

Employer Terms of Service

Please read these Employer Terms of Service ("**Terms of Service**") carefully, as it sets out the basis upon which Foremind licenses the Software and provides Services for use by You, the Customer.

Foremind enables Customers to make wellbeing support Services available to their personnel via the Platform. By executing an Employer Services Agreement, Order Form or SOW or accessing the Services, You agree to these Terms of Service. If You do not agree to these Terms of Service, You must not access or use the Platform or Services. If You do not agree to the provisions of these Terms of Service, do not access the Platform, and do not use any of the Software.

These Terms of Service are entered into on the Effective Date (as defined below), by and between:

- **Foremind Pty Ltd (t/as Foremind)** (ABN 38 615 400 612), an Australian private limited company, with its registered office address at Unit 526, 368 Sussex Street, Sydney, NSW, 2000 ("**Foremind**" or "**We**" or "**Us**"); and
- **The Customer**, being the employer or contracting organisation subscribing to the Services under an applicable Employer Services Agreement, Order Form or SOW ("**Customer**" or "**You**" or "**Your**")

The Customer acknowledges that the consideration it receives by accessing the Platform and Services in accordance with these Terms of Service is full and valuable consideration. Foremind acknowledges that the consideration it receives from the Customer, including fees and charges payable in accordance with the Employer Services Agreement or Order Form, constitutes valuable consideration.

1. Definitions

In these Terms of Service, except to the extent expressly provided otherwise:

"**Abusive Conduct**" includes:

- (a) Unauthorized 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 authorization 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 authorization of the owner of the system or network;
- (d) interference with service to any user of Software 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 authorization;
- (f) collecting or using personal information, email addresses, screen names or other identifiers without the consent of the person identified (including, without limitation, phishing, Internet scamming, password robbery, spidering, and 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) use of the Software or the Services for distribution of advertisement delivery Software unless: (i) the user affirmatively consents to the download and installation of such Software based on a clear and conspicuous notice of the nature of the Software, and (ii) the Software is easily removable by use of standard tools for such purpose included on major operating systems;
- (j) any conduct that is likely to result in retaliation against Foremind and Customers, or Foremind's and Customers' employees, officers or other agents, including engaging in behaviour that results in any server being the target of a denial-of-service attack (DoS);
- (k) promote illegal pyramid selling schemes, betting, wagering, or any other forms of gambling not allowed by the laws applicable to Foremind;

- (l) any act that constitutes a misuse of a party's or any other person's confidential information; or
- (m) devise any form of "work around" to the Services or attempt to run the Services on any unsupported platform;

"Aggregated" means combined with data relating to other individuals or other customers so that the resulting information describes a group rather than an individual, an Authorised User or a single customer;

"**AI Feature**" means a feature of the Platform Services that uses artificial intelligence or machine learning to generate, summarise, classify, translate or suggest content, including any such feature made available through the Platform from time to time;

"**AI Output**" means content generated by an AI Feature;

"**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*;

"**Authorised User**" means an individual personnel member (including employees, contractors or agents) of the Customer who is permitted by the Customer and Foremind to access and use the Services in accordance with these Terms of Service. Authorised User includes individuals accessing the Services without a user login account, such as a user who has called a phone support hotline.

"**Benchmarking Data**" means de-identified, Aggregated statistical information derived from the provision of the Services across two or more customers, used to produce comparative reporting, sector or industry insights and published material, and which does not identify and does not permit the identification of any individual, Authorised User or customer;

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales;

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

"**Critical Incident**" means a significant or potentially traumatic workplace-related event that has caused, or has the potential to cause, substantial psychological distress or disruption to Authorised Users, teams or the Customer, and which may require a coordinated clinical response;

"**Critical Incident Response**" means the coordinated clinical assessment and provision of clinically appropriate support following a Critical Incident, which may include manager guidance, psychological first aid, individual support, an Onsite Response, referral and follow-up;

"**Customer Data**" means all data, materials, content and other information uploaded to, stored on, submitted to, or transmitted through the Platform by or on behalf of the Customer or its Authorised Users, excluding analytics data, de-identified aggregated data and Excluded Records (as defined in clause 16.2).

"**de-identified**" means that information is no longer about an identifiable individual or an individual who is reasonably identifiable, having regard to the information itself, the context in which it is to be used or released, and the other information reasonably available to a recipient;

"**Dedicated Access Line**" means the telephone number nominated by Foremind from time to time as the channel through which the Customer may request a Critical Incident Response;

"**Employer Services Agreement**" means the commercial agreement between the Customer and Foremind;

"**Effective Date**" means the date on which these Terms of Service takes effect, as provided in an Employer Services Agreement.

"**Fees**" means the charges payable by the Customer to Foremind under an Order Form or Employer Services Agreement, including fees for platform plans (including Foundation, Proactive, Thrive), session-based fees and charges for optional add-on Services, or other Services as agreed in an Employer Services Agreement.

"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);

"Foremind" means the company described at the head of these Terms of Service;

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

"Initial Clinical Response" means contact commenced by an appropriately qualified clinician for the purpose of clinical triage of a Critical Incident. It does not require that triage be completed, that a response plan be agreed, or that any decision as to an Onsite Response be made;

"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);

"Insolvency Event" means the occurrence of any of the following in respect of a party: being unable to pay debts as they fall due, being placed under administration, receivership or liquidation, entering into an arrangement with creditors, or any similar event under applicable law;

"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 maintenance, updating, monitoring and technical upkeep of the Platform carried out by Foremind;

"Metropolitan Location" means a location included within a metropolitan service area identified in the Foremind Metropolitan Coverage Guide & Register (Policy Document — Clinical Governance) as at the date of the applicable Order Form;

"Notification" means a request for a Critical Incident Response received by Foremind through the Dedicated Access Line from a person authorised by the Customer under clause 13.4. A request received by any other means, including by email, in-app message, contact with an individual practitioner, or a call to any other telephone number, does not constitute Notification;

"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.

"Onsite Response" means attendance by an appropriately qualified practitioner at, or at another agreed location near, the affected workplace, where clinical assessment indicates that physical attendance is appropriate and likely to be beneficial;

"Order Form" means the commercial ordering document signed by or on behalf of the Customer and Foremind (or its authorised representative) which sets out the plan, add-ons, fees and other key commercial terms of the Customer's subscription to the Services. Each Order Form forms part of this Agreement when executed.

"Platform" means platforms and websites of or managed by Foremind or its Related Bodies Corporate and used 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 Customer as described in an Employer Services Agreement, Order Form or SOW;

"Platform Services" means the hosted services that are made available by Foremind to the Customer as a service via the internet and may be accessed and used by means of the Platform, set out in the Order Form, which may include access to Wellbeing Content, digital self-assessments, Counsellor booking platform, psychosocial hazard reporting and management tools, de-identified analytics and reporting, workforce surveys, and related support services;

"Practitioner Services" means one-on-one or group services delivered to the Customer or its Authorised Users by independent practitioners engaged by Foremind or by a Response Partner, whatever the practitioner's discipline, including Counselling Services, clinical and professional supervision, manager coaching, dietetic consultations and legal consultations, whether delivered online, by telephone or in person;

"Professional Services" means services related to staff training, implementation, configuration, consultation or advisory work provided by Foremind to the Customer, as specified in a Statement of Work or Order Form, available at Foremind's election and subject to an additional fee;

"Regional or Remote Location" means a location that is not a Metropolitan Location;

"Response Partner" means a third party engaged by Foremind to deliver or support the Critical Incident Response Services, including after-hours clinical response capability and specialist trauma response capability;

"Related Body Corporate" means as described in Section 50 of the *Corporations Act 2001* (Cth);

"Service Improvement" means monitoring, evaluating, maintaining, developing and improving the Platform and the Services, including quality assurance, clinical governance, safety monitoring, service design and product development;

"Services" means any services that Foremind provides to the Customer, or which Foremind is obliged to provide under these Terms of Service, including Platform Services, Counselling Services, other Practitioner Services, Professional Services, Support Services, Maintenance Services and any other alternative, optional and add-on services made available to the Customer, online or through offline channels, by Foremind from time to time;

"Software" means Foremind's cloud-based platform (including Foremind's web-applications, software libraries and APIs), that enables access to the Services. The Software is a component of the Platform;

"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, provided by Foremind to the Customer under the applicable Employer Services Agreement, but excluding any clinical, counselling or healthcare-related support, provided between 8:30am and 5:30pm Sydney time on a Business Day;

"Term" means the term of these Terms of Service, commencing in accordance with clause 2.1 and ending in accordance with clause 2.2;

"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 Employer Services 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.

"Update" means a hotfix, patch, fix, enhancement or minor new release of the Platform deployed by Foremind;

"Upgrade" means a major new version or release of the Platform deployed by Foremind;

"Utilisation" means the total number of counselling sessions used in a 12-month subscription period as a percentage of the Customer's staff headcount as stated in the applicable Order Form or Employer Services Agreement, calculated as: $\text{number of sessions used} \div \text{staff headcount} \times 100$. For example, if a Customer with 100 staff uses 20 sessions, Utilisation is 20%. Sessions used by eligible family members of Authorised Users count toward sessions used but do not increase staff headcount, and a session cancelled within 24 hours of its scheduled start time counts as a used session in accordance with clause 11.4.

"User Content" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer 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 Customer (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

2. Term and Contract Formation

- 2.1. These Terms of Service shall commence on the Effective Date and continue until it is terminated in accordance with the terms of these Terms of Service.

- 2.2. These Terms of Service may be formed electronically without the need for physical (wet) ink. The Customer accepts that the right of access to the Platform and Software by Foremind constitutes an offer, and the Customer's access to the Platform and Software for the valuable consideration described above constitutes acceptance by the Customer of Foremind's offer binding the Customer to the provisions of these Terms of Service. Should Foremind require physical (wet) signature, the Customer will accommodate such request and physically sign and email a scan of these Terms of Service to Foremind.

3. Licence and Limitations

- 3.1. Subject to the Customer's compliance with these Terms of Service, Foremind grants to the Customer, from the Effective Date and for the Term, a personal, revocable, non-exclusive, non-transferable, royalty-free licence (without any right to sub-license), to permit Authorised Users to access and use the Software and Platform for internal business purposes only, subject to the limitations and prohibitions set out in this clause 3.
- 3.2. Where the Customer is subscribing under an Employer Services Agreement, the licence is conditional upon the Customer's compliance with its obligations and full payment of applicable fees.
- 3.3. The Customer 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 provide or make the Platform available in any form to any person other than the Customer's employees, sub-contractors or agents without Foremind's prior written consent;
 - (f) not sub-contract, novate or assign its rights under these Terms of Service without Foremind's prior written consent;
 - (g) supervise and control the use of the Software and the Platform so that it is in accordance with the terms of these Terms of Service;
 - (h) ensure that it and its Authorised Users have the internet connectivity, equipment and supported browser or application versions necessary to access the Platform;
 - (i) cooperate with Foremind by providing access to its premises and facilities as reasonably necessary to enable Foremind to provide the Services;
 - (j) ensure that the Customer and the Authorised Users do 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;
 - (k) provide Foremind with up to date and accurate information regarding the details of all end users, as when requested by Foremind;
- 3.4. The Customer agrees that these Terms of Service binds the Customer and the Customer will ensure that Authorised Users and all of its employees, agents and contractors who are permitted to access or use the Software, and access the Platform and other Services, at all times comply with the terms of these Terms of Service and the Customer acknowledges that a breach by an Authorised User of these Terms of Service, will be considered to be a breach by the Customer.
- 3.5. The Customer must not (and must ensure that Authorised Users do not) engage in any Unauthorised Use or Vulnerability Testing.
- 3.6. The Customer must not (and must ensure that Authorised Users do not) use the Platform in a manner that constitutes Abusive Conduct or Offensive Content.

4. Fees and Payment

- 4.1. The Customer must pay Foremind the Fee prior to Foremind providing access to the Platform and annually on each 12-month anniversary of the Effective Date, in consideration for receiving access to the Platform and the licences granted under the Employer Services Agreement.
- 4.2. Fees are exclusive of GST unless otherwise stated. In respect of any taxable supply, the Customer must pay to Foremind an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the applicable Fee, subject to the receipt by the Customer of a valid tax invoice. In this subclause, "GST", "supply", "supplier" and "tax invoice" have the same meaning as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 4.3. Invoices must be paid by the Customer within fourteen (14) days from the date of invoice, unless otherwise specified in the Employer Services Agreement. Foremind may, in its discretion, issue invoices annually in advance or at other intervals in its discretion, having regard to the nature of the Services provided.
- 4.4. If the Customer delays payment under these Terms of Service for any reason, including underpayment, interest will accrue and be payable from the time payment was due until paid in full, at a rate of 7% per annum, accruing daily. If an invoice remains unpaid beyond the due date, Foremind reserves the right to halt or suspend the provision of the Services, in whole or in part, including access to counselling, training and any other contracted offerings, until the outstanding amount is paid in full. Foremind will not be liable for any loss, disruption or impact arising from such suspension. Foremind may terminate the Services by providing 90 days' prior written notice if amounts remain unpaid.
- 4.5. The Fee will increase automatically on each anniversary of the Effective Date by the lesser of 3% or the All Groups Consumer Price Index for Sydney most recently published by the Australian Bureau of Statistics, unless otherwise agreed by the Parties in writing prior to that anniversary date. In addition, Foremind may update the Fee mid-term by providing written notice to the Customer and both parties agreeing in writing prior to the increase.
- 4.6. Where the Customer holds an annual subscription, if Utilisation exceeds 20%, Foremind reserves the right to review the Customer's current plan and, in consultation with the Customer, agree to changes in pricing, features, or service tiers. For Customers with fewer than 25 staff, this threshold is 50% Utilisation.
- 4.7. The Customer's current plan is based on the staff numbers provided at the time of agreement, with a tolerance of plus or minus 10% to allow for normal fluctuations through growth or attrition. If the Customer's staff coverage requirements move beyond this threshold, Foremind will work with the Customer to review the current plan and discuss any adjustments to pricing, features, or service tiers.
- 4.8. Pricing is valid for the initial 12-month term. Foremind reserves the right to review and adjust pricing at renewal, in consultation with the Customer and with reasonable notice provided prior to any change taking effect.

5. Reputation

- 5.1. The Customer must not do any act which prejudices or brings into disrepute the good name and reputation of Foremind or its Customers or any of Foremind's and its Customer's officers, members, servants and agents.

6. Ownership of Platform Materials

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

7. Source Code

Nothing in these Terms of Service shall give to the Customer or any other person any right to access or use the Source Code or constitute any licence of the Source Code.

8. User Login and Access Credentials

- 8.1. Where the Customer 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 Customer(s)), the Customer must treat such information as confidential.
- 8.2. Authorised Users may only access the Platform by entering valid user identification code and password. The Authorised User must keep the log in credentials in a secure and safe place.
- 8.3. Foremind and the Customer each has the right to cancel and disable any user identification code or password, without notice, whether chosen by the Customer or allocated by Foremind or the Customer at any time, if in Foremind's or Customer's reasonable opinion(s), the Customer has failed to comply with any provision of these Terms of Service, and any applicable Customer policies and rules.
- 8.4. In the event of cancellation of the Login account of an Authorised User in accordance with this clause 8, the Authorised User may not object, and such Authorised User shall no longer seek to access the Platform.

9. Provision of Services – General Commitments and Conditions

- 9.1. Foremind agrees to provide the Services during the Term:
 - (a) in good faith and with reasonable care and skill;
 - (b) in a competent and professional manner consistent with applicable standards for comparable hosted services; and
 - (c) in accordance with any reasonable directions of the Customer where mutually agreed and not inconsistent with these Terms of Service.
- 9.2. The Customer further acknowledges that Foremind's role is limited to:
 - (a) delivering and maintaining access to the Platform Services and other Services as described in these Terms of Service;
 - (b) correcting any technical malfunctions in the Platform that Foremind considers to be departures from its intended functionality; and
 - (c) providing such Support Services or Professional Services as are expressly agreed in an applicable Statement of Work or Order Form.
- 9.3. Where Foremind is required to travel to the Customer's location to perform any Services (where agreed), the Customer must reimburse Foremind's reasonable travel, accommodation and related expenses (including accommodation of a standard appropriate to the location, and to the safety and wellbeing of the attending practitioner), as well as travel time charged in accordance with clause 9.5.
- 9.4. Without limiting clause 9.3, travel costs may apply to in-person Services, including face-to-face counselling, onsite critical incident response sessions, and launch or other training delivered on location. These costs are not included in standard Fees and will be charged to the Customer where required.
- 9.5. Travel charges. Unless otherwise stated in an Order Form, travel is charged as follows: (a) travel time is charged at fifty per cent (50%) of the hourly rate applicable to the Service being delivered, calculated from the practitioner's point of departure to the Customer's location and return; (b) vehicle travel is charged at the Australian Taxation Office cents per kilometre rate applying at the relevant time, together with tolls and parking; and (c) air travel, accommodation, meals and other reasonable travel expenses are charged at cost.
- 9.6. Estimates. Where practicable, Foremind will provide the Customer with an estimate of travel time and expenses before mobilising an Onsite Response or other in-person Service at a Regional or Remote Location. Where it is not practicable to do so before mobilisation, Foremind will notify the Customer as soon as reasonably practicable afterwards. For the avoidance of doubt, the provision of urgent clinical support will not be delayed pending agreement on travel costs.

10. Platform Services

- 10.1. The Platform Services made available to the Customer under these Terms of Service are those associated with the service tier and any add-ons selected in the applicable Order Form. The inclusions, usage limits, and features applicable to each service tier and add-on are described in the provided order form, as updated by Foremind from time to time. By selecting a tier or add-on in an Order Form, the Customer agrees to the corresponding inclusions and limitations published at that URL as at the effective date of the Order Form. Any material change to those inclusions will not apply to the Customer during the Term without the Customer's prior written consent.
- 10.2. Subject to the Customer's compliance with these Terms of Service, and in the case of an Authorised User, for such time as the Customer's login account remains valid, Foremind will make available the Platform as a hosted service for the Customer'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 3.
- 10.3. Foremind shall use reasonable commercial endeavours to maintain the availability of the Platform Services to the Customer 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.
- 10.4. The Customer 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.
- 10.5. All the limitations and exclusions of liability and warranties, and the special acknowledgements by the Customer, that are set out in these Terms of Service and are expressed to relate to the Software shall apply in respect of the Platform Services in addition to the Software.
- 10.6. The Customer must ensure that Authorised Users safeguard and do not share login credentials. The Customer is responsible for all use of the Platform by its Authorised Users, including misuse of access credentials.
- 10.7. Availability. Foremind will use reasonable endeavours to make the Platform Services available at least 99.5% of the time in each calendar month, measured at the gateway described in clause 10.3. That target excludes unavailability arising from: (a) scheduled maintenance notified in accordance with clause 14.3; (b) emergency maintenance reasonably required to address a security vulnerability or a risk to data integrity; (c) a Force Majeure Event; (d) the Customer's systems, network or equipment, or any act or omission of the Customer or an Authorised User; or (e) failure of a third-party service outside Foremind's reasonable control. Foremind will report on availability on reasonable request. This clause does not give rise to service credits or any right of set-off.
- 10.8. Continuity. Foremind maintains documented business continuity and disaster recovery arrangements for the Platform, including regular backups and a defined recovery process, and reviews and tests those arrangements at least annually. Where an incident materially affects the availability of the Platform Services for more than one Business Day, Foremind will keep the Customer informed of the expected restoration timeframe.
- 10.9. AI Features. The Platform Services may include AI Features. AI Features assist Authorised Users, practitioners and Customer administrators by generating, summarising, classifying or suggesting content. AI Features are not used to make automated decisions about an Authorised User, and do not determine an Authorised User's care, eligibility, employment or engagement. All clinical decisions, including triage, risk assessment, treatment approach and escalation, are made by appropriately qualified human practitioners exercising their own professional judgement, and any AI Output used in a clinical context is reviewed by an appropriately qualified practitioner before it is relied upon.
- 10.10. Accuracy and reliance. AI Output is generated automatically and may be inaccurate, incomplete or not appropriate to an individual's circumstances. AI Output is general information only. It is not clinical advice, diagnosis, assessment or treatment, and is not legal, financial, taxation or work health and safety advice. The Customer must not rely, and must ensure that its Authorised Users do not rely, on AI Output as a substitute for professional advice or for the exercise of the Customer's own judgement.

- 10.11. Use of AI Output. The Customer must not, and must ensure that its Authorised Users do not: (a) use AI Output to make or support any decision about an individual's employment, performance, engagement, discipline or remuneration; (b) attempt to identify or re-identify any individual from AI Output; or (c) submit to an AI Feature any content that the Customer is not entitled to provide to Foremind.

11. Counselling Services

- 11.1. 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 session or in-person sessions.
- 11.2. The Counselling Services are short-term EAP support and are not intended to replace crisis care, emergency support, diagnostic assessment, or specialist mental health treatment. Where an Authorised User's needs sit outside the scope of EAP counselling, Foremind will support them to identify appropriate next steps, including connection with a general practitioner, crisis service, emergency service or specialist provider.
- 11.3. The availability of Counselling Services is subject to practitioner availability, the applicable Employer Services Agreement, order form and Foremind's discretion.
- 11.4. If an Authorised User cancels a scheduled appointment for any Practitioner Services (including counselling) within 24 hours of the scheduled start time, the full session fee will be charged, and the session will be counted toward the Authorised User's 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. While Foremind requires counselling practitioners — and each other practitioner delivering Practitioner Services (including psychologists, dietitians and legal practitioners) — to hold current registration, accreditation or an equivalent credential with the body applicable to their discipline, being one of the following:
- (a) Australian Counselling Association (ACA);
 - (b) Psychotherapy and Counselling Federation of Australia (PACFA);
 - (c) Australian Association of Social Workers (AASW), including Accredited Mental Health Social Worker (AMHSW) status where applicable;
 - (d) Australian Health Practitioner Regulation Agency (AHPRA), as a registered or endorsed Psychologist;
 - (e) Dietitians Australia, as an Accredited Practising Dietitian (for dietetic services);
 - (f) a current Australian practising certificate issued under the Legal Profession Uniform Law or equivalent State or Territory legislation (for legal consultations); or
 - (g) such other professional body, registration, accreditation or practising certificate as is required to lawfully deliver the relevant Practitioner Service,

you expressly acknowledge and accept such practitioners may not be registered to practice in your Authorised User's jurisdiction of residence. The Customer expressly acknowledges and agrees that where its Authorised Users are located outside of Australia, practitioners will comply with the applicable laws and rules in *their* location of practice, and not necessarily the laws and rules applicable in the Authorised Users' jurisdiction of residence, and you expressly agree to these Terms of Service on that basis. 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 Customer is connected. Foremind is responsible for credentialing practitioners in accordance with these Terms of Service, for facilitating access to Practitioner Services and for maintaining its clinical governance framework, and nothing in this clause limits Foremind's responsibility for its subcontractors under these Terms of Service; however, each practitioner exercises independent professional and clinical judgement in delivering Practitioner Services, and Foremind does not control that judgement. To the maximum extent permitted by law, 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 Customer, 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.

- 11.6. Any advice, diagnosis, treatment or services provided by a practitioner accessed through the Platform are provided entirely at the Customer's own risk. The Customer 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. Authorised Users may select another practitioner at their election if the chosen practitioner is not suitable for their needs. The Customer's use of the Platform, including access to Counselling Services, is at their own discretion and risk. The Customer is solely responsible for any resulting loss or damage.
- 11.7. 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 Customer'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.
- 11.8. The Customer 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 to the extent arising from the acts or omissions of the Customer or its Authorised Users in connection with any healthcare professional accessed through the Platform, including the provision of inaccurate, incomplete or misleading information to a practitioner. For the avoidance of doubt, this clause does not require the Customer to indemnify Foremind in respect of the negligence, malpractice, misconduct or professional failure of a practitioner.

12. Psychosocial Hazard Services

- 12.1. The Platform Services may include psychosocial hazard reporting and management tools, risk and compliance tracking tools, workforce surveys and associated reports (including recommendations and suggestions reports), and related training and guidance materials (together, the "Psychosocial Hazard Services").
- 12.2. The Psychosocial Hazard Services, and any outputs, reports, recommendations or suggestions generated through them, are general information and workflow aids only. They do not constitute legal advice, work health and safety advice or compliance advice, and Foremind does not warrant that use of the Psychosocial Hazard Services will satisfy the Customer's obligations under any law.
- 12.3. The Customer remains solely responsible for its duties as a person conducting a business or undertaking under applicable work health and safety laws, including the identification, assessment and control of psychosocial hazards and the notification of notifiable incidents to regulators. Foremind does not monitor reports or survey responses in real time and does not undertake to escalate any matter to the Customer or to notify any regulator on the Customer's behalf.

- 12.4. Where an Authorised User submits a report anonymously, Foremind will not disclose to the Customer the identity of the reporter, or information reasonably likely to identify the reporter, except with the reporter's express consent, where required by law, or where necessary to lessen or prevent a serious threat to the life, health or safety of any individual. The Customer must not attempt to identify the maker of any anonymous report, and must not subject, or permit any person to subject, a reporter to any detriment or victimisation for making a report.
- 12.5. The Customer acknowledges that anonymity cannot be guaranteed where the content of a report itself identifies, or tends to identify, the reporter.
- 12.6. Reports and surveys may contain personal information of third parties (including individuals who are the subject of a report). Any request by an individual for access to, or correction of, personal information held by Foremind in connection with the Psychosocial Hazard Services will be handled by Foremind in accordance with the Privacy Act 1988 (Cth), and the parties will cooperate in good faith in relation to any such request received by either of them.
- 12.7. Reports, analytics and survey outputs provided to the Customer will be de-identified and aggregated, and will not include breakdowns for cohorts of fewer than 20 individuals or otherwise permit the identity of an individual to be reasonably ascertained.
- 12.8. Nothing in these Terms of Service limits any protection, right or obligation arising under any applicable whistleblower law, including Part 9.4AAA of the Corporations Act 2001 (Cth), and to the extent of any inconsistency the applicable whistleblower law prevails.

13. Professional Services and Critical Incident Response Services

- 13.1. Foremind may, if expressly agreed in a Statement of Work, provide Professional Services to the Customer during the Term. Any such Professional Services fees will be charged on the basis agreed in a pricing schedule. Unless such Professional Services are agreed in writing, Foremind shall have no obligation to provide them.
- 13.2. Where the Customer purchases a Critical Incident Response Package, Foremind will make Critical Incident Response Services available to the Customer in accordance with this clause 13.
- 13.3. Access. The Critical Incident Response Services are available 24 hours a day, 7 days a week. A request for a Critical Incident Response must be made through the Dedicated Access Line by a person authorised by the Customer under clause 13.4.
- 13.4. Authorised requesters and access control. The Customer must nominate, and keep current, the persons authorised to request a Critical Incident Response, and must notify Foremind promptly of any change. The Customer must communicate the Dedicated Access Line and the process for requesting a Critical Incident Response to its Authorised Users. The Customer must not publish, distribute or otherwise make the Dedicated Access Line available to any person other than its Authorised Users and personnel.
- 13.5. Initial Clinical Response. Following Notification, Foremind will seek to provide an Initial Clinical Response within two (2) hours. That period runs from Notification and relates to initial clinical response and assessment only. It does not mean, and must not be represented by the Customer as meaning, that a practitioner will attend a workplace within two (2) hours.
- 13.6. Clinical assessment determines the response. Foremind will clinically assess the circumstances of a Critical Incident before determining the appropriate response. The occurrence of a Critical Incident does not of itself mean that individual support, group support or an Onsite Response is required or will be provided. An Onsite Response will be provided where, in the clinical judgement of the assessing clinician, physical attendance is appropriate and likely to be beneficial.
- 13.7. Onsite Response — Metropolitan Locations. Where an Onsite Response is clinically indicated at a Metropolitan Location, Foremind will seek to provide a practitioner onsite within twenty-four (24) hours of Notification. Earlier attendance may be arranged where clinically appropriate and practicable.
- 13.8. Onsite Response — Regional or Remote Locations. Where an Onsite Response is clinically indicated at a Regional or Remote Location, Foremind will seek to arrange attendance as soon as reasonably practicable, and will provide available telephone or video clinical support without waiting for attendance. Foremind does not guarantee attendance within twenty-four (24) hours at a Regional or Remote Location.

- 13.9. Response times are targets. The response times in clauses 13.5, 13.7 and 13.8 are operational targets and are not guarantees, and Foremind does not guarantee attendance within any particular period at any location. Foremind will use reasonable endeavours to meet those targets. A target may not be met where affected by matters including practitioner availability, the location and its accessibility, insufficient information being available to safely and appropriately brief a practitioner, site safety, travel and transport conditions, communication failure, the Customer's authorisation not being obtained where required, or other circumstances outside Foremind's reasonable control.
- 13.10. Material delay. Where Foremind becomes aware that a response target will not be met and the delay is material, Foremind will inform the Customer and, where appropriate, offer an alternative interim response, which may include telephone or video clinical support, manager guidance, or the engagement of a Response Partner.
- 13.11. Site safety and access. Before any Onsite Response, and as a condition of attendance, the Customer must:
- (a) ensure that the site is secure and that any source of violence or threat has been controlled;
 - (b) advise Foremind whether emergency services remain involved, and confirm that emergency services have been contacted where immediate medical or safety intervention is or was required;
 - (c) disclose any known site hazard, and any material risk to the safety of an attending practitioner which the Customer knows or ought reasonably to know of;
 - (d) provide safe access arrangements and nominate an appropriate onsite contact;
 - (e) provide a suitable private space in which confidential support can be delivered; and
 - (f) provide reasonable information as to the anticipated number of Authorised Users attending and their needs.
- 13.12. Foremind may delay, modify or decline an Onsite Response where safe access cannot reasonably be established, and remote clinical support may continue while safety concerns are addressed. Foremind is not liable for any failure to meet a response target, or for any loss, to the extent arising from the Customer's non-compliance with clause 13.11.
- 13.13. Scope and limits. The Critical Incident Response Services are short-term psychological support and are not an emergency service. Where there is an immediate threat to life, serious injury or imminent harm, emergency services take priority and the Customer must contact them. The Critical Incident Response Services are not a substitute for emergency medical treatment, psychiatric care, ongoing therapy, workplace investigation, industrial relations advice or legal advice. Foremind does not undertake workplace investigations, determine liability, make disciplinary decisions, or assume any of the Customer's obligations as a person conducting a business or undertaking under applicable work health and safety legislation.
- 13.14. Voluntary participation. Participation in a Critical Incident Response is voluntary. No Authorised User will be required by Foremind to attend, to participate in a group session, to discuss an incident, to describe their reactions, or to disclose clinical information to the Customer. Foremind does not routinely provide compulsory psychological debriefing. Where the Customer requests a "debrief", Foremind will clarify the objectives of the request and determine the clinically appropriate intervention.
- 13.15. Practitioner discretion. Practitioners engaged by Foremind or by a Response Partner retain professional discretion as to triage, suitability of services, treatment approach, escalation pathways, referrals, and whether an Onsite Response is clinically appropriate. The Customer acknowledges that Foremind will not direct that clinical judgement.
- 13.16. Package inclusion and fees. A Critical Incident Response Package includes one Onsite Response at a Metropolitan Location comprising up to three (3) hours of onsite attendance. Additional Critical Incident Responses, and onsite attendance beyond the hours included in the Package, are charged at \$350 per hour with a minimum charge of three (3) hours for each response. Travel, travel time and related expenses are charged in addition, in accordance with clauses 9.3 to 9.6. Report preparation, court attendance, training and consultancy are quoted separately and are not included in the hourly rate.

- 13.17. Mobilisation and cancellation. Where Foremind or a Response Partner has commenced triage, coordination, rostering, practitioner allocation or other mobilisation activity in response to a request, and the request is subsequently withdrawn, cancelled, deferred or otherwise not proceeded with, then: (a) if this occurs before the allocated practitioner has commenced travel, a mobilisation and administration fee of \$150 may be charged; and (b) if this occurs after the allocated practitioner has commenced travel, the minimum charge in clause 13.16 applies, together with any travel, accommodation, parking, tolls or other expenses already incurred, whether or not the practitioner arrives at the site or provides any service to an Authorised User. Foremind may waive or reduce a fee under paragraph (a) in its discretion where a request is cancelled promptly and no substantive mobilisation has occurred. Any waiver is determined case by case and creates no entitlement, continuing practice or precedent.
- 13.18. Eligibility. Where a person contacts the Dedicated Access Line and represents, or reasonably appears, to be an Authorised User of the Customer, Foremind or a Response Partner may undertake triage and provide such limited assistance as is clinically necessary before that person's eligibility has been confirmed. Where eligibility cannot immediately be confirmed, is disputed, or is subsequently rejected by the Customer, the Customer must pay the fees for the professional time reasonably incurred in triage, risk assessment, crisis support, safety planning, referral, escalation, coordination or handover, charged at the rate in clause 13.16. Assistance provided under this clause creates no entitlement to ongoing Services once the person is confirmed not to be an Authorised User.
- 13.19. Amounts payable under clauses 13.16, 13.17 and 13.18 are fees for Services rendered and are a debt due and payable by the Customer. They are not a claim under clause 23 and the cap in clause 23.1 does not apply to them.
- 13.20. Reporting. Reporting in relation to the Critical Incident Response Services is limited to information relating to the services delivered, attendance and mobilisation, aggregate utilisation, follow-up activity, general themes relevant to workforce support, and recommendations for further support. Reports will not include individual clinical notes, lists identifying Authorised Users who attended, or clinical information relating to an identifiable individual. Clause 12.7 does not apply to reporting under this clause. Where a Response Partner has delivered any part of a Critical Incident Response, Foremind may be unable to provide information held by that Response Partner.
- 13.21. Follow-up and continuity of care. Where ongoing support is clinically appropriate following a Critical Incident, Foremind will seek to facilitate transition to the Counselling Services or to specialist care. Sessions delivered to an Authorised User as part of a Critical Incident Response count toward that Authorised User's allocated session quota, unless the applicable Order Form states otherwise.

14. Platform Updates and Maintenance

- 14.1. Foremind maintains and updates the Platform as part of the Platform Services. Updates are developed, tested and deployed by Foremind to the hosted Platform and take effect automatically. The Customer is not required to install, apply, host or test any Update or Upgrade, and no Foremind software is required to be installed on the Customer's systems in order to access the Platform.
- 14.2. The Customer must ensure that it and its Authorised Users access the Platform using a supported internet browser and, where a Foremind mobile application is used, a current supported version of that application. Foremind is not responsible for any issue arising from the use of an unsupported browser, operating system or application version.
- 14.3. Foremind may modify, add to or discontinue features of the Platform from time to time. Foremind will not materially reduce the core functionality of the service tier purchased by the Customer during the Term except in accordance with clause 10.1. Where planned maintenance is likely to materially affect availability of the Platform Services, Foremind will give the Customer reasonable notice where practicable.
- 14.4. The Customer acknowledges that additional modules, premium features, Upgrades or add-ons which are not included in the Customer's service tier may be made available subject to additional terms and fees set out in an Order Form.

15. Support Services

- 15.1. From time to time during the Term, Foremind may provide Support Services to the Customer under an Employer Services Agreement, which may indirectly benefit the Customer. Foremind has no obligation to provide Support Services to the Customer under these Terms of Service.
- 15.2. Foremind may in its discretion, make a helpdesk available to the Customer for the purpose of providing the Support Services.
- 15.3. Any Support Services shall be provided remotely and relate only to the use of the Foremind Software.
- 15.4. Foremind shall have no obligation to provide Support Services in respect of any issue caused by:
 - (a) any issue outside the scope of the Employer Services Agreement;
 - (b) the improper use of the Software by the Customer.
- 15.5. The Customer acknowledges and agrees that Foremind gives no warranties or guarantees in relation to the outcome of the Support Services.

16. Customer Data

- 16.1. The Customer retains ownership of the Customer Data uploaded, submitted or made available by the Customer or its Authorised Users through the Platform. Customer Data has the meaning given in clause 1, and does not include Excluded Records, analytics data or de-identified aggregated data.
- 16.2. Notwithstanding any other provision of these Terms of Service, Customer Data does not include, and the Customer has no right of ownership of, or access to: (a) clinical or session records, and summary notes entered into the Platform, relating to Practitioner Services; (b) individual responses to workforce surveys or digital self-assessments; (c) individual psychosocial hazard or incident reports, including any information identifying, or tending to identify, the individual who made the report; and (d) any other health information or sensitive information (each as defined in the Privacy Act 1988 (Cth)) of an individual Authorised User held by Foremind; and (e) any content submitted by an Authorised User to an AI Feature in connection with counselling, wellbeing support or a psychosocial hazard report, and any AI Output generated from that content (together, "Excluded Records").
- 16.3. Foremind will provide the Customer only with de-identified, aggregated outputs and reports derived from Excluded Records. The Customer must not attempt to re-identify any individual from any report, output or dataset provided by Foremind, and must ensure that its personnel do not do so.
- 16.4. The Customer grants to Foremind and its Related Bodies Corporate a non-exclusive, royalty-free licence to use, reproduce, store, process and distribute Customer Data solely to the extent reasonably required for the performance of Foremind's obligations and the exercise of Foremind's rights under these Terms of Service. For the avoidance of doubt, this licence does not permit Foremind or its Related Bodies Corporate to use Customer Data for any commercial purpose beyond the delivery of the Services to the Customer, other than to the extent expressly permitted by clauses 16.5, 16.10, 16.11 and 16.12. The Customer also grants to Foremind and its Related Bodies Corporate the right to sub-license these rights to its third-party service providers engaged solely for the purpose of delivering the Services, subject to any express restrictions elsewhere in these Terms of Service.
- 16.5. Foremind may generate, use and disclose de-identified, Aggregated data derived from Customer Data and Platform usage for Service Improvement and for the production of Benchmarking Data, in accordance with the Privacy Policy and clauses 16.11 and 16.12.
- 16.6. The Customer warrants to Foremind and its Related Bodies Corporate that the Customer Data 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.
- 16.7. Foremind does not supervise, review, or monitor User Content in real-time and assumes no responsibility for the accuracy, legality, or appropriateness of any Customer Data uploaded, submitted or transmitted by the Customer through the Platform.

- 16.8. Foremind disclaims all liability for any direct or indirect loss, damage, or harm arising from or in connection with the Customer's use of, reliance on, or exposure to any Customer Data. Customer and its Authorised Users access and use Customer Data at their own discretion and risk.
- 16.9. Foremind reserves the right to create, collect, use and store metadata and other diagnostic or usage data resulting from the Customer's use of the Platform. This metadata may be used for purposes including, but not limited to, technical troubleshooting, operational management, analytics, and to support investigations or lawful requests by regulatory authorities or government agencies.
- 16.10. Foremind may use de-identified and Aggregated data, including data relating to the Customer's or its Authorised Users' interaction with the Platform and the Services, for Service Improvement and for the production of Benchmarking Data, in accordance with the Privacy Policy and clauses 16.11 and 16.12.
- 16.11. Derivation and safeguards. Foremind may derive de-identified, Aggregated data from Customer Data and from Excluded Records for Service Improvement and for the production of Benchmarking Data. Before Benchmarking Data is disclosed outside Foremind or published, Foremind will ensure that: (a) each reported cohort draws on no fewer than twenty (20) individuals; (b) each reported segment, including any industry, sector, geographic or organisation-size segment, draws on no fewer than five (5) separate customers; (c) it does not identify, and does not permit the identification by inference of, the Customer or any Authorised User; and (d) Foremind has assessed the risk of re-identification having regard to the information being released and the context of its release. Foremind will suppress or further aggregate any category of information where these requirements are not met.
- 16.12. Participation. Data relating to the Customer will be included in the pool from which Benchmarking Data is produced unless the applicable Order Form states otherwise or the Customer notifies Foremind in writing that it elects not to participate. An election not to participate takes effect prospectively from a reasonable time after Foremind receives it. Benchmarking Data already produced, and Foremind's rights in it, are not affected by that election or by termination of these Terms of Service, and Foremind is not required to withdraw the Customer's historical contribution from Benchmarking Data already produced or published.

17. Confidentiality

- 17.1. Each Party agrees to keep confidential and not use for any purpose other than to perform these Terms of Service, or disclose to any third party, any information of the other Party that is reasonably regarded as confidential. This obligation does not apply to information that: (i) is or becomes publicly available through no breach of these Terms of Service; (ii) is lawfully known to the receiving Party at the time of disclosure, without restriction and through no breach of any obligation of confidentiality; (iii) is independently developed by the receiving Party without reference to or use of the disclosing Party's confidential information; (iv) is disclosed with the prior written consent of the disclosing Party; (v) is required to be disclosed by law, regulation or court order, or mandatory reporting obligations, ethical guidelines or professional standards applicable to that Party or its personnel including as described in clause 17.2, provided where legally permitted and reasonably practicable the receiving Party gives written notice (where legally permitted) within a reasonable period and cooperates with the disclosing Party to seek a protective order or other remedy.
- 17.2. Customer acknowledges that where its Authorised Users engage in Practitioner Services (including Counselling Services) provided by a Foremind-appointed practitioner, those Services are subject to legal and ethical obligations that may limit the confidentiality of information disclosed by the Authorised User. Customer further acknowledges that Foremind provides an informational guide titled ***'Your Counselling and Mandatory Disclosures'***, available online at <https://foremind.com.au/your-counselling-and-mandatory-disclosures>, which explains the specific circumstances under which a practitioner may be legally or ethically required to disclose confidential information shared by an Authorised User. Customer must, where requested by Foremind, ensure that each Authorised User is made aware of these confidentiality limitations, including by providing access to this guide prior to the Authorised User's first Counselling session.

17.3. Communications between an Authorised User and a legal practitioner in the course of a legal consultation are subject to legal professional privilege, which belongs to the Authorised User. Notes and records of legal consultations will be created and retained by the legal practitioner in that practitioner's own privileged file, will not be entered into the Foremind platform, and will not be accessed or reviewed by Foremind (including by Foremind's clinical lead). Foremind's clinical governance and note-review processes apply only to clinical Practitioner Services and are carried out only by appropriately qualified professionals for the relevant discipline.

18. Privacy

18.1. Each Party agrees to comply with all applicable data protection, privacy and anti-spam laws in any relevant jurisdiction, including the Privacy Act 1988 (Cth).

18.2. By using the Platform, the Customer consents to Foremind collecting, using, processing and disclosing personal information (including sensitive information) in accordance with Foremind's Privacy Policy, available at <https://foremind.com.au/privacy-policy/>, as updated from time to time.

18.3. The Customer agrees to obtain all necessary consents and authorisations from individuals, including Authorised Users, before providing any personal information to Foremind for the purposes of these Terms of Service, including so that such personal information may be collected, used, processed and disclosed by Foremind in accordance with its Privacy Policy.

18.4. Foremind may compile statistical and analytical information related to the use and performance of the Platform and the Services, may generate de-identified insights from such information, and may produce and publish Benchmarking Data in accordance with clauses 16.11 and 16.12. 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 Customer's confidential information.

18.5. 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.

18.6. Disclosure to a Response Partner. The Customer acknowledges that Foremind may engage a Response Partner to deliver or support the Critical Incident Response Services, and that Foremind may disclose to a Response Partner such personal information (including sensitive information and health information) as is reasonably necessary to assess, coordinate and deliver a Critical Incident Response. Information disclosed will be limited to what is reasonably necessary for that purpose.

18.7. Records held by a Response Partner. A Response Partner is responsible for maintaining clinical records for the services it delivers, in accordance with its own professional, legal and contractual obligations. The Customer acknowledges that Foremind does not hold those records and cannot provide access to, or correction of, them. Any request by an individual for access to or correction of a record held by a Response Partner will be referred to that Response Partner, and Foremind will provide reasonable assistance but cannot compel production.

18.8. Notification of a data breach by Foremind. Where Foremind becomes aware of unauthorised access to, unauthorised disclosure of, or loss of personal information relating to the Customer or an Authorised User held by Foremind or by a Response Partner, Foremind will notify the Customer without undue delay and, where practicable, within forty-eight (48) hours of becoming aware of the incident. The notification will include, to the extent known at the time, the nature of the incident, the kinds of information affected, the categories of person affected, and the steps taken or proposed to contain, assess and remediate the incident.

18.9. A notification under clause 18.8 will not identify, and will not include information reasonably likely to identify, any individual Authorised User, and will not disclose that any identified individual has accessed the Services.

- 18.10. Notification of a data breach by the Customer. Where the Customer becomes aware of unauthorised access to, unauthorised disclosure of, or loss of personal information relating to the Services, including any compromise of Authorised User records, access credentials or the Dedicated Access Line, the Customer must notify Foremind without undue delay and, where practicable, within forty-eight (48) hours of becoming aware of the incident, and must provide the information described in clause 18.8.
- 18.11. Assessment and notification of affected individuals. Each party will take reasonable steps to contain, assess and remediate a suspected eligible data breach within the period contemplated by section 26WH of the Privacy Act 1988 (Cth), and will reasonably cooperate with the other party in relation to any notification required under section 26WK of that Act. Where more than one entity holds the affected information, the parties will agree which entity is to notify affected individuals, having regard to section 26WM. The Customer must not notify an Authorised User of an incident relating to the Practitioner Services or the Critical Incident Response Services without Foremind's prior written agreement.
- 18.12. Security. Foremind will implement and maintain technical and organisational security measures appropriate to the sensitivity of the information it holds, having regard to Australian Privacy Principle 11 and to the nature of health information. Those measures include: (a) encryption of personal information in transit and at rest; (b) role-based access controls, with access to clinical records restricted in accordance with clause 17.3; (c) logging of access to clinical records; (d) multi-factor authentication for administrative access to the Platform; (e) vulnerability management and periodic security testing; (f) confidentiality undertakings and appropriate background screening for personnel with access to personal information; and (g) documented incident response procedures aligned with clauses 18.8 to 18.11.
- 18.13. Assurance. Foremind will provide the Customer with a summary of its security controls on reasonable written request, not more than once in any twelve (12) month period. Foremind is not required to disclose information that would itself create a security risk or that relates to another customer.
- 18.14. Data residency. Personal information collected through the Platform is stored and processed in Australia. Foremind will not store or process personal information outside Australia without first giving the Customer written notice and complying with clause 18.15.
- 18.15. Cross-border disclosure. Where Foremind discloses personal information to an overseas recipient, Foremind will take such steps as are reasonable in the circumstances to ensure that the recipient does not breach the Australian Privacy Principles, in accordance with Australian Privacy Principle 8. The Customer acknowledges that where an Authorised User is located outside Australia, delivery of the Practitioner Services may require disclosure of personal information to a practitioner in that jurisdiction, and that Foremind will limit any such disclosure to what is reasonably necessary to deliver the Service requested.
- 18.16. No model training. Foremind does not use Customer Data, User Content, Excluded Records or any content submitted to an AI Feature to train, fine-tune or otherwise develop or improve any artificial intelligence or machine learning model, and does not permit any third-party provider of AI services to do so. In particular, Foremind does not use counselling records, session notes or any other clinical record for model training.
- 18.17. AI processing and location. All processing of content submitted to an AI Feature occurs within infrastructure located in Australia. Content submitted to an AI Feature is not retained by the provider of the underlying model and is not disclosed to the developer of that model. The AI service providers and models currently used to deliver the AI Features are identified in the Privacy Policy and are available to the Customer on request. Foremind may change the AI service provider, model or hosting arrangement provided that clauses 18.14 and 18.16 continue to be satisfied, and will notify the Customer of any such change in accordance with clause 28.6.

19. Intellectual Property Rights

- 19.1. Nothing in these Terms of Service shall operate to assign or transfer any Foremind IP from Foremind to the Customer, or any Intellectual Property Rights of Authorised Users or the Customer to Foremind.
- 19.2. The Customer 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 Customer Data. To the extent any such rights may vest in the Customer, the Customer assigns those rights to Foremind on creation, with full title guarantee and free of encumbrances;
- (b) the Customer has no rights in the Platform or any part of it, other than the limited licence rights expressly granted under these Terms of Service;
- (c) any Intellectual Property Rights in feedback, suggestions or feature requests relating to the Platform that are provided by the Customer or its Authorised Users (each an “**Improvement Suggestion**”) shall be deemed to be owned solely by Foremind upon submission. The Customer 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 Customer also consents to any acts or omissions by Foremind or its licensees that may otherwise infringe any moral rights the Customer may have in the Improvement Suggestions;
- (d) the Customer must not take any step to invalidate or prejudice Foremind’s (or its licensors’) Intellectual Property Rights in the Platform or any associated materials.

20. Suspension and Termination of Services

- 20.1. Foremind may suspend or restrict the Customer’s access to the Services (in whole or in part), including the Platform, at any time:
- (a) where the Customer or any Authorised User breaches these Terms of Service or any applicable policies;
 - (b) for non-payment of any Fees, including where any amount remains unpaid after its due date;
 - (c) if the Customer is subject to an insolvency event; or
 - (d) if any Authorised User engages in verbal, physical, written or other abuse (including threats of abuse or retribution) towards Foremind’s personnel or practitioners.
- 20.2. Suspension may remain in effect until all outstanding issues have been remedied to Foremind’s satisfaction, including payment in full of all overdue Fees. Foremind may, at its discretion, reinstate Services once remedial conditions are met.
- 20.3. Foremind may terminate the Customer’s access to the Platform and the Services by notice in writing:
- (a) immediately, if the breach is not capable of remedy;
 - (b) if the Customer fails to remedy a remediable breach within 7 days of receiving written notice from Foremind;
 - (c) if the Customer fails to pay Fees that remain overdue for more than two consecutive months; or
 - (d) for any other cause expressly set out in these Terms of Service.
- 20.4. Where Foremind terminates these Terms of Service for cause under this clause or under clause 25 (Termination), the Customer will not be entitled to any refund of Fees, and all unpaid amounts will become immediately due and payable.
- 20.5. Termination does not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages for any pre-existing breach or the obligation to pay Fees.

21. Warranties and Foremind Indemnity

- 21.1. Each party warrants to the other party that it has the legal right and authority to enter into these Terms of Service and to perform its obligations under these Terms of Service.
- 21.2. Foremind warrants to the Customer that to the best of its knowledge the Software, when used by the Customer in accordance with these Terms of Service, will not infringe the Intellectual Property Rights of any person.

- 21.3. If Foremind reasonably determines, or any third party alleges, that the use of the Software by the Customer in accordance with these Terms of Service infringes any person's Intellectual Property Rights, Foremind may, acting reasonably and at its own cost and expense:
- (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights; or
 - (b) procure for the Customer the right to use the Software in accordance with these Terms of Service.
- 21.4. These clauses 21.2 and 21.3 represent Foremind's sole obligations, and the Customer's exclusive remedy with respect to Intellectual Property Rights infringement claims, except where such claims give rise to Foremind's indemnity obligations under clause 21.5.
- 21.5. Foremind agrees to hold harmless and indemnify the Customer 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 as a result of a third-party claim that the Customer's use of the Platform in accordance with these Terms of Service infringes that third party's Intellectual Property Rights, except to the extent such loss is caused or contributed to by the Customer's breach of these Terms of Service. This indemnity is subject to the Customer first exhausting the remedies in clauses 21.2 and 21.3.
- 21.6. All of the parties' warranties and representations in respect of the subject matter of these Terms of Service are expressly set out in these Terms of Service. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of these Terms of Service will be implied into these Terms of Service or any related contract.

22. Acknowledgements and Warranty Limitations

- 22.1. The Customer acknowledges that the Software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms of Service, Foremind gives no warranty or representation that the Software will be wholly free from Malicious Code, defects, errors and bugs.
- 22.2. The Customer acknowledges that the Software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms of Service, Foremind gives no warranty or representation that the Software will be entirely secure.
- 22.3. The Customer acknowledges that it will be responsible for configuring its own technology to access the Platform Service.
- 22.4. The Customer acknowledges that Foremind will not provide any legal, financial, accountancy or taxation advice under these Terms of Service or in relation to the Software, Platform or Services; and, except to the extent expressly provided otherwise in these Terms of Service, Foremind does not warrant or represent that the Software or the use of the Software, Platform or Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.
- 22.5. The Customer 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 Customer's information only. Such links should not be interpreted as approval by Foremind of those linked websites or information the Customer may obtain from them. Foremind has no control over the contents of those sites or resources, and the Customer accesses third party websites entirely at their own risk and subject to the terms and conditions of use for those websites.

23. Customer Indemnity

- 23.1. The Customer 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: (a) as a result of any breach of these Terms of Service by the Customer or any Authorised User; or (b) any unlawful or unauthorised use of the Services. Notwithstanding the foregoing, the Customer's aggregate liability under this clause 23 shall not exceed the total Fees paid or payable by the Customer in the twelve (12) month period immediately preceding the event giving rise to the claim.

23.2. 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.

24. Limitations and Exclusions of Liability

24.1. Nothing in these Terms of Service 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 Customer may have under the Australian Consumer Law ("**non-excludable guarantee**"), except to the extent permitted by law.

24.2. Notwithstanding clause 24.1(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, and such remedy shall be Customer's sole remedy in respect of such 'non-excludable guarantees'.

24.3. 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 any of the following, 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:

- (a) Customer or its Authorised 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;

24.4. Subject to clauses 24.1 and clause 24.2, notwithstanding anything to the contrary in these Terms of Service, in no event will Foremind's aggregate liability for any claims in connection with Customer's and its Authorised User's use of the Platform or Services in respect of any and all events or series of related events for the Term exceed 100% of the total Fees paid or payable by Customer in the twelve (12) month period immediately preceding the event giving rise to the claim.

24.5. 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 exclusion or limitation is not permitted by law, it will not apply. Nothing in this clause 24 affects any rights or remedies the Customer may have under the Australian Consumer Law or any other applicable law that cannot be excluded or limited.

25. Termination

25.1. In addition to Foremind's suspension rights, Foremind may terminate these Terms of Service in the event of a breach of any of the provisions of these Terms of Service by the Customer, or without cause by providing the Customer with at least 60 days' prior written notice. Where Foremind terminates these Terms of Service without cause under this clause, Foremind will refund to the Customer a pro-rata amount of any Fees prepaid for the period following the effective date of termination. Foremind may communicate termination by disabling the Authorised 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 Employer Services Agreement.

25.2. These Terms of Service shall terminate for all Authorised Users immediately and without notice upon termination of the Employer Services Agreement with the related Customer.

25.3. If the Customer is considering cancelling the Services in whole or in part, the Customer must provide at least 60 days' written notice prior to the renewal date. This allows Foremind to work with the Customer through the transition, ensure continuity of care for the Customer's staff, and finalise any outstanding matters. The Services will continue, and applicable Fees will remain payable, throughout the notice period. If notice is not provided prior to this 60 day period, these Terms of Service will automatically renew for a further 12-month term.

26. Effects of termination

26.1. Upon the termination of these Terms of Service, all of the provisions of these Terms of Service shall cease to have effect, save that the following provisions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): 2.2 (Electronic formation), 3 (Licence and Limitations), 4.3 and 4.4 (invoicing and interest), 5 (Reputation), 6 (Copyrighted Material), 7 (Source Code), 8 (User Login and Access Credentials), 9 (Provision of Services – General Commitments and Conditions), 11.7, 11.8, 13.13, 13.16 to 13.20, 14.4, 15.5, 16 (Customer Data), 17 (Confidentiality), 18 (Privacy), 19 (Intellectual Property Rights), 20 (Suspension and Termination of Services), 21 (Warranties and Foremind Indemnity), 22 (Acknowledgements and Warranty Limitations), 23 (Customer Indemnity), 24 (Limitations and Exclusions of Liability), 25 (Termination), 26 (Effects of termination) and 28 (General).

26.2. Except to the extent that these Terms of Service expressly provides otherwise, the termination of these Terms of Service shall not affect the accrued rights of either party.

26.3. Return of Customer Data. Where the Customer makes a written request within thirty (30) days after termination, Foremind will provide the Customer with a copy of the Customer Data then held by Foremind, in a commonly used machine-readable format. This clause does not apply to Excluded Records, to which the Customer has no right of access under clause 16.2.

26.4. Retention of clinical records. Foremind holds clinical records relating to the Practitioner Services and the Critical Incident Response Services in its capacity as a health service provider, and is required by applicable health records legislation to retain them. Those records will be retained for the period required by law, which is generally seven (7) years from the date of last service or, in the case of a record created while the individual was under the age of 18, until that individual attains the age of 25. Those records will not be provided to the Customer on termination or at any other time.

26.5. Deletion. Subject to clause 26.4 and to any other legal obligation to retain information, Foremind will delete or de-identify Customer Data within a reasonable period, and in any event within twelve (12) months, after the later of the date of termination and the end of any period during which the Customer may request a copy under clause 26.3.

27. Amendments

27.1. Foremind may vary these Terms of Service from time to time. If so, Foremind will publish the updated Terms of Service on the Platform and may also notify the Customer by other means, such as via email or in-Platform notice. The updated Terms of Service will take effect immediately upon publication unless otherwise stated.

27.2. Where a variation constitutes a material change to the Customer's rights or obligations under these Terms of Service, Foremind will provide the Customer with at least 30 days' prior written notice. If the Customer 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. Where the Customer provides written notice of objection to a material change and ceases use of the Platform and Services before the effective date of the change, Foremind will refund to the Customer a pro-rata amount of any Fees prepaid for the period following the effective date of the change. Continued use of the Platform or Services following the effective date will constitute acceptance of the amended Terms of Service.

27.3. For changes that do not materially alter the relationship between the Customer and Foremind, no prior notice is required beyond publication of the revised Terms of Service on the Platform in accordance with clause 27.1.

28. General

- 28.1. No breach of any provision of these Terms of Service shall be waived except with the express written consent of the party not in breach.
- 28.2. If any provision of these Terms of Service is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of these Terms of Service 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).
- 28.3. The Customer hereby agrees that Foremind may assign Foremind's contractual rights and obligations under these Terms of Service 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 Customer is a consumer, such action does not serve to reduce the guarantees benefiting the Customer under these Terms of Service. Save to the extent expressly permitted by applicable law, the Customer must not without the prior written consent of Foremind assign, transfer or otherwise deal with any of the Customer's contractual rights or obligations under these Terms of Service.
- 28.4. Foremind may subcontract the performance of any of its obligations under these Terms of Service. 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.
- 28.5. Foremind may also engage independent third-party counselling professionals to deliver the Counselling Services. The Customer acknowledges that Counselling Services are facilitated by Foremind but delivered by such independent providers.
- 28.6. The use of subcontractors or third-party providers does not relieve Foremind of its obligations under these Terms of Service. Foremind remains responsible for ensuring that any subcontracted services comply with these Terms of Service, and will ensure that all subcontractors are bound by confidentiality and data protection obligations that are materially no less protective than those set out in these Terms of Service. Foremind will notify the Customer in writing of any material change to the subcontractors or third-party providers handling the Customer's data, including any change to the primary platform hosting provider, within a reasonable time of such change taking effect.
- 28.7. Foremind may engage, replace or substitute a Response Partner from time to time with a provider having equivalent qualifications and capability, without the Customer's consent, provided that the Critical Incident Response Services continue to be provided materially in accordance with clause 13. Foremind will notify the Customer of any change of Response Partner within a reasonable time of the change taking effect.
- 28.8. These Terms of Service 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 these Terms of Service are not subject to the consent of any third party.
- 28.9. These Terms of Service, together with any Employer Services Agreement, Order Form or Statement of Work, shall constitute the entire agreement between the parties in relation to the subject matter of these Terms of Service, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 28.10. Any queries about these Terms of Service should be sent to us by email at support@foremind.com.au
- 28.11. Dispute resolution. If a dispute arises in connection with these Terms of Service, an Employer Services Agreement, an Order Form, a Statement of Work or the Services, either party may give the other written notice setting out the nature of the dispute.
- 28.12. Within fourteen (14) days after receiving a notice under clause 28.11, senior representatives of each party will meet, confer or otherwise communicate in good faith in an attempt to resolve the dispute. If the dispute is not resolved within twenty-eight (28) days after that notice, either party may pursue any remedy available at law.

- 28.13. Nothing in clauses 28.11 and 28.12 prevents either party from seeking urgent interlocutory or injunctive relief, from recovering an undisputed amount owing, or from taking action where immediate intervention is reasonably required, including where there is a risk to the safety of any person.
- 28.14. These Terms of Service shall be governed by and construed in accordance with the laws of New South Wales in Australia.
- 28.15. The courts of New South Wales in Australia shall have non-exclusive jurisdiction to adjudicate any dispute arising under or in connection with these Terms of Service.
- 28.16. Any notice required or permitted to be given under these Terms of Service must be in writing and delivered by email to the notice addresses specified in the Employer Services Agreement. For foremind this is support@foremind.com.au. A notice sent by email is taken to be received when the sender receives confirmation that the message has been delivered to the recipient's email server, unless the sender receives an automated message indicating that the email was not delivered.

29. Interpretation

In these Terms of Service, 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.

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Joel Anderson - CEO