



## Terms & Conditions

### 1. APPLICATION OF TERMS

**1.1.** The Agreement which is made between Be-Safe Technologies Limited ("Be-Safe") whose details are stated in the Order Form and with the Customer, whose details are also stated in the Order Form and the Terms stated in this Agreement (including documentation referred to herein, such as the Service Level Agreement ("SLA")) shall comprise the entire agreement between the Parties and all other terms and conditions offered by the Customer are hereby excluded from the Agreement. The Agreement shall comprise of these Terms, the Order Form(s) and any documents of Be-Safe referred to in these Terms and in an Order Form itself. These Terms shall become binding upon the Customer when the Customer signs these Terms and/or an Order Form whether manually or by any digital signing platform or otherwise via the Be-Safe website where the Customer has signed up for the Services on the Be-Safe website.

**1.2.** Each Order Form and the SLA shall describe the actual Services and/or Technical Services being provided by Be-Safe and once signed and/or accepted by Be-Safe, following the Customer agreeing to that Order Form by signature, shall be a binding agreement upon the Customer to receive the Services and/or Technical Services described in the SLA, that Order Form subject to these Terms. An Order Form shall be accepted on the earlier of both parties digitally signing or manually signing the Agreement.

**1.3.** In the event of any inconsistency between these Terms (including the SLA) and anything appearing on the face of the Order Form, then the Order Form shall prevail over these Terms.

**1.4.** Each Order Form shall represent a separate Agreement. These Terms shall continue to apply for all Order Forms made under these Terms and each Order Form shall have the same duration as the Order Form for the Full Compliance Genie proposal (which is of 36 months duration from the Go-Live date) unless otherwise stated on that Order Form ("Minimum Period"), such Go-Live date and such Minimum Period commencing as from

the start of the Services provided under that Order Form ("Go-Live"). The foregoing does not prevent any or all Order Forms from being terminated under Clause 6 of these Terms.

## **2. BE-SAFE'S OBLIGATIONS**

**2.1.** Be-Safe shall provide the Services and the Technical Services upon the Terms of the Agreement applicable for each Order Form.

**2.2.** Be-Safe shall also:

(a) provide the Services to the Customer from its own Platform as a competent and professional provider of technology services in accordance with the Services described in the Order Form and the SLA;

(b) provide the Services with the level of skill, care and diligence as would be expected from an industry-leading digital health and safety solutions provider providing services similar to the Services ("Good Industry Practice");

(c) use reasonable endeavours to provide the Services to the standards set out in the SLA, and for any purpose expressly stated in this Agreement or an Order Form.

(d) in its provision of the Services and the Technical Services, provide them in accordance with all applicable legal and regulatory obligations applicable to Be-Safe. It is expressly acknowledged and agreed by the Customer that how the Services are used by the Customer are for the Customer to ensure that it complies with all of the Customer's legal and regulatory obligations including compliance with applicable health and safety laws, which remain the entire responsibility of the Customer.

(e) In consideration of the Customer paying the Charges under an Order Form, Be-Safe hereby grants pursuant to that Order Form a license to the Customer, its Affiliates and Licensed Users to access the Platform to use the Services under the Order Form and for the duration of that Order Form and for the number of Licensed Users stated in the Order Form (as increased from time to time in accordance with Clause 3.1(h) below);

(f) in the provision of any technical services, provide those in a competent, professional, and timely manner and in accordance with the Order Form; and

(g) reasonably co-operate with the Customer in all matters relating to the Services.

### **3. CUSTOMER LICENCE AND OBLIGATIONS**

**3.1.** The Customer shall (and shall ensure that the Licensed Users shall also):

(a) only use the Services for its own internal business use and for the benefit of its health and safety compliance or management and to that extent, any Licensed User who is a contractor of the Customer shall only be authorised to use the Services for the business of the Customer and not a third party and accordingly the Customer shall not resell them, provide any bureau service or otherwise seek to reverse engineer the Services (or any intellectual property underlying them) for any use outside of this Agreement or otherwise and comply with the licence grant set out at this Clause 3.1(a), 3.1(e) and 3.1(g);

(b) comply with all applicable legal and regulatory obligations including compliance with applicable health and safety laws, which remain the entire responsibility of the Customer:

(c) ensure that it can access the Platform and acknowledges that Be-Safe is not responsible for the availability of any telecommunications services or lines or mobile and cellular connectivity ("Technical Configurations") or any other matter not provided by Be-Safe and which it does not provide to the Customer to facilitate that access and the Customer shall ensure that it maintains the Technical Configurations to ensure it can access and maintain access to the Services for the Term;

(d) makes payment of the undisputed Charges as provided for in the Order Form;

(e) only allow the number of Licensed Users to access the Platform and use the Services as stated in the Order Form and remain responsible for the use made by the Licensed Users hereunder and for such purposes ensure that a password used by a Licensed User is personal to that Licensed User and not shared with any other person for use by that person as though they are the Authorised User;

(f) report any issue with the Services as soon as reasonably practicable to Be-Safe to enable Be-Safe to assess that issue and remediate it to the extent it is the responsibility of Be-Safe;

(g) Only use the Services in the Territory stated in the Order Form (as may be amended from time to time by agreement between the parties, to reflect the territories of the Customer's Affiliates) or for the purposes stated in the Order Form and for the duration specified in the Order Form and use them in compliance with all applicable laws and regulations.

(h) The Customer acknowledges that the functionality, features and limitations of the Services they have subscribed for shall be limited to that as described in each Order Form depending on the Pricing Package, the SLA and any further documentation describing the Services provided by Be-Safe to the Customer to enjoy further features or functionality, the Customer would have to agree that with Be-Safe in consideration for an upwards adjustment in the Charges and a change to the Pricing Package described in the Order Form.

#### **4. CHARGES AND PAYMENT**

**4.1.** In consideration of the provision of the Services and (as applicable) the Technical Services, the Customer shall pay the undisputed Charges for the Services and/or the Technical Services as set out in the Order Form. Some of those charges shall be stated as payable in advance for the Services and/or Technical Services and some in arrears calculated by reference to usage, all as shown in the Order Form. All undisputed Charges are due and payable by the Customer to Be-Safe within 45 days of the date of invoice unless otherwise stated in an Order Form. The Charges are stated net of Value Added Tax (or other sales tax or impost, duty or tariff) which if lawfully due, shall be charged in addition at the applicable rate ruling on the date of Be-Safe's invoice to Customer. Any undisputed Charges not paid within the payment terms shall attach interest at the rate of 4% over the Bank of England base rate from the date it was due to the date it is paid.

To the extent that any Charges are disputed, the Customer shall advise Be-Safe promptly and within 30 days of the date of the invoice and provide sufficient detail of the basis for the dispute, so that Be-Safe can understand the nature of it and the parties shall in good faith and acting reasonably, seek to resolve the dispute within 14 days of it being made.

**4.2** Be-Safe Technologies Limited will increase prices on the 1st of April each year in line with the CPI (UK Consumer Price Index), plus 3.0%.

#### **5. CANCELLATION AND AUDIT**

**5.1.** Once an Order Form has been accepted by Be-Safe and the Customer it cannot be cancelled unless terminated by the Customer under clause 6 of this Agreement

**5.2.** Be-Safe reserves the right to audit the use by the Customer of the Services by reasonable prior written notice to the Customer, including as to the use of them by the Licensed Users. The form of the audit shall be limited to the Customer promptly providing any data or documents reasonably requested of them by Be-Safe in writing relating to their use of the Services (including by their Licensed Users). The Customer shall ensure that Licensed Users do not share their credentials or access to the Platform with others. In such circumstances, the Customer shall provide all reasonable assistance and cooperation with Be-Safe in that audit.

## **6. TERMINATION**

**6.1.** Without affecting any other right or remedy available to it, a party may terminate the Order Form and the Agreement relating to that Order Form immediately on written notice to the other party, if the other party:

- (a) commits a material breach of its obligations hereunder and, if the failure is remediable, fails to remedy it within 14 days of a notice requiring it to do so;
- (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner that its conduct is inconsistent with it having the intention or ability to give effect to and comply with, the terms of the Agreement;
- (c) becomes insolvent or bankrupt, or has a receiver, administrative receiver or administrator appointed in respect of the whole or any part of its undertaking or assets, or passes a resolution for its liquidation or winding up (other than for the purposes of a bona fide solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or if the other party enters into any voluntary arrangement with its creditors or becomes subject to an administration order, or if any comparable event occurs in any jurisdiction.

**6.2.** On expiry or termination of an Order Form and/or this Agreement, Be Safe shall if requested by the Customer, provide all assistance reasonably required in respect of the transfer of any data relating to the Customer (not including any third party confidential information or any Intellectual Property of Be Safe), in the timescales and format reasonably advised by the Customer (such timescales being no more than three months unless otherwise agreed in writing by Be Safe) to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it.

**6.3.** All obligations and liabilities intended to survive the termination of the Agreement being those at clauses 6, 7, 8, 9 and 11, will remain in full force and effect after termination.

## 7. LIABILITY and INDEMNITY

7.1. Neither party shall limit or exclude its liability for a breach by a party of their data protection obligations under applicable data protection laws as referenced in clause 10 below, or death or personal injury, fraud or any other liability which it would be unlawful to exclude or limit. Subject to the foregoing the total liability that each party shall have to the other under an Order Form for all claims in each consecutive 12-month period commencing from the date of that Order Form shall not exceed the Charges paid or payable under the Order Form in that same consecutive 12-month period.

7.2. None of clause 7.1 shall limit the liability of the Customer to pay the Charges validly due under this Agreement. Subject to the foregoing, neither party shall be liable to the other whether in contract, tort or otherwise (including negligence) for any indirect or consequential loss or damage whatsoever including any loss of revenues, business, Agreements or anticipated savings (being savings that a party anticipated making by entering into this Agreement);

7.3. Subject to clause 7.2, in the event that a third party claims that the Service provided by Be-Safe infringes the intellectual property rights of that third party, Be-Safe shall indemnify the Customer (and its Licensed Users) for and to the extent only, of those third party claims and for such indemnity to be valid, the Customer shall allow Be-Safe sole conduct to resolve those third party claims which shall be binding upon the Customer PROVIDED THAT such settlement shall not impose on the Customer a financial liability to that third party which is not covered by this third party intellectual property claims indemnity.

In the event that Be-Safe is not able to continue to provide the Services (or any part of them) due to that third party claim, Be-Safe shall promptly (promptly in this context meaning no more than two Business Days) notify the Customer with details relating to that third party claim, and Be-Safe shall seek to amend the Services to remove the part(s) which are subject to that third party claim (but in doing so without materially adversely affecting the out- come of the Services) or seek to agree a commercial resolution with the third party upon terms acceptable to Be-Safe within 14 days of becoming aware of a third party claim (such 14 days shall apply if the Service cannot during that 14 day period continue to be used by the Customer, or if the Customer can use the Service, then such reasonable longer period with Be-Safe promptly dealing with it being resolved). If after the 14 days none of the foregoing are feasible to Be-Safe, without affecting any other right or remedy available to it Be-Safe or the Customer may terminate the Services and Be-Safe shall immediately refund to the Customer any Charges paid in advance and for a period from, the date of

termination.

**7.4.** Notwithstanding anything contained in any Order Form or these Terms, the parties agree that no limitation of liability shall apply to Be-Safe's liability to provide indemnity to the Customer for any third party claims for breach of their intellectual property rights under clause 7.3 (and for such purposes any consequential losses claimed by that third party shall be regarded as direct losses of Customer for such purposes), or any breach by Be-Safe of clause 9 and clause 10.

## **8. INTELLECTUAL PROPERTY RIGHTS AND STATISTICS**

Be-Safe hereby warrants that all Intellectual Property Rights in the Services and Platform are owned or licensed to Be-Safe and the Customer acknowledges that any development or enhancement of the Services and/or the Platform shall remain vested in Be-Safe including any Materials created by Be-Safe from the Platform and in the provision of the Services and Technical Services and no Intellectual Property Rights relating thereto shall be assigned to the Customer. The provision of the Services and the Platform may create anonymised performance data which is also the Intellectual Property Rights of Be-Safe (excluding any Customer Personal Data which remains owned by the Customer).

## **9. CONFIDENTIALITY**

The parties agree to treat confidential information of the other in strict confidence and other than allowing the recipient party's directors, employees, contractors and professional advisors access to such confidential information, the recipient party shall not disclose it to any third party without the express prior written consent of the disclosing party. Confidential information shall not include any information which is in the public domain other than as a breach by the recipient party of its confidentiality obligations hereunder. In the event that the recipient party is ordered by a court of competent jurisdiction to disclose any confidential information of the disclosing party, it shall to the extent legally permissible, notify the disclosing party of that fact and thereby allow the disclosing party to seek such protective measures as it can in order to limit the extent of any such disclosure. The foregoing confidentiality obligations shall survive the termination or expiry of all the Order Forms under the Agreement for a period of three years.

## **10. DATA PROTECTION AND SECURITY**

**10.1** Each party considers that they are independent data controllers, and each party shall comply with the Data Protection Act 2018 and UK GDPR (as amended or replaced from time to time) and to the extent that a party is a processor of personal data and not a controller, a Data Processing Agreement agreed between the parties in writing.

**10.2** Be-Safe shall maintain the security of its Platform to the standards published by it from time to time on its website but in doing so, in accordance with all applicable law.

## **11. GENERAL**

**11.1.** The Agreement constitutes the entire agreement between the parties and cancels and supersedes any and all previous agreements (whether oral or written, express or implied) between the parties relating to the subject matter of the Agreement. Except for the express written terms of the Agreement, the parties acknowledge and agree that in entering into the Agreement they have not relied on or been induced by any warranty, statement or representation of the other or any other person relating to the Agreement. Nothing in the Agreement shall affect any liability of a party for fraud or fraudulent misrepresentation.

**11.2.** No term of the Agreement is intended for the benefit of any third party and none of these Terms shall be enforceable by a third party.

**11.3.** No failure or delay by a party in exercising or enforcing any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of such right, power or privilege.

**11.4.** No variation of this Agreement or any Order Form shall be effective unless it is in writing and signed by the parties.

**11.5.** Neither party may assign or transfer any of its rights and obligations under this agreement without the prior written consent of the other party.

**11.6.** The Agreement shall be governed by and construed in accordance with the laws of the Governing Jurisdiction. The Parties submit to the exclusive jurisdiction of the Governing Jurisdiction over any claim or matter arising under or in connection with this Agreement.



**11.7.** If at any time during the Agreement, either party, is reasonably prevented from performing their obligations hereunder (the 'Affected Party'), by reasons of any present or future statute, law, regulations, order, judgment, whether legislative, executive or judicial, act of God, earthquake, fire, flood, a disease outbreak, epidemic, pandemic, explosion, casualty, lockout, strike, labour controversy (including but not limited to the threat of such), riot, war or armed conflict, threat or act of terrorism, severe illness, endemic, or for any other material reason which is beyond the reasonable control of the Affected Party, then the Affected Party's obligations hereunder shall be suspended for as long as such force majeure event occurs and such non-performance shall not be deemed to be a breach of this Agreement. Any such non-performance by Be-Safe as a result of a matter under this clause 11.7 shall not render Customer liable for payment for those Services for the period of the force majeure affecting Be-Safe, but such non-performance shall not be deemed a breach by either party.

Notwithstanding the foregoing if the period of delay or non-performance continues for 14 continuous days the party not affected may terminate this agreement by giving written notice with immediate effect to the Affected Party.

**11.8.** Any notice to be sent by one party to the other shall be sent to their last known address and shall be deemed delivered within 3 days of posting if sent by first class post, or if sent by email, the day following the email being sent if the email is not returned stated as undelivered.

## **12. DEFINITIONS AND INTERPRETATION**

**12.1.** In the Agreement, unless the context otherwise requires:

"Affiliates" means a party under the control of, subsidiary to, or under the common control of another company in the same group of companies as provided for under the Companies Act 2006.

"Be-Safe" means the Be-Safe Technologies Ltd legal entity named on an Order Form(s)

"Business Day" means 9:00 am to 5:00 pm on any day (other than a Saturday, Sunday or public holiday in England) on which clearing banks in the City of London are open for the transaction of normal sterling banking business.

"Charges" means such charges as are payable by Customer to Be-Safe in respect of the provision of the Services and/or Technical Services as set out in the Order Form. If no price is set out in the Order Form, the price previously paid by the Customer for equivalent supplies. "Agreement" means the Agreement between the Customer and Be-Safe as set out in these Terms.

"Customer" means the customer named in the Order Form.

"Governing Jurisdiction" means English Law and the courts in England, unless otherwise stated in an Order Form.

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, source code, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world "Order Form" means the written order placed with Be Safe by the Customer for the supply of Services or Technical Order Form.

"Licensed Users" means the number of licensed users which are authorised to access the Services under the Order Form each licence user being an individual (as may vary from time to time in accordance with this Agreement and the Order Form).

"Materials" means any reports or other data generated by the Platform from the use of the Services (but not including the Services themselves nor any technology associated with the Platform)

"Platform" means Be Safe's platform which the Customer (and its Licensed Users) shall access the Services.

"Pricing Package" means the Charges under an Order Form for a particular package of Services having regard to the number of Licensed Users with a packaged pricing associated with the limits on use described in that Pricing Package.

"Services" means Be-Safe's services supplied to the Customer under and as described in an Order Form further details of which are published from time to time on the Be-Safe website.

"SLA" means the availability and support that Be-Safe will provide in the provision of the Services as set out in the service level agreement agreed by the Parties on or around the date of this Agreement;

"Technical Order Form" means an order between Be-Safe and the Customer for certain technical and/or professional services in order to enable the Customer to integrate with the Platform and/or any other assistance which Be-Safe provides to the Customer.

"Terms" means these terms and conditions of purchase.

**12.2.** In these Terms, references to:

- (a) the "parties" or "party" are references to Be-Safe and the Customer or one of them as applicable.
- (b) a third party is a reference to a person who is not a party to the Agreement;
- (c) the singular shall include the plural and vice versa.
- (d) a statute, statutory instrument, regulation, order or licence are references to that statute, statutory instrument, regulation, order or licence as substituted, varied or re-enacted from time to time.

**12.3.** The headings in these Terms are for convenience only and shall not affect the construction of these Terms.

**12.4.** The words "include" and "including" shall be construed without limitation.

**12.5.** A reference to writing or written includes fax and email.