

EDGE CUMBE DOCTOR 360°

Edgecumbe Consulting Group Limited

Terms of Business

These terms of business (**Terms**), along with the attached invoice and/or your payment form the contract between you and us. Where we say **you, yourself** or **your** in these Terms we refer to the client identified on the invoice and where we say **we, us** or **our** we mean Edgecumbe Consulting Group Limited, a company registered in England with registered address Whitefriars Business Centre Floor 2, Whitefriars, Lewins Mead, Bristol BS1 2NT and company number 03033236. Edgecumbe Health is one of our trading names.

Correspondence and invoice

The correspondence we have had with you and the invoice or Paypal payment identifies the requirements you have told us about and the scope of work we will deliver to you. You must let us know promptly if you think anything on the invoice is inaccurate.

Who will perform services for you

Our services may be performed by any of our directors, employees, contractors or agents (our **Personnel**). We will always ensure that Personnel of the right qualification and seniority are engaged in the performance of the services. However, we will have discretion to decide which of our Personnel perform the services.

Our fees

Our website and/or correspondence sets out our fees. These may be specified as an estimate, as a fixed fee, or with a formula for calculating them (for example, hourly or daily rates for our Personnel). We will update you regularly on actual fees incurred where we have given you an estimate or a formula for calculating our fees. We review our rates annually and we will let you know what impact, if any, a review has on the amount we will charge you (a review will only impact charges for work additional to that which is set out in this engagement letter, for which the original rates quoted will continue to apply for the original scope of work). There is an administrative charge on invoices for less than 10 feedback licences and for payments made over the phone – these charges are listed on our website 'Buy Online' page. Our fees and payment arrangements constitute commercially sensitive information and are confidential.

Invoice requests for orders of under 10 feedback licences will incur an administrative surcharge of £7.50+vat (£9).

Phone payments will incur an administrative surcharge of £2.08+vat (£2.50).

Expenses

You must reimburse us for travel from home to any venue by our Personnel where that venue is not their ordinary place of work. Our Personnel will travel by rail or air and use taxis or public transport between the train station or airport and the venue. Where reasonable, our Personnel will use first class travel to a maximum of 115% of the cost of standard travel. If our Personnel use a personal car, we will charge mileage to the venue at 55p per mile. We will charge all other travel and subsistence expenses, including any necessary overnight hotel accommodation and car parking, at cost. We will not be subject to your expenses policy or any expense payment process requirements you may have unless we expressly agree them in a contract or Sales Order.

Purchase orders

If your purchase of services from us requires you to issue a purchase order number you must specify it at the time of ordering. If you would like us to observe any other invoicing arrangements (for example sending copy e-mail invoices to particular recipients) you should let us know and we will endeavour to follow them. If you do not provide a purchase order number, we will send all invoices for the relevant services without a purchase order number.

No terms and conditions or other text you purport to have legal effect (including where included on any purchase order you provide to us) shall be binding on us or form part of the contract between you and us.

Cancellation and Termination

If you need to cancel services we have agreed to perform the following applies:

You are entitled to a full or partial refund under the following conditions:

- 1.** Feedback services have not yet been made use of, including any use of the online feedback account and the sending of a patient feedback pack; **And**
- 2.** You request the refund in writing, within 7 working days of the Doctor 360 feedback exercise being activated.

Either you or we may terminate a contract immediately by serving written notice to that effect on the other if at any time any one or more of the following events occurs: (a) the other makes any voluntary arrangement with its creditors or becomes bankrupt or enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or (b) a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the other; or (c) anything analogous to any of the foregoing occurs to the other under the law of any jurisdiction; or (d) the other ceases to carry on business; or (e) the other commits a material breach of a contract and in the case of a breach capable of remedy, fails to remedy that breach within thirty (30) days after being served with a written notice specifying the breach and requiring it to be remedied.

Facilities and Equipment

Where a service we have agreed to perform requires a venue you must provide a suitable venue and any equipment at the venue we reasonably specify, along with appropriate refreshments at the venue. You will be responsible for the health and safety of all attendees, including all of our Personnel who attend, and you must ensure our Personnel are covered by adequate public liability insurance whilst they are on your premises or any premises you arrange.

You must also perform any client dependencies specified in our correspondence.

We reserve the right to make amendments to the question set in the Doctor 360 product during the period of this contract, as and when required, to ensure that the survey remains fit for purpose and meets the requirements of the regulatory bodies governing the appraisal and revalidation system.

Intellectual Property

For the purposes of these Terms Intellectual Property Rights means all patents, trade marks, service marks, designs, utility models, copyright, database rights, semi-conductor topography rights, inventions, trade secrets and other confidential information, know-how, business names and all other intellectual property rights of a similar nature in any part of the world, whether registered, registrable or not and including all applications and the right to apply for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights.

As between you and us, we retain all Intellectual Property Rights and other rights in all of our pre-existing materials and will own all Intellectual Property and other rights in the output of any services we provide to you and otherwise created in the performance of any services for you. Provided you pay all charges due to us, we hereby grant to you free of charge and on a perpetual,

non-exclusive, non-transferable, worldwide basis the right to use the output of any services we provide to you solely for your internal business services, and the right to use our pre-existing materials solely to the extent necessary to allow you to use the output of the services in accordance with this paragraph. Where our pre-existing materials are software products or services your right to use and access the same will be subject to your agreement to the terms of any applicable end user licence agreement.

As between you and us, you retain all Intellectual Property Rights and other rights in all of your pre-existing materials. You hereby grant us a non-exclusive, worldwide, royalty-free right to use your pre-existing materials to the extent necessary for us to perform the services.

You acknowledge that, where we do not own any of our pre-existing materials, your right to use them is conditional on us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license or sub-license such rights to you.

Limit of liability and Professional Indemnity Insurance

Our aggregate liability to you under our contract with you for all claims, actions or demands brought under or in connection with it (whether by reason of any negligence by us or any of our employees or agents, any non-fraudulent misrepresentation, any breach of contract or an express or implied warranty, condition or other term, or otherwise) shall not exceed the total fee specified in the engagement letter.

We shall not be liable to you (whether by reason of any negligence by us or any of our employees or agents, any non-fraudulent misrepresentation, any breach of contract or an express or implied warranty, condition or other term, or otherwise) for any: (a) loss of profits; or (b) damage to reputation; or (c) loss of anticipated savings; or (d) loss of anticipated revenues; or (e) loss of business opportunities; or (f) loss of contracts; or (g) loss of goodwill; or (h) loss or corruption of any data; or (i) claim, action or demand made against you by any third party; or (j) any indirect loss, damage, cost, expense or claim whatsoever; which arises out of or in connection with this agreement.

Nothing in our contract with you shall operate to limit or exclude our liability to you for any death or personal injury caused by the negligence of us or any of our employees or agents, for fraud or fraudulent misrepresentation, or for any other matter in respect of which liability cannot lawfully be limited or excluded.

You acknowledge and agree that the exclusions and limitations of liability specified in this paragraph 9 reflect the charges payable to us under our contract with you, your responsibility for applying and interpreting the output of any services we perform for you in your business, and are fair and reasonable in all the circumstances.

Data Protection and storage of information

We will hold and/or transfer any data you provide to us in accordance with applicable data protection laws and our data protection registration and you consent to this. We will normally use your contact details to send you updates and news of our services. You may, of course, advise us if you do not wish us to do so.

We will retain documents and electronic files relating to the services we perform for you for such period of time as we consider necessary to comply with our legal, audit, and any other regulatory requirements. After this time we will destroy documents in a secure manor and securely delete electronic files. During the period of storage we will take all reasonable steps to ensure the documents and electronic files are held securely.

Where through the performance of services we gather data in reports or data sheets or from psychometric or other questionnaires we are entitled to use that for our internal research and our

commercial purposes, provided that in doing so we use the data only in an anonymised format and respect any opt-outs from that use by individuals.

Confidentiality

Each of you and we shall safeguard and keep confidential the terms of contracts and any and all confidential information acquired in relation to the business or affairs of the other party. Neither you nor we shall use or disclose the other's confidential information except to the extent that such use or disclosure is necessary for the purposes of performing its obligations or exercising its rights under this contract. You and we shall each ensure that its officers and employees and any other persons to whom confidential information is disclosed comply with the provisions of this paragraph 11. The obligations in this paragraph 11 shall not apply to any information to the extent that such information: (a) is publicly available or becomes publicly available through no act or omission of the receiving party; or (b) is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority, including in the event that a feedback report indicates that a colleague may have a serious concern about a doctor's performance or behaviour that could compromise patient safety, we may, on the request of the Responsible Officer, be obliged to provide the identity of said colleague in line with paragraph 25 of the Good Medical Practice Guide (2013). The provisions of this paragraph 11 shall survive any termination of a contract. We agree that reports on individuals and teams, individual and team psychometric reports and/or data sheets, and all written and oral communications naming individuals constitute confidential information which shall remain confidentially perpetually.

Release of Reports

Edgecumbe will endorse the release of reports under the following conditions:

- The relevant self-assessment has been completed by the doctor
- Feedback from a minimum of 6 Peers and 6 Support/Junior colleagues has been collected for the colleague report
- Feedback from a minimum of 17 patients has been returned with a signed Patient Feedback Declaration Form for the patient report

We will upload a maximum of 50 patient questionnaires: further questionnaires can be uploaded for an additional charge, based on the data entry time taken.

Exceptions to these conditions will require written consent from the doctor's Responsible Officer to release the report with feedback below the minimum requirements*. The doctor using this product understands that in this situation, Edgecumbe cannot confirm that the report achieves the generally accepted requisite level of reliability for medical appraisal. Further to this, the doctor using this product understands that once a Doctor 360 report is released, this will permanently end the feedback session and cannot be reopened to allow the addition of extra feedback responses thereafter.

*** The absolute minimum number of feedback returns that we can accept for releasing a report is 3 Peers, 3 Support/Junior colleagues and 7 Patients.**

Service Materials

For each license used all materials required for collecting feedback will be available from the associated online feedback account, unless an alternative arrangement has been agreed between you and ECG for paper-based patient feedback. Paper packs can be purchased at an additional cost from the Doctor 360 website.

Miscellaneous provisions

- **Assignment and sub-contracting:** You may not assign, sub-contract or otherwise dispose of any of your rights or obligations under a contract with us without our prior written consent. We may assign, sub-contract or otherwise dispose of any of our rights or obligations under a contract with you without your consent provided the assignee, sub-

contractor, or other party to which the rights and/or obligations are disposed commits in writing to you to continue to be bound by the terms of the contract.

- **No partnership or agency:** Nothing in a contract between you and us shall constitute any partnership or be deemed to have created any relationship of agency, and unless expressly stated neither you nor we shall have the authority to contract on behalf of or otherwise bind the other in any way.
- **Entire agreement:** These Terms and the relevant engagement letter forming a contract shall constitute the entire agreement and understanding in respect of that contract, and shall supersede any previous agreements between the parties in connection with its subject matter.
- **Severability:** If any provision of a contract is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of that contract not affected by such invalidity or unenforceability shall remain in full force and effect.
- **Third party rights:** Unless expressly stated in a contract, nothing in it shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.
- **Waiver:** If you or we don't enforce rights under a contract as soon as the right to enforce them arises that does not prevent you or us from enforcing them in the future, or if the rights arise again in different circumstances (for example, if we agree not to charge you a cancellation fee we could charge you on one occasion, that does not mean we can not charge you a cancellation fee in the future). The rights and remedies provided in a contract are cumulative and are additional to any rights or remedies provided by law.
- **Variation:** No variation to a contract shall be effective unless made in writing and signed by authorised representatives of both you and us.

Governing law and jurisdiction

These Terms and any contract we enter with you shall be governed by and construed in accordance with the laws of England and Wales, and any disputes arising out of or in connection with these Terms and/or any contract we enter with you shall subject to the following provision be subject to the jurisdiction of the English courts. Nothing in this paragraph shall limit our right to take proceedings against you in any other court of competent jurisdiction in the jurisdiction in which you are incorporated or have any trading presence, nor shall our taking proceedings in any one or more jurisdictions preclude us taking proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction. You may not bring proceedings against us other than in the English courts.

*We are a company that welcomes feedback - if you can provide us with any comments on our service, please contact us on **0117 3328277** or email us on **support@edgcumbe.co.uk***