



## END USER LICENSE AGREEMENT (EULA)

Updated 29 January 2026

Please read this End User Licence Agreement (“EULA”) carefully, as it sets out the basis upon which Foremind licenses the Software and provides Services for use by You, the User. This document should be read in conjunction with the ‘Your Counselling and Mandatory Disclosures’ guide which outlines the specific circumstances under which a Foremind-appointed Counsellor may be legally or ethically obligated to report or disclose your confidential information. Please read it carefully before commencing your first counselling session.

**Foremind’s Counselling Services are not a crisis or emergency service. If You are in immediate danger or require urgent assistance, contract emergency services (000 in Australia).**

### Details

This EULA is entered into on the Effective Date (as defined below), by and between:

- (1) Foremind Pty Ltd (t/as Foremind) (ABN 38 615 400 612), an Australian private limited company, with its registered office address at Quayside, g10/50 Eastlake Parade, Kingston, Australian Capital Territory, 2604 (“Foremind” or “We” or “Us”); and
- (2) the **User**, being the person, who is either (i) a Registered User or (ii) an Unregistered User (“User” or “You” or “Your”).

The Platform enables Users to access wellbeing support provided by their employer or contracting organisation (“Client”) via the Platform. Before You access the Platform (as defined below), or before You use the Software (as defined below), by downloading it from the Platform or the App Store, or using any Foremind Service, You give Your express agreement to the provisions of this EULA. If You do not agree to the provisions of this EULA, do not access the Platform, and do not use any of the Software.

You acknowledge that consideration You will receive by accessing the Platform and using the Software in accordance with the provisions of this EULA is full and valuable consideration for entering into this EULA.

Foremind acknowledges that consideration Foremind will receive from granting the User access to the Platform and granting the license to the User to use the Software in accordance with the provisions of this EULA is the greater of:

- (a) the fees and charges payable by the applicable Client in accordance with the relevant Client Agreement; and
- (b) the value of Services;

being full and valuable consideration for entering into this EULA.

### 1. Definitions

In this EULA, except to the extent expressly provided otherwise:

**“Abusive Conduct”** includes:

- a) unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network;
- b) granting logins or password information to any person or affiliate who does not directly carry out data entry or administrative functions in relation to the Services ;
- c) monitoring data or traffic on any network or system without the express authorisation of the owner of the system or network;
- d) interference with service to any user of the Platform or the Services, including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
- e) use of an Internet account or computer without the owner's authorisation;
- f) collecting or using personal information, email addresses, screen names or other identifiers without the valid consent of the person identified (including, without limitation, phishing, scamming, password theft, scraping, and data harvesting);
- g) collecting or using information without the consent of the owner of the information;
- h) use of the Software or the Services to distribute Software that covertly gathers information about a user or covertly transmits information about the user;
- i) (k) any conduct that is likely to result in retaliation against Foremind and its Related Bodies Corporate, its Clients, or each of their employees, officers or other agents, including engaging in behaviour that results in any server being the target of a denial-of-service attack (DoS);
- j) any act that constitutes a misuse of a party's or any other person's confidential information; or
- k) devise any form of "work around" to the Services or attempt to run the Services on any unsupported platform.

**"Australian Consumer Law"** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth), and the Australian Consumer Law Regulations being as set out in Parts 6 and 7 of the *Competition and Consumer Regulations 2010* (Cth).

**"Client"** means organisation that has a commercial agreement with Foremind in respect of Foremind's 'Employee Assistance Program'.

**"Client Agreement"** means the commercial agreement between the Client and Foremind, including an Employer Services Agreement, between those parties.

**"Counselling Services"** means one-on-one counselling services made available by Foremind to the Client and its Users from time to time, either: (i) online as part of the Platform Services; or (ii) through offline channels, including video call, telephone or in-person sessions.

**"Effective Date"** means, in each case: (i) in the case of a Registered User, the earlier of: (a) the date on which the Registered User first uses the login and password to access the Platform; (b) the date on which the Registered User first uses the Software; and (c) the date upon which the User receives a written confirmation that EULA has come into force following the Registered User's express consent to this EULA; and (ii) in the case of a Unregistered User, the earlier of: (x) the date on which the

Unregistered User clicks 'accept' on the Platform; (y) the date on which the Unregistered User first uses the Software or Services; and (z) the date upon which the User expressly consents to this EULA.

**"Foremind"** means the company described at the head of this EULA; and

**"Foremind IP"** means the Intellectual Property Rights (including the IP in the provision of Services) owned by or licensed to Foremind.

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).

**"Intellectual Property Rights"** or **"IP"** means registered and unregistered proprietary rights in respect of trademarks, patents, logos, details of venue or event layouts, copyrights, designs, confidential information, trade business, company names, business names, websites, URLs, email addresses, personal information, data, documents, records, and know-how and all other proprietary rights and all other intellectual property defined in Article 2 of the Convention establishing the World Intellectual Property Organization (July 1967).

**"Malicious Code"** means:

- a) any code, program or sub-program whose purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of software, code, a program or a sub-program, itself; or
- b) any device, method or token that permits any person to circumvent the normal security of the Software or Platform or the system containing the code or infiltrates a computer, system or Software or Platform without the prior consent or knowledge of the user, owner or licensee of such computer, system or software; and including any virus, timebomb, software lock.

**"Maintenance Services"** means the supply to the User of Updates and Upgrades;

**"Offensive Content"** includes conduct that:

- a) Constitutes, depicts, fosters, promotes or relates in any manner to pornography, bestiality, or non-consensual sex acts;
- b) is violent, incites violence, threatens violence or contains harassing content or hate speech;
- c) enables a minor to access material inappropriate for a minor or to establish (or try to establish) contact with a minor not otherwise known to a party;
- d) is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
- e) is defamatory or violates a person's privacy;
- f) creates an imminent risk to a person's safety or health, creates a risk to public safety or health, compromises national security or interferes with an investigation by law enforcement;

- g) knowingly improperly exposes trade secrets or other confidential or proprietary information of another person;
- h) is intended to assist others in defeating technical copyright protections;
- i) knowingly infringes on another person's Intellectual Property Rights;
- j) is intended to promote illegal drugs, violates export control laws, relates to illegal gambling or illegal arms trafficking;
- k) is otherwise known to be illegal or solicits conduct that is known to be illegal under laws applicable to you or to Foremind; or
- l) is otherwise malicious, fraudulent or likely to result in retaliation against Foremind by offended viewers.

**“Platform”** means platforms and websites of or managed by Foremind or its Related Bodies Corporate and used by Foremind or its Related Bodies Corporate to provide the Platform Services, the system and server software used to provide the Platform Services, and the computer hardware on which that application, database, system and server software is installed, access to which Foremind may in its discretion partition and restrict, including based on subscription elements selected by the applicable Client as described in the Client Agreement.

**“Platform Services”** means the hosted services that are made available by Foremind to the User as a service via the internet and may be accessed and used by means of the Platform, including access to Wellbeing Content, digital self-assessments, counselling bookings and online Counselling Services, psychosocial hazard reporting and management tools, de-identified analytics and reporting, workforce surveys, training and related support services.

**“Privacy Policy”** means Foremind’s Privacy Policy available at <https://foremind.com.au/privacy-policy/> as updated from time to time.

**“Related Body Corporate”** means as described in Section 50 of the *Corporations Act 2001* (Cth).

**“Registered User”** means a User that has been granted access to the Platform with a user login account.

**“Services”** means any services that Foremind provides to the User, or which Foremind is obliged to provide under this EULA, including Platform Services, Counselling Services, Support Services, Maintenance Services and any other alternative, optional and add-on services made available to the User, online or through offline channels, by Foremind from time to time.

**“Software”** means Foremind’s proprietary user interfaces, web-applications, mobile applications, software libraries and APIs, that enables access to the Services.

**“Source Code”** means, in respect of the Software, the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software or decompiled from the Software, but excluding interpreted code comprised in the Software.

**“Support Services”** means technical assistance provided by Foremind in relation to the implementation and use of the Foremind Software, including helpdesk support for resolving user access or functionality issues and training, provided by Foremind to the Client under the applicable Client Agreement, but excluding any clinical, counselling or healthcare-related support;

**“Term”** means the term of this EULA, commencing in accordance with clause 3.1 and ending in accordance with clause 3.2;

**“Unauthorised Use”** means any of the following:

- a) sale, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;
- b) alter, edit or adapt the Software;
- c) decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software;
- d) use of the Software in breach of an applicable Client Agreement and related policies;
- e) use of the Software in a manner which causes the Platform to function in a degraded manner, or interference with use of the Software by other means or circumstances which may place Foremind in potential or actual breach of any agreements with third parties;
- f) provide access to the Software to parties who do not have valid authority to have access;
- g) allow any Malicious Code to be transmitted or disseminated in or by the Software;
- h) not create a false identity or to otherwise mislead any person as to the identity, source or origin of any communications;
- i) not copy, disclose, publish or otherwise make available to any third party, any compilation of data obtained through the use of the Software; and
- j) any activity which is fraudulent, harmful, a breach of applicable law, or illegal or in connection with any such activity.

**“Unregistered User”** means a User that is accessing the Services without a user login account, such as a user who has called a phone support hotline;

**"Update"** means a hotfix, patch or minor version update to the Software;

**"Upgrade"** means a major version upgrade of the Software;

**“User”** means an individual (including employees, contractors or agents of the Client) who is permitted by the Client and Foremind to access and use the Services in accordance with this EULA, and includes (i) Registered Users and (ii) Unregistered Users.

**"User Content"** means all data, works and materials: uploaded to or stored on the Platform by the User; transmitted by the Platform at the instigation of the User; supplied by the User to Foremind for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Platform Services by the User (but excluding analytics data relating to the use of the Platform and server log files);

**“Vulnerability Testing”** includes attempting to probe, scan, penetrate or test the vulnerability of the Software or the Services or to breach Foremind’s security or authentication measures, whether by passive or intrusive techniques, without Foremind’s express written consent.

**“Wellbeing Content”** means wellbeing related content including written, audio and visual content, designed to support employees across a variety of wellbeing topics.

**“Your Counselling and Mandatory Disclosures”** means the guide made available at <https://www.foremind.com.au/legals/your-counselling-and-mandatory-disclosures> as updated from time to time.

## **2. Eligibility**

- 2.1 If you are under sixteen (16) years of age, you are not permitted to be a User or receive any Services under any circumstances.
- 2.2 If you are between sixteen (16) and seventeen (17) years of age (inclusive) ("**Minor**"), you may only be a User or otherwise use the Services with the prior consent of your parent or legal guardian who is also a User and who is at least eighteen (18) years of age and has the legal capacity to be bound by and bind you to this Agreement ("**Guardian**").
- 2.3 If you are a Guardian permitting a Minor to be a User, you represent and warrant to us that:
- (a) you are at least eighteen (18) years of age;
  - (b) you are the parent or legal guardian of the relevant Minor;
  - (c) you have the capacity to and accept this EULA on the Minor's behalf;
  - (d) you guarantee the Minor's performance of all obligations as a User herein; and
  - (e) you acknowledge and understand that the relevant Minor's acts and omissions shall be deemed your acts and omissions, and that you are liable for all such acts and omissions taken by the Minor.
- 2.4 We reserve the right to suspend or terminate access to the Platform or otherwise refuse to provide Services to individuals that do not meet these eligibility requirements, including to Minors whose Guardian's consent has not been validly obtained or cannot be verified.

## **3. Term and Contract formation**

- 3.1 This EULA shall come into effect upon the Effective Date.
- 3.2 This EULA shall continue in force indefinitely, in each case, until the date of termination of this EULA in accordance with the terms of this EULA.
- 3.3 This EULA may be formed electronically without the need for physical (wet) ink. The User accepts that the right of access to the Platform and Software by Foremind constitutes an offer, and the User's access to the Platform and Software for the valuable consideration described above constitutes acceptance by the User of Foremind's offer binding the User to the provisions of this EULA. Should Foremind require physical (wet) signature, the User will accommodate such request and physically sign and email a scan of this EULA to Foremind.

## **4. License and Limitations**

- 4.1 Subject to the compliance by the User with the provisions of this EULA, and in the case of a Registered User for such time as the User's Login account remains valid and during the term of this EULA, Foremind hereby grants to the User from the Effective Date for the Term, a personal, revocable, non-exclusive, royalty-free, non-transferrable, licence without any right to sub-license, to use the Software, subject to the limitations and prohibitions set out and referred to in this clause 4.

- 4.2 Subject to the terms of this EULA, the Platform and Services are made available only while the relevant User maintains active employment or engagement with the Client (including, for Minors, the Guardian) and where there is an active Client Agreement in place. When that employment or engagement or Client Agreement ends, all associated access rights automatically lapse, and Foremind may terminate or suspend access without notice at any time, subject to clause 21.2.
- 4.3 Where the User is a registered or named User of a related Client, the User's license is conditional upon compliance by the applicable Client of the terms of the related Client Agreement, including full payment of all fees and charges under that Client Agreement by the Client to Foremind.
- 4.4 The User must:
- (a) not sell, rent, lease, licence, sublicense, display, time share or otherwise transfer the Software or the Platform to, or permit the use of the Platform by, any unauthorised third party;
  - (b) not, directly or indirectly, cause or allow a third person to copy, reproduce, modify, distribute, revise, vary, translate, reverse-engineer, use, alter, decompile, disassemble or otherwise attempt to derive the Source Code from object code;
  - (c) not remove any copyright or proprietary notice from the Platform;
  - (d) use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software and the Platform;
  - (e) not post or transmit through the Platform any material or content that gives rise to civil or criminal liability or otherwise violates any applicable law;
  - (f) use the Software or the Platform for any Unauthorised Use or Vulnerability Testing.
- 4.5 The User shall not access the Platform or use the Software in a manner that constitutes Abusive Conduct or Offensive Conduct.

## **5. Reputation**

- 5.1 The User must not do any act which prejudices or brings into disrepute the good name and reputation of Foremind or its Clients or any of Foremind's and its Client's officers, members, servants and agents or prevents Foremind from meeting its obligations under this EULA or any Client Agreement.

## **6. Copyrighted Material**

- 6.1 The User must not use the Platform to download, publish, distribute or otherwise copy in any manner any text, video, music, Software, art, image or other work protected by copyright law, unless:
- (a) the User has been expressly authorised by the owner of the copyright for the work to copy the work in that manner and use of such materials is strictly limited to operational use, backup, testing or evaluation, provided such copies are made solely for internal business purposes; or
  - (b) the User is otherwise permitted by established Australian copyright law to copy the work in that manner, and such use does not infringe the rights of Foremind or its licensors.

- 6.2 All Intellectual Property Rights in the Platform, Services and any related materials remain owned by or licensed to Foremind.

## **7. Source Code**

Nothing in this EULA shall give to the User or any other person any right to access or use the Source Code or constitute any licence of the Source Code.

## **8. Platform Services**

- 8.1 Subject to the User's compliance with this EULA, and in the case of a Registered User, for such time as the User's login account remains valid, Foremind will make available the Platform as a hosted service for the User's access and use during the Term. Access is provided on a personal, revocable, non-exclusive, royalty-free and non-transferable basis, subject to the limitations and prohibitions set out in clause 4.
- 8.2 Foremind shall use reasonable commercial endeavours to maintain the availability of the Platform Services to the User at the gateway between the public internet and the network of the hosting services provider for the Platform Services, but Foremind does not guarantee availability.
- 8.3 The User must not use the Platform Services in any way that causes, or may cause, damage to the Platform Services or the Platform or impairment of the availability or accessibility of the Platform Services.
- 8.4 All the limitations and exclusions of liability and warranties, and the special acknowledgements by the User, that are set out in this EULA and are expressed to relate to the Software shall apply in respect of the Platform Services in addition to the Software.

## **9. User Login and Access Credentials**

- 9.1 Where the User is provided with a user identification code, password or any other piece of information as part of Foremind's security procedures (whether by Foremind or its Client(s)), the User must treat such information as confidential.
- 9.2 Registered Users may only access the Platform by entering valid user identification code and password. The Registered User must keep the log in credentials in a secure and safe place.
- 9.3 Foremind and the Client each has the right to cancel and disable any user identification code or password, without notice, whether chosen by the User or allocated by Foremind or the Client at any time, if in Foremind's or Client's reasonable opinion(s), the User has failed to comply with any provision of this EULA, and any applicable Client policies and rules.
- 9.4 In the event of cancellation of the Login account of a Registered User in accordance with this clause 9, the Registered User may not object, and such Registered User shall no longer seek to access the Platform or the Services.



## **10. User Content**

- 10.1 The User hereby grants to Foremind and its Related Bodies Corporate a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the User Content to the extent reasonably required for the performance of Foremind's obligations and the exercise of Foremind's rights under this EULA. The User also grants to Foremind and its Related Bodies Corporate the right to sub-license these rights to Client and its service providers, subject to any express restrictions elsewhere in this EULA.
- 10.2 Foremind may generate, use and disclose de-identified, aggregated data derived from User Content and Platform usage, including to improve the Services, conduct analytics and support research, in accordance with its Privacy Policy.
- 10.3 The User warrants to Foremind and its Related Bodies Corporate that the User Content does not and will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 10.4 Foremind does not supervise, review, or monitor User Content in real-time and assumes no responsibility for the accuracy, legality, or appropriateness of any User Content uploaded, submitted or transmitted by the User through the Platform.
- 10.5 Foremind disclaims all liability for any direct or indirect loss, damage, or harm arising from or in connection with the User's use of, reliance on, or exposure to any User Content. Users access and use User Content at their own discretion and risk.
- 10.6 Foremind reserves the right to create, collect, use and store metadata and other diagnostic or usage data resulting from the User's use of the Platform. This metadata may be used for purposes including, but not limited to, technical troubleshooting, operational management, search engine optimisation, analytics, and to support investigations or lawful requests by regulatory authorities or government agencies.
- 10.7 Foremind may use de-identified and aggregated data, including data relating to the User's interaction with the Platform and the Services, for the purpose of improving the Platform, enhancing its Services, and advancing Foremind's internal research and commercial objectives. Any such use will be in accordance with its Privacy Policy.

## **11. Counselling Services**

- 11.1 Foremind's Counselling Services are not a crisis or emergency service. If You are in immediate danger or require urgent assistance, contact emergency services (000 in Australia).
- 11.2 From time to time during the Term, Foremind may provide Counselling Services. Such Counselling may be accessed through the Foremind Platform through virtual sessions or via offline channels, including phone support or in-person sessions.
- 11.3 Foremind has no obligation to provide access to Counselling Services under this EULA: for example if a user engages in verbal, physical, written or other abuse (including threats of abuse or retribution)

towards our personnel or practitioners. The availability of Counselling Services is subject to practitioner availability, the applicable Client Agreement, order form and Foremind's discretion.

- 11.4 Please note if You cancel a scheduled counselling appointment within 24 hours of the scheduled start time, the full session fee will be charged to the Client organisation, and the session will be counted toward your allocated session quota (if any). This applies regardless of the reason for cancellation, except where the cancellation is due to an emergency or other extenuating circumstances accepted by the relevant practitioner in their sole discretion.
- 11.5 When you talk to a practitioner, there are certain limitations on confidentiality. By accepting this EULA you explicitly agree you have read and agree to the *'Your Counselling and Mandatory Disclosures'* guide. This document serves to formally outline the specific circumstances under which a Foremind-appointed Counsellor may be legally or ethically obligated to report or disclose your confidential 'client' information.
- 11.6 While Foremind requires counselling practitioners be a member of one of the following professional bodies:
- (a) Australian Counselling Association (ACA);
  - (b) Psychotherapy and Counselling Federation of Australia (PACFA); or
  - (c) Australian Association of Social Workers (AASW) verified Mental Health Clinicians,
- you expressly acknowledge and accept such practitioners may not be registered to practice in your jurisdiction of residence, and you expressly agree to consult such practitioner on that basis. If you are located outside of Australia, you expressly acknowledge and agree that such practitioner will comply with the applicable laws and rules in their location of practice, and not necessarily the laws and rules applicable in your jurisdiction of residence. Foremind does not endorse, recommend, warrant or represent the qualifications, expertise, specialisation, quality, suitability, reputation or abilities of any counselling practitioner or service provider, other healthcare professional to whom the User is connected. Foremind disclaims all liability for the acts, omissions, conduct or representations (including misrepresentations), negligence, misconduct or malpractice of any such practitioner, whether occurring during the provision of counselling sessions, in the course of any communications with the User, or otherwise arising from the professional services or advice provided. This disclaimer applies regardless of whether the practitioner is accessed via the Platform or through offline channels facilitated by Foremind.
- 11.7 Any advice, diagnosis, treatment or services provided by a practitioner accessed through the Platform are provided entirely at the User's own risk. The User must exercise their own judgment when engaging with any such professional, including verifying suitability for their needs and the appropriateness of any advice or recommendations given. Users may select another practitioner at their election if the chosen practitioner is not suitable for their needs. Foremind does not supervise, direct, or control the clinical judgment or actions of any healthcare professional, and assumes no responsibility for their decisions or conduct. The User's use of the Platform, including access to Counselling Services, is at their own discretion and risk. The User is solely responsible for any resulting loss or damage.
- 11.8 To the fullest extent permitted by law, Foremind disclaims all liability for any direct or indirect loss, damage, injury or adverse outcome arising from or in connection with the User's interaction with any

healthcare professional providing any Services accessed through the Platform. This includes negligence, malpractice or misconduct, as well as any side effects or consequences resulting from the healthcare professional's Services.

- 11.9 Foremind is not responsible for clinical decision-making or the professional obligations of its counsellors, clinicians, and other professional service provider partners.
- 11.10 The User agrees to hold harmless and indemnify Foremind against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred arising out of the User's interactions with any healthcare professional accessed through the Platform. This includes, without limitation, claims relating to the provision of advice, treatment, diagnosis, misconduct, malpractice, or any failure by a healthcare professional to meet applicable professional or legal standards, regardless of whether the practitioner is accessed via the Platform or through offline channels facilitated by Foremind.
- 11.11 Some jurisdictions do not permit the exclusion or limitation of liability for certain types of loss or damage, including incidental or consequential damages. To the extent any such limitation or exclusion is not permitted by law, it does not apply. Nothing in this clause 23 affects any rights or remedies you may have under the Australian Consumer Law or other applicable law that cannot be excluded or limited.

## **12. Maintenance Services**

- 12.1 Foremind may from time to time during the Term provide Maintenance Services to the User in respect of the Foremind Software but shall have no obligation to do so.
- 12.2 The User must apply each Update and Upgrade to the Software made available by Foremind through the Maintenance Services in a timely manner.
- 12.3 If the User does not apply an Update or Upgrade to the Software, then in Foremind's discretion, the User may cease to have any right to use the Software until such time as it does so. The User acknowledges that Foremind may use technical measures to enforce this clause 12.3.
- 12.4 The User acknowledges that the supply and licensing of Upgrades to the Foremind Software may, at the discretion of Foremind, be subject to additional terms and conditions.

## **13. Support Services**

- 13.1 From time to time during the Term, Foremind may provide Support Services to the Client under a Client Agreement, which may indirectly benefit the User. Foremind has no obligation to provide Support Services to the User under this EULA.
- 13.2 Foremind may in its discretion, make a helpdesk available to the User for the purpose of providing the Support Services.
- 13.3 Any Support Services shall be provided remotely and relate only to the use of the Foremind Software.
- 13.4 Foremind shall have no obligation to provide Support Services in respect of any issue caused by:

- (a) any issue outside the scope of the Client Agreement;
- (b) the improper use of the Software by the User; or
- (c) any alteration to the Software made without the prior consent of Foremind.

13.5 The User acknowledges and agrees that Foremind gives no warranties or guarantees in relation to the outcome of the Support Services

#### **14. Privacy Policy**

14.1 By using the Platform, the User acknowledges and agrees to Foremind collecting, using, storing, processing, disclosing and deleting personal information (including sensitive information and health information) in accordance with Foremind's Privacy Policy.

14.2 The User may withdraw their consent to Foremind's collection, use and disclosure of certain personal information in accordance with the Privacy Policy. However, withdrawal of consent may limit the User's ability to fully utilise and Foremind's ability to provide certain Services.

14.3 The Platform uses tracking and analytics technologies to collect information about how Users interact with the Platform. This may include cookies, event logs, click-stream data, feature usage, device information session activity, and other telemetry data. Foremind uses such data for purposes including security, performance optimisation, user experience improvement, improvements to Services, analytics, support services and product development. Such data is used in accordance with Foremind's Privacy Policy.

14.4 Foremind may compile statistical and analytical information related to the use and performance of the Platform and the Services, and may generate de-identified insights from such information. Foremind may use and publicly disclose such statistical information, provided that it does not:

- (a) include any personal information or identify any individual; or
- (b) disclose or allow inference of the User's confidential information.

14.5 Foremind retains all Intellectual Property Rights in aggregated or de-identified data, statistical outputs, and insights derived from use of the Platform, including any outputs adapted, compiled or generated by Foremind's machine learning systems or professional expertise in connection with the Services

#### **15. Intellectual Property Rights**

15.1 Nothing in this EULA shall operate to assign or transfer any Foremind IP from Foremind to the User.

15.2 The User acknowledges and agrees that:

- (a) as between the Parties, Foremind retains all right, title and interest in and to the Platform, Software and Services including all Intellectual Property Rights in any modifications, enhancements, updates or derivative works of the Platform, Software and Services, excluding User Content. To the extent any such rights may vest in the User, the User assigns those rights to Foremind on creation, with full title guarantee and free of encumbrances;

- (b) the User has no rights in the Platform or any part of it, other than the limited licence rights expressly granted under this EULA;
- (c) any Intellectual Property Rights in feedback, suggestions or feature requests relating to the Platform that are provided by the User (each an “**Improvement Suggestion**”) shall be deemed to be owned solely by Foremind upon submission. The User hereby assigns all right, title and interest in and to such Improvement Suggestions to Foremind, effective immediately upon provision, including by operation of section 197 of the Copyright Act 1968 (Cth) and in equity. The User also consents to any acts or omissions by Foremind or its licensees that may otherwise infringe any moral rights the User may have in the Improvement Suggestions;
- (d) the User must not take any step to invalidate or prejudice Foremind’s (or its licensors’) Intellectual Property Rights in the Platform or any associated materials.

## **16. Suspension of Services**

- 16.1 Foremind may suspend the provision of any or all of the Services at any time, including where the User is in breach of any of the provisions of this EULA, and any applicable policies of the Clients.
- 16.2 Verbal, physical, written or other abuse (including threats of abuse or retribution) of any of our employees, members, representatives, officers or independent practitioners will result in immediate termination of your access to the Platform.

## **17. User indemnity**

- 17.1 The User shall indemnify and shall keep indemnified Foremind and its Related Bodies Corporate indemnified against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by Foremind and arising directly or indirectly as a result of any breach by the User of this EULA.
- 17.2 We reserve the right, at your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify us, and you will cooperate with our defence of these claims. You will not settle any matter without our prior written consent. We will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

## **18. Warranties**

- 18.1 Each party warrants to the other party that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.
- 18.2 Foremind warrants to the User that the Software, when used by the User in accordance with this EULA, will not infringe the copyright rights of any person in Australia only.
- 18.3 If Foremind reasonably determines, or any third party alleges, that the use of the Software by the User in accordance with this EULA infringes any person's copyright rights, Foremind may acting reasonably at its own cost and expense:
  - (a) modify the Software in such a way that it no longer infringes the relevant copyright rights;
  - or

(b) procure for the User the right to use the Software in accordance with this EULA.

18.4 Clauses 18.3(a) and 18.3(b) represent Foremind's sole obligations, and the User's exclusive remedy with respect to Intellectual Property Rights infringement claims.

18.5 All of the parties' warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

## **19. Acknowledgement and Warranty Limitations**

19.1 The User acknowledges that the Software is never wholly free from defects, errors and bugs; and subject to the other provisions of this EULA, Foremind gives no warranty or representation that the Software will be wholly free from Malicious Code, defects, errors and bugs.

19.2 The User acknowledges that the Software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, Foremind gives no warranty or representation that the Software will be entirely secure.

19.3 The User acknowledges that it will be responsible for configuring its own technology to access the Platform Services.

19.4 If you request, in the provision of the Services we may introduce you to certain financial, tax and legal professional service providers; [including connecting with those Service Providers through the Platform]. However, nothing in the Platform or Services or any component thereof constitutes legal, tax, accounting, regulatory or other professional advice, opinion or recommendation by Foremind. Without limiting the foregoing, Foremind is not a law or accounting firm nor does it provide legal, financial or accounting services, advice, or representation. All practitioners accessible through the Platform operate as independent service providers and use the platform solely as a tool for meeting with you. Foremind does not supervise, direct or control their professional judgment and is not liable for their acts or omissions. If legal or other professional assistance is required, the services of a competent professional should be sought. Where the User accesses such services from independent practitioners through the Platform or Service, such services are provided by those practitioners in their own capacity and not as agents, employees or representatives of Foremind. Foremind is not responsible for, and does not guarantee, the accuracy, quality or suitability of any advice or service provided by independent practitioners. The User assumes all responsibilities and obligations with respect to any decisions, advice, conclusions, legal or tax opinions, or recommendations made or given as a result of your use of the Platform, including without limitation any decision made or action taken in reliance upon content, or incorporating or referencing the content made available or accessed through the Platform or Services. No solicitor-client or other fiduciary relationship is formed with Foremind by virtue of providing the Platform or Services. Nothing in the Platform or Services shall constitute or be construed as a recommendation, solicitation, offer, opinion, by Foremind or any of its affiliates for any financial product

19.5 The User acknowledges that Foremind will not provide any legal, financial, accountancy or taxation advice under this EULA or in relation to the Software; and, except to the extent expressly provided

otherwise in this EULA, Foremind does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

- 19.6 The User acknowledges that where the Software or website of Foremind contains links to other sites (including banner advertisements and sponsored links) and resources provided by third parties, these links are provided for the User's information only. Such links should not be interpreted as approval by Foremind of those linked websites or information the User may obtain from them. Foremind has no control over the contents of those sites or resources, and the User accesses third party websites entirely at their own risk and subject to the terms and conditions of use for those websites.

## **20. Limitations and Exclusions of Liability**

- 20.1 Nothing in this EULA will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law, and,
- (e) if a party is a consumer, exclude, restrict, or modify any rights or remedies that the User may have under the Australian Consumer Law ("non-excludable guarantee"), except to the extent permitted by law.

- 20.2 Notwithstanding clause 20.1(e), as our Services are not of a kind ordinarily acquired for personal, domestic or household consumption, if we are liable for a breach of any such implied 'non-excludable guarantee', we may, at our election, lawfully limit our liability pursuant to section 64A of the Australian Consumer Law, where it is fair and reasonable to do so, to supplying the services again or paying the cost of having the services supplied again, notwithstanding clause 20.6, such remedy shall be User's sole remedy in respect of such 'non-excludable guarantees'.

- 20.3 In no case will Foremind or its representatives be liable for any indirect, special, consequential, exemplary, punitive damages or other damages, or for any losses, damages, liabilities, costs or expenses arising out of or relating to:

- (a) User's access, use, misuse or inability to access or use the Platform or Services;
- (b) the interruption, suspension or termination of any part of or all of the Platform or Services; or
- (c) a Force Majeure Event;

in each case regardless of the cause of action (whether in contract, warranty, tort, negligence, strict liability or any other theory of liability), and even if Foremind or its representatives have been advised of the possibility of such damages.

- 20.4 User expressly understands and agrees that Foremind and its representatives shall not be liable for any direct, indirect, incidental, special, consequential, punitive or exemplary damages, including but not limited to damages for loss of profits, goodwill, lost revenues or business opportunities, loss of use, data or other intangible losses, in contract, tort, strict liability, negligence, general civil liability or any other cause of action under legal or equitable theory, relating to the Platform or Services, any

information on or downloaded from the Platform or Services, activities arising from use of the Services (including Counselling Services, and other professional services), or any third-party materials made available via the Platform or Services.

- 20.5 This limitation of liability applies, without limitation, to any damages or injury caused by any error, omission or other failure of performance by Foremind or its representatives; any interruption, defect or delay in operation or transmission, including communication line failure; any computer virus; and any theft, destruction or alteration of, or unauthorised access to or use of, any electronic records.
- 20.6 Subject to clauses 20.1 and 20.2, notwithstanding anything to the contrary in this EULA, in no event will Foremind's aggregate liability for any claims in connection with User's use of the Platform or Services in respect of any and all events or series of related events for the Term exceed \$AUD500.

## **21. Termination**

- 21.1 In addition to Foremind's suspension rights, Foremind may terminate this EULA in the event of a breach of any of the provisions of this EULA by the User, or without the need to specify a cause immediately. Foremind may communicate termination by disabling the Registered User's Login account which may occur as a result of a determination made by Foremind in its discretion or in accordance with an applicable Client Agreement.
- 21.2 Upon termination or expiry of the applicable Client Agreement, this EULA will not automatically terminate for existing Users affiliated with that Client. However, affiliated Users' access to the Platform and Services will be limited. Affiliated Users may continue to log in to the Platform to view their account information and appointment history and may attend any appointments that were validly booked prior to the termination or expiry of the Client Agreement, but they will not be able to make new bookings or access any Services that require an active Client Agreement. Foremind may, at its discretion, disable or terminate such affiliated User accounts (and this EULA) after all pending appointments have been completed, cancelled or otherwise passed.

## **22. Effects of termination**

- 22.1 Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): 1 (Definitions), 2 (Eligibility), 3.3 (Electronic formation), 4 (Licence and Limitations), 5 (Reputation), 6 (Copyrighted Material), 7 (Source Code), 8 (Platform Services), 9 (User Login and Access Credentials), 10 (User Content), 13 (Support Services), 14 (Privacy Policy), 15 (Intellectual Property Rights), 16 (Suspension of Services), 17 (User Indemnity), 18 (Warranties), 19 (Acknowledgements and Warranty Limitations), 20 (Limitations and Exclusions of Liability), 21 (Termination), 22 (Effects of termination), and any other provision that, whether expressly stated or by its nature, is intended to survive termination.
- 22.2 Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party.



## **23. Amendments**

- 23.1 Foremind may vary this EULA from time to time. If so, Foremind will publish the updated EULA on the Platform and may also notify the User by other means, such as via email or in-Platform notice. The updated EULA will take effect immediately upon publication unless otherwise stated.
- 23.2 Where a variation constitutes a material change to the User's rights or obligations under these EULA, Foremind will provide the User with at least 30 days' prior written notice. If the User does not agree to the amended terms, it must notify Foremind in writing and cease using the Platform and Services before the effective date of the change. Continued use of the Platform or Services following the effective date will constitute acceptance of the amended EULA.
- 23.3 For changes that do not materially alter the relationship between the User and Foremind, no prior notice is required beyond publication of the revised EULA on the Platform in accordance with clause 23.1.

## **24. General**

- 24.1 No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.
- 24.2 If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 24.3 The User hereby agrees that Foremind may assign Foremind's contractual rights and obligations under this EULA to its Related Bodies Corporate, or to any successor to all or a substantial part of the business of Foremind from time to time, or to any third party, providing that, if the User is a consumer, such action does not serve to reduce the guarantees benefiting the User under this EULA. Save to the extent expressly permitted by applicable law, the User must not without the prior written consent of Foremind assign, transfer or otherwise deal with any of the User's contractual rights or obligations under this EULA.
- 24.4 Foremind may subcontract the performance of any of its obligations under this EULA. This includes the engagement of third-party vendors, contractors, and hosting partners to support the operation and delivery of the Platform and related Services, including infrastructure, software, networking, data storage, payment processing, analytics, and technical support.
- 24.5 Foremind may also engage independent third-party counselling professionals to deliver the Counselling Services. The User acknowledges that Counselling Services are facilitated by Foremind but delivered by such independent providers.
- 24.6 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any

amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

- 24.7 The EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 24.8 Any queries about the EULA should be sent to us by email at [support@foremind.com.au](mailto:support@foremind.com.au)
- 24.9 This EULA shall be governed by and construed in accordance with the laws of the Australian Capital Territory in Australia.
- 24.10 The courts of Australian Capital Territory in Australia shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

## **25. Interpretation**

In this EULA, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.