

## **DYNAMIC HEALTH TODAY**

### **USER TERMS AND CONDITIONS OF USE OF SUBSCRIPTION SERVICES**

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## **1. INTRODUCTION**

- 1.1. Dynamic Health Today (“DHT”) is a telehealth platform that facilitates connections between users and independently operating registered mental health Practitioners, such as psychologists and counsellors.
- 1.2. DHT’s subscription services include online mental health services, workshops, self-therapy toolkits and other related resources.
- 1.3. These Terms and Conditions (“Terms”) govern the use of DHT’s Platform, platform, and subscription services. By using the DHT platform, the user acknowledges and agrees to be bound by these Terms.

## **2. RELATIONSHIP BETWEEN USER, PLATFORM AND PRACTITIONERS**

- 2.1. The User acknowledges that the Practitioners operating on the DHT platform do so as independent contractors. DHT does not supervise, direct, or control the clinical judgment or services delivered by any Practitioner.
- 2.2. Users understand and agree that DHT is not a healthcare provider, but a technology facilitator alternatively a platform through and on which the User is connected, at the special instance and request and with the consent of the User, to an Independent mental health practitioner.
- 2.3. The User acknowledges that the Practitioners operating on the DHT platform do so as independent contractors and the nature of their services is limited to Mental wellness coaching, support and non-clinical services;
- 2.4. The User acknowledges that the services offered by the Independent Practitioners is not a substitute for or intended to be misconstrued as diagnostic or clinical treatment based therapy;
- 2.5. Each User confirms and acknowledges that DHT is not responsible for any advice, diagnosis, treatment, or other service delivered by any of the independent practitioners that the User may be connected with through the use and subscription of any of the services of the DHT Platform.

## **3. TERMS AND CONDITIONS OF USE OF SUBSCRIPTION SERVICES**

- 3.1. This document sets out the terms and conditions of the agreement (“the User Terms”), the User’s rights and responsibilities as the User/client/patient (the “User”) of the DHT platform (the “Platform”) and in the therapeutic relationship, as well as the scope and limitations of those rights.
- 3.2. This document, the User Terms of Use, together with the Platform Terms and Conditions set out the terms and conditions of Dynamic Health Today (Pty) Ltd, No.2016/229172/07, (“DHT”), for the access and use of the information, products, subscription and general services and functions provided on [www.dynamichealth.today](http://www.dynamichealth.today),
- 3.3. By accessing DHT’s Platform and using DHT’s subscription services the User acknowledges the legal obligations created by it and agrees to these

Terms of Use and agrees to be bound by it.

- 3.4. The User further acknowledges and accepts that the relationship between:
  - 3.4.1. The User as the client or patient
  - 3.4.2. Alternatively, as a Platform User,
  - 3.4.3. The DHT platform and website, and
  - 3.4.4. The Practitioner
- 3.5. are all distinct and uniquely identifiable and separate relationships governed by inter alia, the Client Terms of Use, the Platform Terms and Conditions and the Practitioner Terms of Use.
- 3.6. Should the User (“the patient,” “the client” or “user”) disagree with any of the terms, contained in any of the aforesaid documents, the User must refrain from accessing the Platform and/or using the subscription services.
- 3.7. Notwithstanding anything to the contrary the terms and conditions of the use of the Platform must be read in conjunction with the User Terms, as if specifically incorporated herein.
- 3.8. If the User is under the age of 18, the User must obtain both the User parents’ or legal guardians’ advance authorization, permission and consent, to be bound by these Terms before purchasing, subscribing to or accessing any products or general free of use services available on the Platform. Such consent is deemed to have been obtained by the minor from the parents or legal guardians, once the client has accepted, by either clicking “I Accept”, selecting or entering any part of the DHT Platform and the terms and conditions applicable to the services the client is requesting from DHT and or any of the service providers of DHT.
- 3.9. By further using the Platform, and/or clicking “accept,” the User warrants that the User has obtained the required consent, and/or are 18 (eighteen) years of age or older and of full legal capacity. If the User is under the age of 18 (eighteen) or if the User is not legally permitted to enter into a binding agreement, then the User may use the Platform only with the involvement and supervision of the User’s parent or legal guardian. If the User’s parent or legal guardian supervises the User and gives his/her consent, then such person agrees to be bound to these Terms and to be liable and responsible for the User and all the User’s obligations under these Terms.
- 3.10. By subscribing to the DHT Platform and/or accessing the Website, the User confirms and agrees that all the information that the User provided in or through the DHT Platform, and the information that the User provides on or through the DHT Platform in the future, is accurate, true, current and complete. Furthermore, the User agrees that during the term of this Agreement the User will make sure to maintain and update this information so it will continue to be accurate, current, and complete.

- 3.11. By further using the Platform you as the individual User warrant that you are 18 (eighteen) years of age or older and of full legal capacity. If you are under the age of 18 (eighteen) or if you are not legally permitted to enter into a binding agreement, then you may use the Platform only with the involvement and supervision of your parent or legal guardian. If your parent or legal guardian supervises you and gives his/her consent, then such person agrees to be bound to these Terms and to be liable and responsible for you and all your obligations under these Terms.
- 3.12. Notwithstanding any representations made by you the User with regards to your age and/or consent, to the extent permissible by law, neither DHT, its affiliates, shareholders, agents, consultants or employees shall be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the use of, or the inability to access or use the content of the Platform, DHT's subscription and general services or any functionality thereof, or the information contained on the Platform, or of any linked website, even if DHT knows or should reasonably have known or is expressly advised thereof.
- 3.13. The User agrees, confirms, and acknowledges that the User is responsible for maintaining the confidentiality of the User's password and any other security information related to the User's account (collectively "Account Access"). We advise the User to change the User's password frequently and to take extra care in safeguarding the User's password.
- 3.14. The User agrees to notify us immediately of any unauthorized use of the User Account Access or any other concern for breach of the User account security.
- 3.15. The User agrees, confirms, and acknowledges that neither DHT nor the Practitioner will be liable for any loss or damage that incurred as a result of someone else using the User's account, with or without the User's consent and/or knowledge.
- 3.16. The User agrees, confirms, and acknowledges that the User is solely and fully liable and responsible for all activities performed using the User's Account Access. The User further acknowledges and agrees that DHT can and will hold the User liable and responsible for any damage or loss incurred as a result of the use of the User's Account Access by any person whether authorized by the User or not, and the User, by accepting these Terms agrees to indemnify DHT for any such damage or loss.
- 3.17. The User agrees and commits not to use the account or Account Access of any other person for any reason.
- 3.18. The User agrees and confirms that the User's use any of the functions of the DHT Platform, including the Subscription Services, are for the User's own personal use and that the User is not using the DHT Platform or any of the Subscription Services for or behalf of any other person or organization for whatever reason.

- 3.19. The User agrees and commits not to interfere with or disrupt, or attempt to interfere with or disrupt, any of our systems, services, servers, networks or infrastructure, or any of the DHT Platform's systems, services, servers, networks or infrastructure, including without limitation obtaining unauthorized access to the aforementioned.
- 3.20. The User agrees and commits not to make any use of the DHT Platform for the posting, sending or delivering of either of the following: (a) unsolicited email and/or advertisement or promotion of goods and services; (b) malicious software or code; (c) unlawful, harassing, privacy invading, abusive, threatening, vulgar, obscene, racist or potentially harmful content; (d) any content that infringes a third party right including intellectual property rights; (e) any content that may cause damage to a third party; (f) any content which may constitute, cause or encourage a criminal action or violate any applicable law.
- 3.21. The User agrees and commits not to violate any applicable law, albeit, municipal, national or international law, statute, ordinance, rule, regulation or ethical code or code of conduct in relation to the User's use of the DHT Platform, Subscription Services and User relationship with the relevant Practitioner(s) and DHT itself.
- 3.22. If the User receives any file from us or from a DHT employee or independent service provider or Practitioner, whether through any of the DHT Platforms or not, the User agrees to check and scan this file for any virus or malicious software prior to opening or using this file.
- 3.23. The User will indemnify DHT, and hold DHT harmless from and against any and all claims, losses, causes of action, demands, liabilities, costs or expenses (including, but not limited to, litigation and reasonable attorneys' fees and expenses) arising out of or relating to any of the following: (a) the User access to or use of the DHT Platform; (b) any actions made with the User account or Account Access whether by the User or by someone else, whether directly or indirectly associated with the User; (c) the User's violation of any of the provisions of this Agreement; (d) non-payment for any of the Subscription services (including but not limited to Practitioner's Services) which were provided through the DHT Platform; (e) the User's violation of any third party right, including, without limitation, any intellectual property right, publicity, confidentiality, property or privacy right. This clause shall survive expiration or termination of this Agreement.
- 3.24. The User confirms and agrees to use only credit cards or other payment means (collectively "Payment Means") on PayPal, PayFast, Apple Pay etc., which the User is duly and fully authorized to use, and that all payment related information that the User provided and will provide in the future, to or through the DHT Platform, is accurate, current and correct and will continue to be accurate, current and correct.

#### **4. NON-CIRCUMVENTION**

- 4.1. The User undertakes that the User will not at any time, whether directly or indirectly, endeavor to or actually circumvent the DHT Platform by dealing

directly or endeavoring to deal directly, or indirectly, with any Practitioner that DHT has connected the User with, or the Practitioner that DHT has introduced the User to, to the exclusion of the DHT Platform;

- 4.2. In the event that the User accepts or solicits Services contrary to the provisions of clause 3.1 above, the User unequivocally agrees and undertakes to provide DHT with a schedule of all Services accepted by the User, and the User further undertakes and agree to compensate DHT for the Service and any other fees lost as a result of such circumvention.
- 4.3. The User undertakes to pay the compensation to DHT, stipulated in clause 3.2 above, into DHT's nominated bank account within 30 days of DHT's demand or of such circumvention having come to your attention, whichever is earlier.

## **5. RISK, WARRANTY, LIABILITY & INDEMNITY**

- 5.1. The User acknowledges and accepts that there is no warranty or claim to the reliability, accuracy, timeliness, usefulness, adequacy, or completeness of the services provided inter alia:
  - 5.1.1. Through or on the DHT Website;
  - 5.1.2. Using telemedicine and/or teletherapy;
  - 5.1.3. Using the Practitioners;
  - 5.1.4. Using the DHT platform;
  - 5.1.5. Attending and or watching and or listening to DHT Webinars;
  - 5.1.6. Using DHT Self therapy Toolkits; and/or
  - 5.1.7. Any other services which may be accessible through the DHT Website, the DHT Platform and/or its subscription services from time to time.
- 5.2. DHT can, neither through its employees, directors, shareholders, members, independent contractors and/or any associated persons, nor any of the attending Practitioners, either explicitly or by implication give an undertaking, and/or make a warranty and/or a claim as to the correctness and/or the appropriateness and/or the effectiveness of any of the content and/or any information and/or responses and/or course of treatment provided to the User by the Practitioner.
- 5.3. DHT does not guarantee in any way that engagement with a Practitioner via the DHT platform is the appropriate course of action and/or the only course of action for the User's particular health care problem.
- 5.4. DHT and the Practitioner shall not be liable for any damages of any nature, including but not limited to personal injury, wrongful death, or loss of use, as a result of the User using the services and/or the inability to use the services.

- 5.5. The User indemnifies and holds DHT, the Practitioner and their affiliates harmless against all losses, liability, expenses, damages and costs, including all attorney's fees, arising out of or related to any breach of the terms of use by the User and or any of his or her affiliates, the User's relationship with DHT and the Practitioner any negligent or wrongful action or omission by the User related to the User's use of any and all services through DHT, or any negligent or wrongful use of the services by the User or any other person acting on the User's behalf.
- 5.6. The User acknowledges and accepts that the use of any of the services (subscription and general) on the Platform, DHT's social media sites and the DHT's platform is entirely at the User's own risk.
- 5.7. If any applicable law does not allow the limitation of liability as set forth above, the limitation will be deemed modified solely to the extent necessary to comply with applicable law.
- 5.8. DHT operates under the jurisdiction and legal framework of the Republic of South Africa.
- 5.9. The Independent Practitioners are registered with the Health Professions Council of South Africa (HPCSA) and may not be licensed in the jurisdiction where an international user resides.
- 5.10. By using this platform, international users (e.g., U.S. residents) waive any right to claim that services provided constitute psychological care under local (non-South African) laws.
- 5.11. DHT disclaims all liability for failure to meet international licensing, malpractice, or healthcare compliance standards.
- 5.12. This entire section shall survive the termination or expiration of this Agreement.

## **6. CROSS-BORDER LEGAL RISK AND INDEMNITY**

- 6.1. International users agree that all services rendered through the DHT platform are performed and received in South Africa.
- 6.2. Users indemnify and hold harmless DHT, its directors, affiliates, and contractors against any legal claims, losses, or damages arising from conflicts with the user's local health laws or regulatory frameworks.
- 6.3. By clicking "I Accept" or proceeding to use the platform, users acknowledge:
- 6.4. The practitioner is not licensed in their jurisdiction (if international).
- 6.5. Services are governed by South African law. - In case of emergencies, local emergency services should be contacted directly.

## **7. CONFIDENTIALITY AND DATA PRIVACY**

- 7.1. Teletherapy sessions and issues discussed therein remain confidential

between the Practitioner and the User. In this regard, confidentiality means that the Practitioner has a responsibility to keep information obtained during teletherapy confidential, including all identifying information about the User's assessment and treatment.

- 7.2. All personal information is handled in accordance with South Africa's Protection of Personal Information Act (POPIA). Users acknowledge that DHT does not guarantee HIPAA compliance and that data may be hosted in South Africa or internationally with encryption standards.
- 7.3. The User acknowledges that there are circumstances, (not including where legal exceptions exist and are mandated by law), where the Practitioner may be required to breach this confidentiality. In instances where confidential information is requested for release by a court of law for instance, the Practitioner will only do so after the client has obtained the necessary permissions from the User in writing where appropriate, necessary, and possible.
- 7.4. In certain situations, mental health professionals are required by law to reveal information obtained during therapy to other persons or agencies without the User's consent. In such situations, the Practitioner will not be required to inform the User of the Practitioner's actions nor obtain a release form.
- 7.5. Exceptions to confidentiality are applicable inter alia the following situations:
  - 7.5.1. Cases of acknowledged or suspected abuse/neglect of children. If the Practitioner has knowledge of a child or suspects that a child under 18 has been the victim of child abuse or neglect, the law requires that the Practitioner files a report with the appropriate governmental agency. The Practitioner is also required to report it if the Practitioner knows or reasonably suspect that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way (other than physical or sexual abuse, or neglect). Once a report is filed, the Practitioner may be required to provide additional information.
  - 7.5.2. Cases of acknowledged or suspected abuse/neglect of the elderly or dependent adult. If the Practitioner observes or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elderly or dependent adult, the law requires that the Practitioner reports it to the appropriate government agency. Once such a report is filed, the Practitioner may be required to provide additional information.
  - 7.5.3. Cases of potential harm to self. If a client threatens to harm him- or herself the Practitioner is obligated to seek hospitalization for the client or to contact family members or others who can intervene, provide assistance, help or provide protection.



- 7.5.4. Cases of potential harm to others. If a client communicates a serious threat of physical violence against an identifiable victim, the Practitioner must take protective actions, including notifying the potential victim and contacting the police. The Practitioner may also seek hospitalization for the client, or contact others who can assist in protecting the victim.
- 7.5.5. The Practitioner may disclose confidential information in proceedings brought against the professional by a client in order to defend him or herself as a professional.
- 7.5.6. Disclosure may occur as mandated by the courts of law, for example, if courts subpoena the client files. If subpoenaed the Practitioner is required by law to appear as a witness in court in matters concerning the client, however, in such cases the psychologist will indicate they are appearing as an unwilling witness. If the User, is involved in court proceedings or may become involved in litigation, the User is urged to consult the User's legal counsel prior to signing this agreement to determine whether a court would be likely to order the psychologist to disclose information.
- 7.5.7. Disclosure of personal details may occur in order to obtain payment for DHT subscription services. The terms and conditions of *PayPal*, *PayFast* etc. can be found on [www.PayFast.co.za](http://www.PayFast.co.za) & Paypal on <https://www.paypal.com/za/legalhub/paypal/home>
- 7.6. Please note that teletherapy and online counselling cannot replace or be compared to traditional face-to-face counselling, and is an entirely new process with its own benefits and disadvantages. It is the responsibility of the User to conduct each session in an environment in which the User feels safe and where their information remains confidential.
- 7.7. Neither DHT nor the Practitioner can under any circumstances be held liable for breach of confidentiality due to the negligence of the User.
- 7.8. This entire section shall survive the termination or expiration of this Agreement.
- 8. SUBSCRIPTION SERVICES, PAYMENT & PAYMENT METHODS**
- 8.1. DHT offer subscription packages for the use of its services for Individuals, Couples and Teens.
- 8.2. All payments must be made via PayPal, PayFast etc. in advance and prior to making use of the selected DHT Subscription Service.
- 8.3. PayPal, & PayFast terms and conditions can be found at [www.PayFast.co.za](http://www.PayFast.co.za); & <https://www.paypal.com/za/legalhub/paypal/home>
- 8.4. DHT reserves the right to change and amend the products, prices and rates quoted on this Platform from time to time without notice.

## **9. MEDICAL AID CLAIMS (SOUTH AFRICAN RESIDENTS ONLY)**

- 9.1. DHT does not claim from the Medical Aid on behalf of the User.
- 9.2. Individual voices can be generated after each session and provided together with relevant ICD 10 codes for submission to the User's medical aid, but the User is required to submit and claim from the User's medical aid.
- 9.3. Should the User have any further queries regarding medical aid claims or ICD-10 codes, same can be discussed with the relevant Practitioner or directed at [info@dynamichealth.today](mailto:info@dynamichealth.today).

## **10. SUSPENSION AND CANCELLATION**

- 10.1. The User will be entitled to the DHT Subscription Services, for so long as payment is timeously made to DHT for the use thereof.
- 10.2. Both DHT and the User shall be entitled to cancel this Agreement, without any reason and recourse to itself, on 30 (thirty) days' notice by cancelling the subscription online through the DHT Platform and/or on the DHT App.
- 10.3. In respect of Third Party Benefit Programs, the User will be entitled to make use of the DHT Subscription and General Services:
  - 10.3.1. to the extent the agreement between the Third Party Benefit Program and DHT remains legally in force and has not been terminated; and
  - 10.3.2. for so long as the Third Party Benefit Program has paid for such service.
- 10.4. DHT will be entitled, but not obliged to:
  - 10.4.1. suspend a selected DHT Subscription Service, without any recourse to itself, pursuant to any unforeseen event beyond its reasonable control and which prevents its performance; and/or
  - 10.4.2. suspend a selected DHT Subscription Service and/or cancel or terminate this Agreement if and to the extent the User and/or Third Party Benefit Program fails, neglects and/or refuses to make any payment timeously and/or at all; and/or cancel or terminate this Agreement, without any recourse to itself, if and to the extent any agreement by and between DHT and a Third Party Benefit Program is suspended, terminated and/or expires.

## **11. COMPLAINTS PROCESS**

- 11.1. Complaints of a professional nature against a Service Provider registered with the HPCSA can be lodged with the HPCSA by completing the relevant forms found at <https://www.hpcs.co.za/> and be directed to the Registrar, P O BOX 205, Pretoria, 0001, 553 Madiba Street, Arcadia 0083; Legalmed@hpcs.co.za; Tel: 012 338 9300; Fax: 012 328 4895 or emailing [legalmed@hpcs.co.za](mailto:legalmed@hpcs.co.za).

- 11.2. All complaints regarding the general use of the platform, website and or services provided on the platform and website can be sent to [info@dynamichealth.today](mailto:info@dynamichealth.today).

## **12. CONTENT OF THE PLATFORM**

- 12.1. DHT may use the services of third parties to provide information or provide services to the User on or through the Platform. DHT has no control over this information and makes no representations or warranties of any nature as to its accuracy, appropriateness, or correctness. The User agrees that such information is provided “as is” and that DHT and its online partners shall not be liable for any losses or damages that may arise from the User’s reliance on it, howsoever these may arise.

12.1.1. DHT makes no representations or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, data, and/or content on the Platform, including without limitation

12.1.2. DHT does not warrant that the Platform or information or downloads shall be error-free or that they shall meet any particular criteria of performance or quality. DHT expressly disclaims all implied warranties, including without limitation, warranties of merchantability, fitness for a particular purpose, non-infringement, compatibility, security and accuracy;

12.1.3. whilst DHT has taken reasonable measures to ensure the integrity of the Platform and its contents, no warranty, whether express or implied, is given that any files, downloads or applications available via this Platform are free of viruses, or any other data or code which has the ability to corrupt, damage or affect the operation of the User’s system; and

12.1.4. DHT disclaims any responsibility for the verification of any claims. Information published on this Platform may be done so in the format in which DHT receives it and statements from external parties are accepted as fact.

## **13. LINKED THIRD PARTY WEBSITES AND THIRD PARTY CONTENT**

- 13.1. DHT may provide links to third party websites on the Platform. These links are provided to the User for convenience purposes only and DHT does not endorse, nor does the inclusion of any link imply DHT’s endorsement of, such websites, their owners, licensees or administrators or such websites’ content or security practices and operations.

- 13.2. While DHT tries to provide links only to reputable websites or online partners, DHT cannot accept responsibility or liability for the information provided on other websites. Linked websites or pages are not under, nor subject to, the control of DHT. DHT is not responsible for and gives no warranties or makes any representations in respect of the privacy policies or practices of linked or any third party or advertised websites on the

Platform.

- 13.3. The User agrees that DHT shall not be held liable, directly or indirectly, in any way for the content, the use or inability to use or access any linked website or any link(s) contained in a linked website, nor for any loss or damage of any sort incurred as a result of any dealings with, or as the result of the presence of such third party linked websites on the Platform. Any dealings that the User may have with any linked websites, including advertisers, found on the Website, are solely between the User and the third party website.

#### **14. USAGE RESTRICTIONS**

- 14.1. The User hereby agrees that it shall not itself, nor through a third party:
- 14.2. copy (other than for backup, archival or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, license, sub-license, encumber or in any other way deal with any part of the Platform for any reason and in any manner, unless it is consistent with the intent and purpose of these Terms;
- 14.3. decompile, disassemble, or reverse engineer any portion of the Platform;
- 14.4. write and/or develop any derivative of the Platform or any other software program based on the Platform;
- 14.5. Modify or enhance the Platform. In the event of a user effecting any modifications or enhancements to the Platform in breach of this clause, such modifications and enhancements shall be the property of DHT;
- 14.6. without DHT's prior written consent, provide, disclose, divulge, or make available to or permit the use of or give access to the Platform by persons other than the User;
- 14.7. remove any identification, trademark, copyright, or other notices from the Platform;
- 14.8. post or transmit, by means of reviews, comments, suggestions, ideas, questions or other information through the Platform, any content which is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually-explicit, profane or hateful, or racially, ethnically or otherwise objectionable content of any kind; and/or
- 14.9. Notwithstanding anything contained to the contrary in these Terms, use the Platform for any purpose other than personal, non-commercial and information purposes.

#### **15. SECURITY**

- 15.1. In order to ensure the security and reliable operation of all the services to all DHT's users, DHT hereby reserves the right to take whatever action it may deem necessary to preserve the security, integrity and reliability of its

network and back-office applications.

- 15.2. The User may not utilize the Platform in any manner which may compromise the security of DHT's networks or tamper with the Platform in any manner whatsoever, which shall include without limitation, gaining or attempting to gain unauthorized access to the Platform, or delivering or attempting to deliver any unauthorized, damaging or malicious code to the Platform, all of which is expressly prohibited. Any person or entity which does so, or attempts to do so, shall be held criminally liable. Further, should DHT suffer any damage or loss, civil damages shall be claimed by DHT against the User.
- 15.3. Any user who commits any of the offences detailed in Chapter 13 of the Electronic Communications and Transactions Act 25 of 2002 ("ECTA") (specifically sections 85 to 88 (inclusive)) shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by DHT and its affiliates, agents and/or partners.

## **16. INTELLECTUAL PROPERTY RIGHTS**

For the purpose of this clause, the following words shall have the following meanings ascribed to them:

- 16.1. "Intellectual property rights" means all and any of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under license by DHT, now or in the future, including without limitation, DHT's rights, title and interest in and to all technology, source code/s, trade secrets, logos, systems, methods, trademarks, trade names, styles, insignia, designs, patents and copyright, and all similar proprietary rights which may subsist in any part of the world, whether registered or not.
- 16.2. All copyright and other intellectual property rights in all content, trademarks, software, data, material, including logos, databases, text, graphics, icons, hyperlinks, confidential information, designs, agreements, and multimedia works, published on or via the Platform ("proprietary material"), are the property of, or are licensed to, DHT and as such are protected from infringement by local and international legislation and treaties.
- 16.3. By submitting reviews, comments and/or any other content (other than the User personal information) to DHT for posting on the Platform, the User automatically grant DHT and its affiliates a non-exclusive, royalty-free, perpetual, irrevocable right and license to use, reproduce, publish, translate, sub-license, copy and distribute such content in whole or in part worldwide, and to incorporate it in other works in any form, media, or technology now known or hereinafter developed, for the full term of any copyright that may exist in such content. Subject to this license, the User retains any and all rights that may exist in such content.
- 16.4. All rights not expressly granted are reserved and no right, title or interest in any proprietary material or information contained in this Platform is granted to the User.

- 16.5. Except with DHT's express written permission, no proprietary material from this Platform may be copied or retransmitted.
- 16.6. Irrespective of the existence of copyright, the User acknowledges that DHT is the proprietor of all material on the Platform (except where a third party is indicated as the proprietor), whether it constitutes confidential information or not, and that the User has no right, title or interest in any such material.
- 16.7. DHT authorizes the User only to view, copy, temporarily download to a local drive and to print the content of this Platform, or any part thereof, provided that such content is used for personal purposes and for information purposes only, and such content is used for non-commercial purposes.

## **17. DHT PRIVACY AND COOKIE POLICY**

Please see our complete Privacy and Cookie Policy document, which Policy forms part of these Terms as if it is specifically incorporated herein. DHT takes the User's privacy seriously and is committed to protecting the User personal information in compliance with POPIA. We use the personal information that we collect from the User in accordance with our Privacy and Cookie Policy.

## **18. BREACH OR CANCELLATION BY DHT**

- 18.1. DHT is entitled without notice, in addition to any other remedy available to it at law or under these Terms, including obtaining an interdict, to cancel these Terms, limit or deny such user use of the Website and services, or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to DHT's right to claim damages, should any user:
  - 18.1.1. breach any of these Terms;
  - 18.1.2. in the sole discretion of DHT, use the Website in an unauthorized manner; or
  - 18.1.3. Infringe any statute, regulation, ordinance, or law.
- 18.2. Breach of these Terms entitles DHT to take legal action without prior notice to the User and the User agrees to reimburse the costs associated with such legal action to DHT on an attorney and own client scale.

## **19. COMPLIANCE WITH SECTION 43(1) OF ECT ACT**

In compliance with section 43(1) of the ECT Act, the following is noted:

- 19.1. Full name: Dynamic Health Today (Pty) Ltd
- 19.2. Registration number: 2016/229172/07
- 19.3. Physical address (for service of legal processes): 79 Hamlin Street, Highlands North Ext Johannesburg, South Africa 2192
- 19.4. Postal Address: PO Box 737, Florida Hills, South Africa, 1716

- 19.5. Telephone number: 0837590351
- 19.6. Website address: [www.dynamichealth.today](http://www.dynamichealth.today)
- 19.7. E-mail address: [info@dynamichealth.today](mailto:info@dynamichealth.today)
- 19.8. Names of office bearers: LC Fick –Director, JCA Fick -Director

## **20. COMPLIANCE WITH LAWS**

The User shall comply with all applicable laws, statutes, ordinances, and regulations of the Republic of South-Africa pertaining to the User use of and access to this Platform.

## **21. NOTICES**

Except as explicitly stated otherwise, any notices shall be given by email to [info@dynamichealth.today](mailto:info@dynamichealth.today) (in the case of DHT) or to the e-mail address the User have provided to DHT (in the User's case), or such other address that has been specified. Notice shall be deemed given 48 (forty-eight) hours after an email is sent, unless the sending party is notified that the email address is invalid. Alternatively, DHT may give the User notice by registered mail, postage prepaid and return receipt requested, to the address which the User has provided to DHT. In such case, notice shall be deemed given 7 (seven) days after the date of mailing. The User acknowledge that all agreements, notices, or other communication required to be given in terms of the law, or these Terms may be given via electronic means and that such communications shall be "in writing". Notwithstanding anything to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address(es) for that purpose.

## **22. DISCLAIMER**

- 22.1. These subscription services may be reviewed, updated, added to and/or removed by DHT from time to time, meaning that the above list of subscription services may change. This list is not exhaustive, and it may be varied from time to time to bring it in line with the current subscription and general services offered by DHT.
- 22.2. Where Practitioners are in doubt whether an online consultation will be in the best interest of the client, the clients are advised to present themselves for a face-to-face consultation or to seek assistance at a health care facility closest to them to seek further professional medical advice, consultation, examination, diagnosis or treatment.
- 22.3. DHT cares about your mental health, and should you require emergency assistance or are a possible suicide risk, you can find a comprehensive list of emergency helplines here: <https://dynamichealth.today/helplines/>

## **23. GENERAL CLAUSES**

- 23.1. These Terms shall be governed in all respects by the laws of the Republic

of South Africa as such laws are applied to agreements entered into and to be performed within South Africa.

- 23.2. By submitting a request for online therapeutic services, the User is offering to make use of DHT's subscription services, which offer shall be deemed to be communicated to the administrator of DHT's online platform in the Republic of South Africa, Johannesburg and the acceptance of such offer to receive our service shall be deemed to be accepted in the Republic of South Africa, Johannesburg, irrespective of where the acceptance of the offer (which occurs in the Republic of South Africa, Johannesburg) is read by the User/recipient of DHT's online services.
- 23.3. All services, whether rendered by way of text messaging, audio chat or video conferencing, will be deemed to be performed and received in the Republic of South Africa, Johannesburg, irrespective of where the recipient of the online services may be physically present at any given time.
- 23.4. As a result of the above, the Laws of the Republic of South Africa, including any regulations, guidelines and/or rules as stipulated by any applicable governing body such as the Health Professions Council of South Africa ("HPCSA") in relation to the provision of psychological/counselling services, privacy, jurisdiction, liability and non- liability shall apply in relation to the provision or non-provision of services.
- 23.5. This Platform is controlled, operated and administered by DHT from its offices within the Republic of South Africa. DHT makes no representation that the content of the Platform is appropriate or available for use outside of South Africa. Access to the Platform from territories or countries where the content of the Platform is illegal is prohibited. Users may not use this Platform in violation of South African export laws and regulations. If the User accesses this Platform from locations outside of South Africa, that user is responsible for compliance with all local laws.
- 23.6. DHT reserves the right, in its sole discretion, to amend and/or replace any of, or the whole of, the Terms. Such amendments shall supersede and replace any previous Terms and shall be made available on the Platform. Each time a user accesses the Platform and/or uses the services, the User shall be deemed to have consented, by such access and/or use, to the Terms, as amended and/or replaced by DHT from time to time. If the User is not satisfied with the amended Terms, the User should refrain from using the Platform.
- 23.7. We will however give the User prior notice where we have collected personal information from the User and the purpose for which we collected that information is affected by the intended amendment.
- 23.8. If there is anything in these Terms that the User do not understand then please contact us as soon as possible – see clause 16 above for contact details. Please note that calls to us are charged at national rates and may be monitored for training, security and quality assurance purposes.
- 23.9. DHT does not guarantee continuous, uninterrupted or secure access to



our services, as the operation of our Platform may be interfered with as a result of a number of factors which are outside of our control.

- 23.10. DHT's failure to act with respect to a breach by the User or others does not constitute a waiver of our right to act with respect to subsequent or similar breaches.
- 23.11. If DHT and/or the Practitioner agree, either explicitly, tacitly or by implication, to waive their rights in one circumstance, it does not mean they agree to waive their rights in all circumstances or in that same circumstance on another occasion.
- 23.12. The User shall not be entitled to cede the User rights or assign the User rights or delegate the User obligations in terms of these Terms to any third party without the prior written consent of DHT.
- 23.13. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 23.14. These User Terms set forth the entire understanding and agreement between the User, DHT and the Practitioner with respect to the subject matter hereof.
- 23.15. Each of the provisions of this Agreement is to be treated as distinct, individual and separately enforceable from the other provisions. Should any provision of the User Terms become invalid, or be invalid, or unenforceable, then that provision shall be deemed to be severable from the remaining provisions of the User Terms which shall continue to be in full force and effect.
- 23.16. The head notes to the paragraphs to these Terms are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 23.17. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## **24. INTERPRETATION**

- 24.1. The headings of the clauses in these User Subscription and Terms of Use are for purposes of convenience and reference only and shall not be used in the interpretation, nor modify or amplify the terms hereof nor any clause hereof. Unless a contrary intention appears–
- 24.2. Words importing any one gender include the other gender, the singular includes the plural and vice versa and a natural person includes juristic persons (corporate or unincorporated) and vice versa.

- 24.3. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 24.4. References to clauses and annexures are to the clauses and annexures of this Agreement; references to paragraphs are to paragraphs of the relevant annexures to this Agreement.
- 24.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 24.6. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a business day, in which case the last day shall be the next succeeding business day.

## **25. DEFINITIONS AND APPLICABLE LEGISLATION**

This list is not exhaustive and that DHT strives to be ethically and legislatively compliant and strives to remain up to date with any existing, amended and new applicable laws, guidelines, regulations and codes of ethics in South Africa.

**“AHP Act”** refers to the Allied Health Professions Act 63 of 1982, Any reference to AHPA automatically includes references to the Regulations in terms of the Allied Health Professions Act of 1982 as amended (“the Regulations”) and the Code of Ethics of the Allied Health Profession

**“Confidential Information”** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information by a Party, or information which the receiving Party knows or reasonably should have known is of a proprietary or confidential nature.

**“Constitution of the RSA”** means the Constitution of the Republic of South Africa.

**“CPA”** means the Consumer Protection Act 68 of 2008.

**“Children’s Act”** means the Children’s Act 38 of 2005.

**“DHT subscription services”** include *inter alia* Online Counselling and related Resources, Workshops and Webinars and Self-Therapy Toolkits and are subject to being amended, removed or expanded, terminated from time to time at the sole discretion of DHT.

**“DHT general services”** include *inter alia* any other services offered via the Platform, other than those covered under the Subscription Service and are available for access and free of use to the User and are subject to being amended, removed or expanded, terminated from time to time at the sole discretion of DHT.

**“Documentation”** means the document made available to the User by DHT online

via [www.dynamichealth.today](http://www.dynamichealth.today) or such other web address notified by DHT to the User from time to time which sets out a description of the DHT Subscription and General Services and the User instructions for the DHT Subscription and General Services.

**“ETC Act”** means the Electronic Communications and Transactions Act 25 of 2002.

**“Ethical Rules”** means the Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act.

**“Health Practitioners”** means Registered Counselling, Clinical, Industrial & Educational Psychologists, Social Workers, Psychiatric nurses who are duly registered with the Health Professions Council of South Africa.

**“Health Profession Regulations”** means regulations defining the scope of the health care profession of psychology of the Health Professions Act.

**“HPA Act”** means the Health Professions Act 56 of 1974; Any reference to HPA automatically includes references to the Regulations in terms of the Health Professions Act 56 of 1974 as amended (“the Regulations”) and the Ethical Rules of Conduct of the Health Profession

**“HPCSA”** means the Health Professions Council of South Africa.

**“Intellectual Property Rights”** means all the rights in and to Intellectual Property including (without limitation) the rights in and to trademarks, service marks, trade names, domain names, logos, get-up, patents, provisional patents, inventions (whether patentable or not), know-how (including confidential industrial and commercial information and techniques in any form), utility models, registered and unregistered design rights, copyright, semi-conductor topography rights, database rights, rights in respect of any new or existing compilation of any data or information not covered under any existing copyright, any structured analysis, reports, application and any resulting know-how, use or any other results originating or following from or as a consequence of data being made available in respect of any of the aforementioned or part thereof, and all similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations, as well as any Confidential Information or processes relating to that subject matter.

**“Independent Contractor”** A Practitioner who is not an employee or agent of DHT.

**“International User”** A user residing outside South Africa, including but not limited to users in the United States.

**“Mental Health Act”** means the Mental Health Care Act 17 of 2002.

**“PAIA Act”** means the Promotion of Access to Information Act 2 of 2000.

**“Personal Information”** has the meaning ascribed to it in the Protection of Personal Information Act 4 of 2013 (“POPI”).

**“Platform”** The DHT digital ecosystem including the website and all related interfaces.

**“POPI Act”** means the Protection of Personal Information Act 4 of 2013.

**“Practitioner”** A Health Professions Council of South Africa (“HPCSA”) -registered mental health professional offering services through the platform.

**“Telemedicine”** means the practice of medicine using electronic communications, information technology or other electronic means between a healthcare Practitioner in one location and a healthcare Practitioner in another location for the purpose of facilitating, improving and enhancing clinical, educational and scientific healthcare and research, particularly to the under serviced areas in the Republic of South Africa. Telemedicine involves secure videoconferencing or similar forms of technology which enable healthcare Practitioners to replicate the interaction of traditional face-to-face consultations between healthcare Practitioners and the patient as defined in the Telemedicine Guidelines as contained in Booklet 10 of the Guidelines for Good Practice in the Healthcare Professions of the HPCSA.

**“Telemedicine Guidelines”** means the Telemedicine Guidelines as contained in Booklet 10 of the Guidelines for Good Practice in the Healthcare Professions of the HPCSA.

**“Teletherapy”** means the practice of psychotherapy via secure videoconferencing and or text-based services offered by the DHT platform and its subscription services in accordance with HPCSA Codes of Ethics and Guidelines for Good Practice on Telemedicine.

**“User,” “client” or “patient”** means any person who enters, subscribes, or uses the DHT website, albeit a patient, notwithstanding the fact that such a person only visits the home page of the DHT website.