute and make it available to third parties.
- 8.4 BDM Medical also have the right to disclose their identity to any third party who is claiming that any content posted or uploaded by the User to our App constitutes a violation of their intellectual property rights, or of their right to privacy.
- 8.5 BDM Medical will not be responsible, or liable to any third party, for the content or accuracy of any content posted by the User or any other user of our App.
- 8.6 BDM Medical have the right to remove any posting the User makes on our App if, in our opinion, the post does not comply with the content standards set out in our privacy policy.
- 8.7 The views expressed by other users on our App do not represent our views or values.
- 8.8 The content on our App is provided for general information only. It is not intended to amount to advice on which the User should rely. The User must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on our App.

- 8.9 Although we make reasonable efforts to update the information on our App, we make no representations, warranties or guarantees, whether express or implied, that the content on our App is accurate, complete or up-to-date.
- 8.10 Where our App contains links to other apps and resources provided by third parties, these links are provided for the User's information only. BDM Medical have no control over the contents of those apps or resources.

## **9 Confidentiality and patient records**

- 9.1 BDM Medical store patient contact details only, so that a Doctor can make contact following a consultation if deemed necessary.
- 9.2 BDM Medical do not retain any medical records. The Doctor that the User sees will document the consultation on their own electronic medical record system, independently of BDM Medical or our App.
- 9.3 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under these Conditions, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to these Conditions. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall survive termination of these Conditions.

## **10 Medications dispensed**

- 10.1 All prescriptions following the User's consultation will be given on a private basis only. Prescriptions will then have to be taken to the pharmacy of the User's choice and dispensed on a private fee paying basis independently of NHS prescription cost. The User understands that the cost of the private prescription is not influenced in any way by the practitioner or BDM Medical or our App and the cost of the medicine is unique to the fulfilling pharmacy. Furthermore, BDM Medical and the Doctors are not responsible for the dispensing of any medication. The User agrees that the dispensing of the medication remains the responsibility of the individual pharmacist and they have no obligation to dispense the said medication. Under no circumstances will the Doctor issue or be obliged to give a NHS prescription following a private consultation booked through our App.
- 10.2 Our App is not a prescription fulfillment service. Only after a consultation booked through our App will a medication be prescribed by mutual agreement being reached between the User and the Doctor under circumstances that are appropriate, legal and responsible.
- 10.3 The User fully understands and accepts that the Doctor is not obliged to prescribe medication that is not appropriate, legal or responsible. There is no guarantee whatsoever that a prescription suggested by the User or a third party will be prescribed. The final issuing of a prescription is at the sole discretion of the doctor.
- 10.4 Prescriptions are given on a private basis only and should not be given under any circumstances to the User's NHS GP to be converted to an NHS prescription. If a medication prescribed is suggested for repeat dispensing, the User's NHS GP is not under any obligation to fulfill that prescription.
- 10.5 There are certain drugs that will not be prescribed given the mode of consultation. These include controlled restricted drugs which fall under the Misuse of Drugs Regulations 2001, unlicensed medications, sedatives or sleeping tablets, medications that need to be initiated by secondary care or a hospital consultant.
- 10.6 The User understands, accepts and agrees that any prescription given to them is solely for personal use. If the User loses a prescription, a copy may be reissued by the Doctor and may be subject to an additional cost. The User accepts that the Doctor has the right to refuse to issue a copy of the prescription should it be deemed inappropriate.

## **11 NHS GP**

- 11.1 The User acknowledges that they cannot book a private consultation with their existing NHS GP or practice that they are registered with. In order to prevent this situation from arising we ask the User to confirm prior to booking an appointment that they are not registered with the said practice. However in the unlikely event that the User unknowingly connects with their own registered practice, they accept that the Doctor will cancel the Appointment and the User will subsequently be refunded the cost in full. Furthermore, if the User mistakenly books an Appointment with their own practice they are obliged to inform the practice or BDM Medical immediately, allowing the doctor or BDM Medical to provide the User with a full refund. The User agrees and accepts these conditions and will not hold the Doctor or BDM Medical responsible in these circumstances.
- 11.2 The User is aware that their NHS GP is under no obligation to action any instruction or recommendation provided by Doctor registered with us or our App.

## **12 Further investigations**

- 12.1 In order to formulate a diagnosis and treatment plan it may be necessary for the Doctor to advise further investigations. BDM Medical outsources further investigations to an accredited, London based pathology laboratory. The User understands that any investigation initiated by the Doctor will be on a private and fee paying basis. An investigation may be a blood test, urine test, swab, X-ray or ultrasound. The User understands that for blood tests, urine analysis and swabs, the Doctor will require payment upfront and prior to collection of the specimen. The User understands that any imaging such as x-rays and ultrasound will be paid to the private provider who performs the imaging which has been outlined to the User by their Doctor. Once the investigation is performed it is solely the User's responsibility to follow up the result with the Doctor at a mutually convenient time using an appropriate and secure form of communication. This in most cases will be either face-to-face during a follow-up appointment or over the phone using the number provided by the patient to BDM Medical via our App.
- 12.2 The User is not obliged to pay for any further investigation however by not performing an investigation that is advised the User agrees to hold BDM Medical and the Doctor completely free of liability under every circumstance relating to the User's initial presentation.
- 12.3 In the circumstance that further investigations are advised by the Doctor but the User is unable to or does not wish to pay, the User is advised to see their NHS GP for consultation. The User is aware that their NHS GP is under no obligation whatsoever to fulfill any investigation advised by a Doctor the User has seen using our App.

### **13 Further treatment**

- 13.1 The User understands that a Doctor may refer the User to a specialist directly on a private fee paying basis and if the User has private health care insurance this may be covered under their policy. The User understands that it is their responsibility to check with their private insurance whether the cost of further referral and investigation is covered under their policy. If the User does not have private insurance they can still be referred to a specialist on a private self-pay basis only. The User will be solely responsible for arranging their private appointment with any specialist for further treatment.
- 13.2 The User is not obliged to pay or use health insurance but the User understands and accepts that in the event that a specialist referral is advised and they do not want to seek private further care, the User agrees to hold BDM Medical and our App and the Doctor completely free of liability under every circumstance relating to the User's initial consultation.
- 13.3 In the circumstance that onward referral is advised by the Doctor but the User is unable to or does not wish to pay, the User is advised to see their NHS GP for consultation. The User is aware that their NHS GP is under no obligation whatsoever to fulfill any referral or any element of a treatment advised by a Doctor the User has seen using our App.
- 13.4 In some circumstances the Doctor will advise the follow-up with themselves to monitor response to treatment or convey the results of investigation. The User understands that they are not obliged to have this follow-up however by not doing so, the User hold BDM Medical and the Doctor completely free of liability for any circumstance arising from the initial presentation.

### **14 Cancellations, Late arrival and Missed appointment**

- 14.1 The User is aware and accepts that they can cancel their appointment online once booked but if their cancellation is made within 2 hours of their booked appointment, the User understands that they forfeit the cost of the consultation.
- 14.2 The User understands that if they miss their appointment, the User forfeits the full cost of the Appointment without any possibility refund.
- 14.3 The User understands and accepts that if they are more than 10 minutes late to an appointment they will lose their appointment time and forfeit the cost of the consultation. Furthermore, the User understands and accepts that if they are late for an appointment by a period of less than 10 minutes, the Doctor is not obliged to see them and they may still lose their consultation fee. If the Doctor can still accommodate the User's appointment, it will be at a time determined by the Doctor at his discretion, and should this not be acceptable, the User will lose the consultation fee.
- 14.4 The User holds BDM Medical and the Doctor completely free of liability under every circumstance relating to the User's reason for initial presentation in the event that the User is late and the appointment is cancelled.
- 14.5 The User accepts that due to the nature of general practice, BDM Medical and the Doctors registered with our App, do not guarantee that an appointment will necessarily be kept at the exact time stipulated as the booked appointment. The User understands that there can potentially be a wait time for their appointment. If the waiting time exceeds 30 minutes, the User has the option of either rebooking, waiting with no refund or receiving a full refund without consultation.
- 14.6 Without limiting its other rights or remedies, a Doctor may cancel an Appointment by giving the User twenty four hours notice which may be sent via email, or SMS text message to the mobile phone number supplied by the User or via the App.
- 14.7 Without limiting its other rights or remedies, BDM Medical may terminate any contract or cancel any Appointment with immediate effect by giving written notice to the User via email, via a SMS text message to the mobile phone number supplied by the User or via the App. If the User fails to pay any amount due under these Conditions on the due date for payment and fails to pay all outstanding amounts within seven days after being notified in writing to do so.

### **15 Limitation of liability: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 15.1 Nothing in these Conditions excludes or limits our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English law.
- 15.2 To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to our App or any content on it, whether express or implied.
- 15.3 BDM Medical will not be liable to any user for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:
  - 15.3.1 Use of, or inability to use, our App; or
  - 15.3.2 Use of or reliance on any content displayed on our App.
  - 15.3.3 Please note that we only provide our App for domestic and private use. The User agrees not to use our App for any commercial or business purposes, and we have no liability to the User for any loss of profit, loss of business, business interruption, or loss of business opportunity.
  - 15.3.4 BDM Medical will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect the User's computer equipment, computer programs, data or other proprietary material due to their use of our App or to their downloading of any content on it, or on any App linked to it.
  - 15.3.5 BDM Medical assume no responsibility for the content of apps linked on our App. Such links should not be interpreted as endorsement by us of those linked apps. BDM Medical will not be liable for any loss or damage that may arise from the User's use of them.
  - 15.3.6 BDM Medical do not guarantee that our App will be secure or free from bugs or viruses.
  - 15.3.7 The User is responsible for configuring their information technology, computer programmes and platform in order to access our App. The User should use their own virus protection software.
  - 15.3.8 The User must not misuse our App by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. The User must not attempt to gain unauthorised access to our App, the server on which our App is stored or any server, computer or database connected to our App. The User must not attack our App via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, the User would commit a criminal offence under the Computer Misuse Act 1990. BDM Medical will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing the User's identity to them. In the event of such a breach, the User's right to use our App will cease immediately.
- 15.4 This clause 16 shall survive termination of any contract between us.

## **16 Events outside our control**

- 16.1 For the purposes of these Conditions, an Event Outside Our Control means an event beyond the reasonable control of BDM Medical including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of BDM Medical or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 16.2 BDM Medical shall not be liable to the User as a result of any delay or failure to perform any of its obligations under these Conditions as a result of an Event Outside our Control.

## **17 Other important terms**

### **17.1 Assignment and other dealings**

- 17.1.1 BDM Medical may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under these Conditions and may subcontract or delegate in any manner any or all of its obligations under these Conditions to any third party or agent.
- 17.1.2 The User shall not, without the prior written consent of BDM Medical, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Conditions.

### **17.2 Notices**

- 17.2.1 Any notice or other communication given to a party under or in connection with these Conditions shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **17.3 Severance**

- 17.3.1 If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions.
- 17.3.2 If any provision or part-provision of these Conditions is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **17.4 Waiver**

A waiver of any right under these Conditions, any contract between us or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under these Conditions, any contract between us or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **17.5 No partnership or agency**

Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

### **17.6 Third parties**

A person who is not a party to these Conditions shall not have any rights to enforce its terms by virtue of the Contract Rights of Third Parties Act 1999 or otherwise.

### **17.7 Variation**

We amend these Conditions from time to time. Please look at the top of this page to see when these conditions were last updated and which Conditions were changed. Every time the User books an Appointment through BDM Medical, the Conditions in force at the time of booking will apply to the contract between us.

### **17.8 Governing law**

This contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

### **17.9 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract or its subject matter or formation (including non-contractual disputes or claims).