



THRIVE THERAPEUTIC SOFTWARE LTD

and

[INSERT CUSTOMER]

Software as a service (SaaS) Agreement

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THIS AGREEMENT is made on (**Commencement Date**) between the following parties (each a **party** and together the **parties**):

PARTIES

- (1) THRIVE THERAPEUTIC SOFTWARE LTD incorporated and registered in England and Wales with company number 07928073 whose registered office is at Celixir House, Stratford Business & Technology Park, Stratford upon Avon, CV37 7GZ (**Provider**); and
- (2) [INSERT CUSTOMER NAME] a company incorporated in England and Wales whose registered number is [INSERT COMPANY NUMBER] and whose registered office is at [INSERT REGISTERED OFFICE] (**Customer**).

BACKGROUND

- (A) Provider has designed and developed, and is the entire legal and beneficial owner and licensor of, certain software applications that it wishes to make available as a service to Customer for the benefit of the Customer and its Members (as defined below).
- (B) Customer and Members will be able to benefit from the software as a service (**SaaS**) and associated applications by interacting with it remotely through the Internet.
- (C) Provider wishes to provide the Services and associated Applications (as defined below) and Customer agrees to pay for the Services and associated Applications on the terms of this Agreement.

The parties agree:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Words shall have the meanings given to them in this Agreement, including without limitation as set out below:

Act: the Data Protection Act 2018 or any legislation which amends or replaces it;

Applicable Law: any and all applicable laws, statutes, orders, rules, treaties, decree, regulations, directives, edicts, bye-laws, schemes, warrants, other instruments made under or to be made under any statute, any exercises of the royal prerogative and codes of conduct and regulatory rules or guidelines, whether local, national, international or otherwise existing from time to time, together with any other similar instrument having legal effect in the relevant circumstances;

Application/App: any software or application owned by Provider and made available to Customer and the Members as part of the Services and as set out in Schedule 1;

Appointed Shared Care Representative: the Customer's representative, as appointed by the Customer from time to time (in the event that a Shared Care Protocol applies), which shall provide mental health services to Members who are referred by the Provider in accordance with paragraph 6.2.3 of Schedule 1. The Appointed Shared Care Representative shall be specified in the Shared Care Protocol. It is the Customer's responsibility to inform the Provider immediately in writing if there is a change in the Appointed Shared Care Representative;

Associate: in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that party from time to time;

Business Day: a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London;

Confidential Information: all information whether technical or commercial know-how (including all specifications, inventions, processes, initiatives, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties) given by one party to the other or otherwise obtained by one party relating to the other party's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including information relating to management, financial, marketing, technical and other arrangements or operations of any Associate, person, firm, or organisation associated with that party where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

Control: owning directly or indirectly more than fifty percent (50%) of the shares or securities of the other person representing the right to vote on all or substantially all matters including the election of directors and **Controls** and **Controlled** shall be interpreted accordingly;

Data Controller: controller, as defined in the GDPR;

Data Protection Legislation: (a) to the extent UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; (b) to the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Provider is subject, which relates to the protection of personal data;

Documentation: the documents (in whatever media) that accompany the Services or Applications, including all data, reports and specifications;

EU GDPR: the General Data Protection Regulation (EU) 2016/679;

Force Majeure: an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, or reasonable precautions against any such; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions; non-performance or default by suppliers or subcontractors; and interruption or failure of utility services; **Force Majeure** does not include inability to pay;

GDPR: the UK GDPR or the EU GDPR or both, to the extent that each applies to the processing under this Agreement;

Intellectual Property Rights: any and all copyright, know-how, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, mask

works, the right to sue for passing off, utility models, domain names and all similar rights and, in each case:

- (a) whether registered or not,
- (b) including any applications to protect or register such rights,
- (c) including all renewals and extensions of such rights or applications,
- (d) whether vested, contingent or future, and
- (e) wherever existing;

Launch Date: [INSERT DATE] or such other date as is agreed in writing by the parties as the date from which the Services are to be provided pursuant to this Agreement;

Losses: all incurred losses, liabilities, damages, costs, claims, demands, actions, proceedings, orders and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties;

Member(s): the individuals that are authorised to use the Services as specified in Schedule 1. If Schedule 1 does not specify a 'user figure' or any other reference to the number of individuals, then the number of Members shall be deemed to be equivalent to the total number of authorised individuals that actually have access to the Services;

Member Data: all information of whatever form relating to a Member which is made available to Provider by a Member through their use of the Services;

Member Population: the total number of individuals for the time being [employed by the Customer] [OR substitute relevant definition here];

Member Subscriptions: the subscriptions purchased by Customer pursuant to clause 4 which entitle each Member to access and use the Services and the Documentation in accordance with this Agreement; and

processing: the meaning given in the **GDPR**;

Personal Data: **personal data** as defined in the **GDPR** and shall include, where applicable, personal data which is processed from time to time by the parties in connection with the Shared Care Protocol (if applicable);

Referrals: as defined in paragraph 6.2.3 of Schedule 1, and 'Referred' shall be construed accordingly;

SCP Responsibilities: the responsibilities of each party that are set out in the Shared Care Protocol in a designated section headed 'Responsibilities';

Services: the software-as-a-service (**SaaS**) and associated delivery of Applications provided remotely to Customer for the benefit of the Customer and Members on a subscription basis in accordance with the terms of this Agreement, and as further set out in the Documentation and Schedule 1 and, where applicable, shall include any error corrections, patches, fixes, updates, upgrades, new releases or new versions of software subsequently developed (if any) and any additional services set out in Schedule 1;

Shared Care Protocol: the documentation defined in paragraph 6.2.5 of Schedule 1;

Site: the website located at <https://thrive.uk.com/>;

Subscription Fee: the fees referred to in clause 4 (Subscription Fee and payment) and further set out in Schedule 1;

Therapy Service: therapy sessions provided at Provider's option via remote communication via the App or other means agreed by Provider (for example, by secure text chat, secure VoiP services, secure videoconferencing services or other communication service), facilitated by a therapist provided by Provider, and may also include guided self-help and triage;

Thrive 24: out-of-hours triage services provided as part of the Therapy Service as described in paragraph 6.1.9(a) of Schedule 1;

Thrive Oceania: the trading name under which Australian Wholistic Health & Wellbeing Company Ltd (ACN 145723119) provides Thrive Mental Wellbeing and associated services in Oceania (including Australia and New Zealand);

Triage Services: as defined in paragraph 6.2 of Schedule 1;

UK GDPR: has the meaning given to it in the Act;

VAT: United Kingdom value added tax, and any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to subclauses, clauses and Schedules are to subclauses, clauses or Schedules of this Agreement;
- 1.2.3 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.4 references to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation;
- 1.2.5 in the event and to the extent only of any conflict between:
 - (a) the clauses and the Schedules, the clauses shall prevail;
 - (b) the Act and the GDPR, the Act shall prevail;
- 1.2.6 clause and schedule headings do not affect the interpretation of this Agreement; and
- 1.2.7 a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. **SERVICES**

2.1 In consideration of the mutual undertakings agreed under this Agreement, during the term of this Agreement, Provider shall:

2.1.1 provide the Services to Customer for the benefit of Customer and its Members with effect from the Launch Date in accordance with this Agreement; and

2.1.2 comply with the requirements of Schedule 1 in performing its obligations under this Agreement.

3. **USE OF THE SERVICES AND APPLICATIONS**

3.1 Subject to Customer purchasing the Services and paying the Subscription Fees in accordance with clause 4 and Schedule 1, Provider hereby grants a non-transferable, non-exclusive licence with effect from the Launch Date for the term of this Agreement to Customer (for the benefit of Customer and its Members) to use the Applications and Documentation to the extent necessary to receive the benefit of the Services.

3.2 Prior to providing Members with access to the Services, Applications or Documentation, Customer shall:

3.2.1 ensure that all Members are aware of their obligation to comply with user terms applicable to the Services, Applications or Documentation. Customer shall only provide Members with access to the Services via the access method provided by Provider and shall not provide access to anyone other than a Member.

3.3 Provider's responsibility to Customer for the provision of the Services to Members shall be limited to those Members who comply with the End User Licence Agreement (www.thrive.uk.com/eula) as varied from time to time (**EULA**), including (without limitation) the requirement to use recent versions of the compatible internet browsers and devices specified in the EULA.

3.4 Except to the extent such activities are expressly agreed by the parties to this Agreement:

3.4.1 Customer's rights to use the Services and/or Applications do not permit it, or Members, to copy, cut and paste, email, reproduce, publish, distribute, redistribute, broadcast, transmit, modify, adapt, edit, abstract, create derivative works of, store, archive, publicly display, sell or in any way commercially exploit any part of the Services and/or Applications;

3.4.2 Customer's rights to benefit from the Services and/or Applications do not permit it to;

(a) combine, merge or otherwise permit the Services or Applications (or any part of them) to become incorporated in any other program, nor arrange or create derivative works based on it;

- (b) attempt to decompile (as defined in section 50B of the Copyright, Designs and Patents Act 1988) the underlying software (or any part of it) that is used to provide the Services and/or Applications, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988; and
 - (c) observe, study or test the functioning of the underlying software (or any part of it) that is used to provide the Services and/or Applications, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988.
- 3.5 Customer warrants that it shall, and acknowledges that Members must, keep confidential and, except as provided for in this Agreement, not share with any third party any 'PIN', 'ID' or similar password (if applicable) that it is provided with to facilitate a Member's access to the Services and/or Applications.
- 3.6 Customer acknowledges that the Members must use due care and diligence to avoid introducing any software virus or other contaminant (including any bugs, worms, logic bombs, trojan horses or any other self-propagating or other such program) that may infect or cause damage to the Services, Applications or Provider's systems or otherwise disrupt the provision of the Services.
- 3.7 The Customer shall not permit any third party to benefit from the Services and/or Applications without the prior written consent of the Provider.
- 3.8 In case of unauthorised use of the Services by Customer or a Member, Provider reserves the right to deny access to the Services and/or Applications to Customer or any Member by blocking without prior notification the IP address(es) used to access the Services and/or Applications.
- 3.9 Customer undertakes that:
 - 3.9.1 it will not knowingly allow or suffer any Member Subscription to be used by more than one individual Member; and
 - 3.9.2 it shall not hold the Provider liable for any damages arising from the failure of a Member: to keep a secure password for his use of the Services and Documentation and to keep that password confidential.
- 3.10 Customer shall not, and shall not knowingly permit any third party to, and the Provider shall have no responsibility for Members who, access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:
 - 3.10.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 3.10.2 facilitates illegal activity;

- 3.10.3 depicts sexually explicit images;
- 3.10.4 promotes unlawful violence;
- 3.10.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 3.10.6 is otherwise illegal or causes damage or injury to any person or property,

and Provider reserves the right, without liability or prejudice to its other rights to Customer, to disable any Member's access to any material that breaches the provisions of this clause.

3.11 Customer shall not:

- 3.11.1 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 3.11.2 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Members.

3.12 Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Provider.

4. SUBSCRIPTION FEE AND PAYMENT

4.1 Customer shall pay Provider the Subscription Fees in connection with the receipt of the Services and/or use of the Applications.

4.2 All amounts due under this Agreement are exclusive of VAT, sales or other tax applicable which shall be paid in addition by Customer at the rate and in the manner for the time being prescribed by law.

4.3 If Customer fails to pay the amounts due to Provider in accordance with the terms of this Agreement, and without prejudice to any other rights and remedies of Provider:

- 4.3.1 Provider may, without liability to Customer, disable Customer's password, account and access to all or part of the Services and Provider shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 4.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to three percent (3%) over the then current base lending rate of Lloyd's Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after any judgment.

- 4.4 Except as otherwise expressly provided, all amounts and fees stated or referred to in this Agreement shall be payable in pounds sterling.
- 4.5 Customer acknowledges and agrees that the Provider reserves the right to monitor the number of Members and/or individuals with access to the Applications from time to time and, where the Member Population exceeds the number of Member Subscriptions purchased by Customer, the Provider reserves the right to charge Customer the Fees for an additional set of Member Subscriptions in the amount set out in Schedule 1, together with interest at the rate set out in clause 4.3.2, and Customer shall pay for such Member Subscriptions and interest in accordance with clause 4.4.
- 4.6 Customer may, during the term of this Agreement, purchase additional sets of Member Subscriptions. Such additional sets of Member Subscriptions shall be available for purchase at a Subscription Fee to be agreed in writing between the parties prior to such individuals accessing the Services and/or Applications.

5. **WARRANTIES**

- 5.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.
- 5.2 Provider warrants that:
- 5.2.1 it has the right, power and authority to grant to Customer the rights (if any) contemplated herein and supply the Services and/or license the Applications;
 - 5.2.2 the Documentation will provide users with adequate instructions to enable them to use the Services and/or Applications effectively;
 - 5.2.3 the Services and/or Applications shall be free from viruses and other malicious code.
- 5.3 The warranties specified in clause 5.2 are subject to Customer giving notice to Provider as soon as it is reasonably practicable to do so upon becoming aware of the breach of warranty. When notifying Provider of a breach Customer shall use its reasonable endeavours to provide Provider with such documented information, details and assistance as Provider may reasonably request.
- 5.4 Upon notification in writing Provider undertakes to use its reasonable endeavours to remedy any fault arising from a breach of clause 5.2 within 90 days after notification. If Provider rectifies such fault within such time then it will have no other liability of any kind in respect of the fault.
- 5.5 Customer acknowledges and agrees that:
- 5.5.1 Provider is not and cannot be aware of the extent of any potential Losses resulting from any failure by Provider to discharge its obligations under this Agreement;

- 5.5.2 the Services and/or Applications have not been prepared to meet Customer's individual requirements and that they cannot be tested in every operating environment so as to produce software which is error free or operates without interruption; and
 - 5.5.3 it is Customer's responsibility to ensure the facilities and functions of the Services and/or Applications meet Customer's requirements.
- 5.6 Provider does not warrant or represent that the Services and/or Applications shall be:
 - 5.6.1 uninterrupted or error free; or
 - 5.6.2 interoperable with third party software or equipment.
- 5.7 Save to the extent set out in this clause 5 or to the extent that any exclusion is prohibited by law, no other representations, warranties or conditions, express or implied, statutory or otherwise (including as to condition, satisfactory quality, performance or fitness for purpose), are given or assumed by Provider in respect of the Services, Applications and/or Documentation and any such representations, warranties or conditions are hereby excluded.
- 5.8 Any warranties given by Provider shall be subject to Customer using the Services and/or Applications in compliance with this Agreement, and Provider shall not be liable under this clause for, or required to remedy, any problem arising from any defect or error wholly caused by third party software used in connection with the Services and/or Applications.
- 6. **DEVELOPMENTS**
 - 6.1 During the term of this Agreement, the Provider may introduce error corrections, patches, fixes, updates, upgrades, new releases or new versions (**Updates**) of the Applications from time to time.
 - 6.2 The Provider shall supply to Customer and the Members such Updates at no further cost or expense to Customer or Members. For the avoidance of doubt, it is in the Provider's sole discretion as to whether it makes such Updates available.
- 7. **PROVIDER'S OBLIGATIONS**
 - 7.1 Provider shall provide the Services in accordance with good industry practice.
 - 7.2 Provider shall host the Applications and associated software remotely via the cloud.
 - 7.3 Provider shall provide the Services in accordance with Applicable Law to the extent that such Applicable Law is general in nature or affects or relates to a supply of services that are the same or similar to the Services.
 - 7.4 Provider shall not be liable for its failure to comply with clause 7.1 to the extent that any non-conformance is caused by use of the Services contrary to Provider's instructions, or modification or alteration of the Services by any party other than Provider or Provider's duly

authorised contractors or agents. If the Services do not conform with clause 7.1, Provider will, at its expense, use its reasonable commercial endeavours to correct any such non-conformance as soon as reasonably practicable, or provide Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of clause 7.1.

- 7.5 Notwithstanding the foregoing, Provider is not responsible for any delays or delivery failures resulting from the transfer of data over communications networks and facilities, including the Internet, and Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.6 This Agreement shall not prevent Provider from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 7.7 Without prejudice to any other rights of Provider, Provider shall not be obliged to provide Triage Services where the Customer is in material breach of any of its obligations under clause 8 of this Agreement.

8. **CUSTOMER'S OBLIGATIONS**

8.1 Customer shall:

8.1.1 provide Provider with:

- (a) all necessary co-operation in relation to this Agreement; and
 - (b) all necessary access to such information as may be required by Provider,
- in order to enable Provider to provide the Services;

8.1.2 use the Services and/or Applications in accordance with Applicable Law;

8.1.3 promptly inform Provider of the then current number of individuals in the Member Population in any of the following circumstances:

- (a) on each anniversary of the Launch Date [OR consider specifying other interval in the event that more rapid changes are anticipated];
- (b) on being requested to do so by Provider;
- (c) on the number of Members in the Member Population exceeding the number of Member Subscriptions at any time.

8.1.4 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance as agreed by the parties, Provider may adjust any agreed timetable or delivery schedule as reasonably necessary;

- 8.1.5 not knowingly permit the Members to use the Services and the Documentation other than in accordance with the terms and conditions of this Agreement;
- 8.1.6 or its Members shall obtain and maintain all necessary licences, consents, and permissions necessary for Provider, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- 8.1.7 in relation to Triage Services, meet the standard required by paragraph 6.2.6 of Schedule 1;
- 8.1.8 acknowledge that each of its Members must ensure that their network and systems comply with the relevant specifications provided by Provider from time to time; and
- 8.1.9 or its Members shall be responsible for:
 - (a) procuring and maintaining their network connections and telecommunications links from their systems to Provider's data centres; and
 - (b) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's or a Member's network connections or telecommunications links or caused by the Internet.

9. PROVIDER INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

- 9.1 All Intellectual Property Rights in and to the Services, Applications and Documentation shall vest and remain vested in Provider. To the extent that Customer acquires any Intellectual Property Rights in the Services, Applications and/or Documentation, Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including under this Agreement by way of present assignment of future Intellectual Property Rights) to Provider. Customer shall execute all such documents and do such things as Provider may consider necessary to give effect to this clause.
- 9.2 Provider shall defend Customer against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify Customer for any amounts awarded against Customer in judgment or settlement of such claims, provided that:
 - 9.2.1 Provider is given prompt notice of any such claim;
 - 9.2.2 Customer provides reasonable co-operation to Provider in the defence and settlement of such claim, at Provider's expense; and
 - 9.2.3 Provider is given sole authority to defend or settle the claim.
- 9.3 In the defence or settlement of any claim, Provider may procure the right for Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on

- two (2) Business Days' notice to Customer without any additional liability or obligation to pay liquidated damages or other additional costs to Customer.
- 9.4 In no event shall Provider, its employees, agents and sub-contractors be liable to Customer to the extent that the alleged infringement is based on:
- 9.4.1 a modification of the Services or Documentation by anyone other than Provider;
or
 - 9.4.2 Customer's use of the Services or Documentation in a manner contrary to the instructions given to Customer by Provider; or
 - 9.4.3 Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Provider or any appropriate authority.
- 9.5 The foregoing states Customer's sole and exclusive rights and remedies, and Provider's (including Provider's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
10. **DATA PROTECTION**
- 10.1 Each party shall act in accordance with Data Protection Legislation and provide the other party with reasonable assistance in complying with its obligations under applicable Data Protection Legislation insofar as necessary to facilitate each party's compliance with each party's obligations in this Agreement.
- 10.2 The parties acknowledge and agree that:
- 10.2.1 each party shall be an independent controller of the other party's **Business Contact Information** (being names, job roles, business mailing addresses, business email addresses, business phone numbers and other business contact information regarding the other party's employees, directors, vendors, agents, expressly excluding Member Data); and each party agrees that the other party can use its Business Contact Information only for the purpose of allowing each party to perform obligations or receive benefits under the Agreement, such as but not limited to contract/Services management and invoicing;
 - 10.2.2 Provider shall be the **Data Controller** in respect of any Personal Data contained within Member Data received directly from Members via the App or otherwise.
11. **CONFIDENTIAL INFORMATION**
- 11.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.

- 11.2 Each party undertakes to:
- 11.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents, professional advisers and contractors (including Provider personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
 - 11.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 11.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 11.4 The provisions of this clause shall not apply to information which:
- 11.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - 11.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 11.4.3 is independently developed by the recipient, without access to or use of such information; or
 - 11.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 11.5 Notwithstanding the other provisions of this Agreement, Provider shall be entitled to publicly announce and disclose in promotional materials that Customer is a customer of Provider and any press releases, messages and case studies prepared in accordance with this clause 11.5 and on request Customer shall provide all reasonable cooperation to Provider to facilitate the preparation of:
- 11.5.1 a joint press release and agree a messaging and a communication plan; and
 - 11.5.2 a case study no more frequently than once every 12 months.
- 11.6 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five years thereafter.

12. **LIMITS ON LIABILITY**

- 12.1 This clause 12 sets out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other party:
- 12.1.1 arising under or in connection with this Agreement;

- 12.1.2 in respect of any use made by Customer of the Services and Documentation or any part of them; and
 - 12.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Except as expressly provided in this Agreement:
 - 12.2.1 Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by Customer, and for conclusions drawn from such use;
 - 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from this Agreement;
 - 12.2.3 the Services, Applications and Documentation are provided to Customer on an "as is" basis;
 - 12.2.4 the content of the Site and Apps is intended to provide general information that a Member may use to become more knowledgeable about managing his health; it is not a substitute for professional medical advice, diagnosis or treatment of particular conditions;
 - 12.2.5 the Provider cannot make any guarantee to the Customer or any Member (and therefore makes no warranty and gives no indemnity) that the use of any information available on the Site or any App will cure or remedy any particular ailment;
 - 12.2.6 the Member's use of any information the Provider provides is entirely at his own risk; and
 - 12.2.7 information obtained through the Site is not exhaustive and does not cover all diseases, ailments, health conditions or their treatment (and the Provider likewise gives no warranty or indemnity to that effect).
- 12.3 Subject to clause 12.5, in no event shall the aggregate liability of either party to the other party, including liability for breach of contract (including under any indemnity), misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty, warranty, strict liability or any other legal theory howsoever arising, in respect of any and all claims or Losses arising under this Agreement exceed one hundred percent (100%) of the total Subscription Fees paid or payable to Provider under this Agreement during the twelve (12) month period before the date on which the loss or damage giving rise to the claim arose.
- 12.4 Subject to clause 12.5, under no circumstances shall either party be liable to the other party for any of the following types of loss or damage arising under or in relation to the Agreement (whether arising for breach of contract (including under any indemnity), misrepresentation

(whether tortious or statutory), tort (including negligence), breach of statutory duty, warranty, strict liability or any other legal theory howsoever arising):

12.4.1 any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or

12.4.2 any indirect or consequential loss or damage whatsoever,

even if that party was aware of the possibility that such loss or damage might be incurred by the other.

12.5 Notwithstanding the above neither party excludes or limits any liability for:

12.5.1 personal injury and death to the extent that such injury results from the negligence or wilful default of a party or its employees;

12.5.2 fraud, fraudulent misrepresentation or fraudulent concealment;

12.5.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

12.5.4 any other liability to the extent the same cannot be excluded or limited by law.

12.6 The parties agree that the limitations on liability in this Agreement are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement.

13. **FORCE MAJEURE**

13.1 Neither party (**claiming party**) shall be liable to the other for any delay or failure to perform any of its obligations hereunder to the extent such delay or failure is due to Force Majeure provided that:

13.1.1 the claiming party could not have avoided such circumstances by taking precautions which it ought reasonably to have taken or planned for;

13.1.2 the claiming party has used and continues to use its reasonable endeavours to mitigate the consequences of such an event upon the performance of its obligations under this Agreement and to continue to perform its affected obligations;

13.1.3 the claiming party shall not be excused performance of its obligations unaffected by Force Majeure; and

13.1.4 the claiming party shall resume performance of its obligations affected by Force Majeure as soon as reasonably practicable.

13.2 The claiming party shall promptly give written notice forthwith to the other upon becoming aware of Force Majeure, which notice shall contain details of the circumstances giving rise to Force Majeure and its anticipated duration.

13.3 If, due to Force Majeure, a party is unable to perform a material obligation, or is delayed in or prevented from performing its obligations for a continuous period of more than ninety (90) days, the other party may, within a further ten (10) days following the expiry of any such ninety (90) day period, terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

14. **TERM AND TERMINATION**

14.1 This Agreement shall commence on the Commencement Date and shall (subject to earlier termination pursuant to this clause 14) from the Launch Date continue for an initial period of 12 months commencing on the Launch Date (**Initial Period**).

14.2 Subject to this clause 14, the Agreement shall thereafter continue automatically until terminated in accordance with its terms for successive periods of 12 months (each a **Renewal Period**), unless:

14.2.1 either party notifies the other party of termination, in writing, at least sixty (60) days before the end of the Initial Period or any Renewal Period, in which case the parties shall agree transition arrangements meeting the requirements set out in Schedule 3 (if applicable) and this Agreement shall terminate no sooner than upon the expiry of the applicable Initial Period or Renewal Period; or

14.2.2 otherwise terminated in accordance with the provisions of this Agreement.

14.3 Without affecting any other right or remedy available to it, subject to Applicable Law, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

14.3.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;

14.3.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

14.3.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

14.3.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a

scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 14.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.3.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 14.3.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 14.3.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.3.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
 - 14.3.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3.3 to clause 14.3.9 (inclusive); or
 - 14.3.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.4 Without affecting any other right or remedy available to it, Provider may terminate this Agreement with immediate effect by giving written notice to the Customer if there is a change of Control of the Customer.

15. **EXIT ARRANGEMENTS**

- 15.1 In the event of termination of this Agreement for any reason:
- 15.1.1 the right to access the Services, Applications and/or Documentation provided under this Agreement shall terminate immediately;
 - 15.1.2 all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

16. **NOTICES**

- 16.1 Any notice or other communication given to a party under or in connection with the Agreement (**Notice**) shall be in writing, addressed to that party at its registered office (if it is

a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause.

16.2 A Notice shall be deemed to have been received:

16.2.1 if delivered personally: when left at the address referred to in clause 16.1;

16.2.2 by first-class post: two Business Days after posting;

16.2.3 by airmail: seven Business Days after posting;

16.2.4 by hand: on delivery; and

16.2.5 by e-mail: on receipt of a read return mail from the correct address within one Business Day from delivery if no notice of delivery failure is received, or (if earlier) on receipt of a written communication from the party receiving Notice acknowledging receipt of the Notice.

16.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17. **ENTIRE AGREEMENT**

17.1 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the parties, whether oral or written, in relation to that subject matter.

17.2 Each party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, undertakings or representations which were made by or on behalf of the other party in relation to the subject-matter of this Agreement at any time before its signature, other than those which are set out expressly in this Agreement.

17.3 Each party hereby waives all rights and remedies which might otherwise be available to it in relation to any statements or other representations made under clause 17.2, but for clause 17.4.

17.4 Nothing in this clause shall exclude or restrict the liability of either party arising out of any pre-contract fraudulent misrepresentation or fraudulent concealment.

18. **GENERAL**

18.1 Any variation to the Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised signatory of each party.

- 18.2 In respect of any indemnity given by either party under this Agreement, the party which receives the benefit of the indemnity shall take all reasonable steps so as to reduce or mitigate the loss covered by the indemnity.
- 18.3 Nothing in this Agreement shall (except as expressly provided) be deemed to constitute a partnership, or create a relationship of principal and agent between the parties for any purpose.
- 18.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any rights or remedy of such a person that exists or is available apart from that Act.
- 18.5 No party may assign, novate, transfer, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent or except as expressly permitted in this Agreement.
- 18.6 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 18.7 A waiver of any right under this Agreement is only effective if it is in writing, and applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.
- 18.8 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 18.9 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.
- 18.10 The amounts due under this Agreement shall not change except as mutually agreed by the parties.
- 18.11 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.
- 18.12 Provisions which by their terms or intent are to survive termination of this Agreement will do so.
19. **MEDIATION**
- 19.1 If any dispute arises in connection with this Agreement, the parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model

Mediation Procedure. Unless otherwise agreed between the parties within fourteen (14) days of notice of the dispute, the mediator will be nominated by CEDR.

- 19.2 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

20. **GOVERNING LAW AND JURISDICTION**

- 20.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.

- 20.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), save that the Provider reserves the right to bring injunctive proceedings or similar in such jurisdictions that it considers appropriate.

SCHEDULE 1 SERVICES

1. SERVICES

Provider shall provide pursuant to the terms of this Agreement:

- (a) remote access to the Applications as set out in paragraph 2 of this Schedule 1; and
- (b) the additional services set out in paragraph 6 of this Schedule 1.

2. APPLICATIONS

Thrive. To be made available via iOS App, Android App and Web.

The standard version of *Thrive* may be configured with logo and links for the Customer. Customer hereby grants permission for its logo(s) to be used royalty-free in connection with Services provided pursuant to this Agreement and undertakes promptly to provide a digital copy in any form reasonably requested by Provider.

3. DOCUMENTATION

Documentation is provided within the Apps and may be supplemented from time to time by documentation accessible via Provider's website, whose address as at the date of this Agreement is as follows. www.thrive.uk.com

4. SUBSCRIPTION FEES

- 4.1 Customer shall pay to Provider a Subscription Fee of **£[INSERT AMOUNT] + VAT** [per Member Subscription] per annum for up to **[INSERT NUMBER OF]** Member Subscriptions. Customer shall pay (a) the initial Subscription Fee within 15 days after the date of Provider's invoice and (b) subsequent annual Subscription Fees in advance on the first day of each Renewal Period.

- 4.2 Provider reserves the right to invoice Customer if Provider reasonably believes that:

4.2.1 the Member Population has exceeded the permitted and fully paid for Member Subscriptions; or

4.2.2 Customer has requested additional Member Subscriptions,

And Customer shall pay each invoice within thirty (30) days after the date of such invoice. Customer acknowledges and agrees that additional Member Subscriptions may be purchased at a cost to be agreed in writing between the parties.

- 4.3 Provider may increase Subscription Fees at any time effective on or after the first anniversary of the date of this Agreement by up to an amount in line with the corresponding percentage increase in the UK Consumer Prices Index (**CPI**) plus 5% per annum.

- 4.4 Provider may increase Subscription Fees by any other amount at its discretion with effect from the first day of a Renewal Period (**Revision Date**), provided that it gives Customer not less than sixty (60) days' written notice prior to the Revision Date. If Provider exercises its option under this clause, Customer shall have the option to terminate this Agreement, to be effective at the end of the day before the Revision Date, by written notice to Provider provided that such notice is received by Provider not less than thirty (30) days (in accordance with clause 16) before the Revision Date.

5. **MEMBERS**

- 5.1 Customer shall monitor the Member Population on a monthly basis and shall promptly notify Provider if the Member Population exceeds the number of Member Subscriptions purchased by Customer. In the event that the Member Population exceeds the number of Member Subscriptions purchased at any time, Provider shall charge, and Customer shall pay, for such additional Member Subscriptions in accordance with the provisions of paragraph 4 of this Schedule 1.
- 5.2 Customer may, from time to time during any Initial Period or Renewal Period, purchase additional Member Subscriptions and Provider shall grant access to the Services and the Documentation to such additional Members in accordance with the provisions of this Agreement.
- 5.3 If Customer wishes to purchase additional Member Subscriptions, Customer shall notify Provider in writing. Provider shall evaluate such requests for additional Member Subscriptions and respond to Customer with approval or rejection of the request.
- 5.4 If Provider approves Customer's request to purchase additional Member Subscriptions, Customer shall pay for the Member Subscriptions in accordance with paragraph 4.
- 5.5 At the Commencement Date, Customer warrants that the Member Population comprises no more than [XXX] individuals.

6. **ADDITIONAL SERVICES**

6.1 **Therapy Service (if purchased)**

- 6.1.1 Customer may by agreement with Provider purchase the Therapy Service (with or without Thrive 24) to be made available pursuant to this paragraph 6.1, for up to the number of Members specified in paragraph 4.1, on payment of an agreed price.
- 6.1.2 **Price adjustment.** The terms agreed between Customer and Provider are agreed in the light of Provider's estimates based in good faith on general population data and Provider's historical experience of the rate at which Members require therapy. In the event that in any twelve-month period more than fifteen per cent (15%) of Members are provided with Therapy Services, Customer and Provider shall in good faith negotiate adjustments in pricing such as may be reasonably necessary to maintain Provider's profit margin in historical or future subscription periods.

6.1.3 Provider Responsibilities. The Provider shall:

- (a) provide access to the Therapy Service within three (3) Business Days of either the Member:
 - (i) requesting it through App 'signposting'; or
 - (ii) employing the 'request help' feature on the App.
- (b) in the event that a Member is referred to the Therapy Service, provide the Therapy Service to those who need it, as determined by a therapist using a standardised assessment.

6.1.4 Customer Responsibilities. The Customer shall:

- (a) assist the Provider on request to verify Members which the Customer has approved to receive the Services.

6.1.5 There shall be no maximum or minimum number of sessions. The number of sessions shall be determined by the therapist and the Member, ultimately at the discretion of the therapist.

6.1.6 As decided by the therapist and depending on the level of risk, the Provider may in appropriate cases refer on to emergency or mainstream medical services.

6.1.7 Other Areas of Responsibility

- (a) Save where otherwise stated, the Member bears ultimate responsibility to refer himself for the Therapy Service.

6.1.8 How Referrals Work:

- (a) The App automatically recommends accessing the Therapy Service if it detects that:
 - (i) the Member suffers from moderate depression or anxiety or more;
 - (ii) the Member shows any suicidal ideation; and/or
 - (iii) the Member has screened positive for depression, stress or anxiety and his symptoms do not improve for two continuous weeks.
- (b) A Member may refer himself by using the App's 'contact us' function.

6.1.9 Therapy Service - general information

- (a) **Therapy Service Hours** are between 08:00-20:00 UK time on Business Days. Where Thrive 24 has been purchased, out-of-hours triage services will additionally be made available between 20:00 and 08:00 UK time on Business Days and between 00:00 and 24:00 UK time on non-Business

Days. The Provider reserves the right to subcontract out-of-hours triage services to Thrive Oceania, in which event Provider remains responsible for the actions of its subcontractor under this Agreement.

- (b) The Therapy Service and Thrive 24 are not emergency services. The Therapy Service will be available to receive referrals during Therapy Service Hours. The Provider may at its discretion also provide pre-arranged consultations at other times by agreement with Members receiving the Therapy Service.

6.2 Triage Services (if purchased)

6.2.1 Customer may by agreement with Provider purchase **Triage Services**, defined in this paragraph 6.2, on payment of an agreed price.

6.2.2 Meaning of terms

- (a) In this Schedule, “**adequate**” shall mean to a standard that would be readily recognised as being in accordance with good clinical practice according to the Health and Care Professions Council Standards of Conduct, Performance and Ethics.

6.2.3 Referrals

- (a) The Provider shall use reasonable endeavours to refer Members to the Appointed Shared Care Representative in accordance with the SCP Responsibilities, for the provision of mental health services (the '**Referrals**'). Such Members may be identified and referred via the App or via any other method agreed by the parties and documented in the Shared Care Protocol.
- (b) Once a Member has been referred by the Provider to the Appointed Shared Care Representative, subject always to its data protection obligations the Provider shall provide to the Appointed Shared Care Representative access to all information in its possession reasonably required to allow the Appointed Shared Care Representative to provide mental health services to such Member including, but not limited to, online access to all Member Data for that Member.

6.2.4 Unless otherwise agreed between the parties in signed writing, Triage Services are usually provided between 8am and 8pm UK time on all weekdays, except bank holidays in England and Wales.

6.2.5 Shared Care Protocol

- (a) The parties shall consult and collaborate with each other and, at the request of the Customer, with the Appointed Shared Care Representative, in good faith to prepare and agree a 'Shared Care Protocol', which may be amended

from time to time by the written agreement of the parties. The purpose of such document is to encourage an effective working relationship between the parties and the Appointed Shared Care Representative when providing the App and mental health services (as applicable) to the Members, so as to have a protocol for shared care and good communication that is intended to protect the needs of Members. The Shared Care Protocol does not form part of this Agreement and shall not create any obligations on either party other than as expressly provided in this Agreement.

- (b) The Shared Care Protocol shall include:
 - (i) Purpose
 - (ii) Service Definitions
 - (iii) Responsibilities
 - (iv) Agreed Care Pathway
 - (v) Communication protocols
 - (vi) Referral Procedure and data requirements
 - (vii) Triage protocol

6.2.6 Customer shall:

- (a) provide Provider with full details of Customer's arrangements for the provision of care to Members via the Appointed Shared Care Representative, including a proposed draft of the Shared Care Protocol for review and discussion with Provider in accordance with paragraph 6.2.5; and
- (b) ensure that the Shared Care Protocol, and the provision of care to Members who have been Referred pursuant to paragraph 6.2.3, are of an adequate standard, including without limitation compliance with Data Protection Legislation.

6.3 Management Information

- 6.3.1 Subject to the Provider's obligations under this Agreement, under any agreements between the Provider and Members, and otherwise as to confidentiality, privacy and ethical policies, and Data Protection Legislation, and subject to the Provider's discretion (only to be exercised reasonably and in good faith) to withhold information, where applicable the Provider shall provide selected aggregated

anonymised management information regarding the rollout or usage of the App in respect of the Customer (**Management Information**).

6.3.2 In particular and without limitation:

- (a) The Provider may use its absolute discretion to withhold data that might in the Provider's opinion compromise any clinical, ethical or other duty or choice it might make in relation to Members;
- (b) The Provider may from time to time at its discretion, acting reasonably, change the set of Management Information to be provided; and
- (c) The Provider shall not be required to provide Management Information in respect of a group of individuals numbering fewer than fifty (50) people.

6.4 **Training and workshops**

6.4.1 At any time during the term of this Agreement, Customer may by agreement with Provider purchase training sessions or workshops to be made available pursuant to this paragraph 6.4.1, on payment of an agreed price.

SCHEDULE 2 END USER LICENCE AGREEMENT

[to be inserted here]

SCHEDULE 3 THERAPY TRANSITION ARRANGEMENTS

1. PURPOSE AND TIMING

- 1.1 No less than 10 Business Days prior to the date of termination specified in a notice to terminate this Agreement pursuant to clause 14.2.1 (**Planned Termination Date**), Customer shall put in place, and send written details to Provider of, adequate arrangements to provide for continuity of care to those Members who in Provider's reasonably held opinion as at the actual date of termination are receiving or due to receive therapy sessions (**Members Requiring Support**), as set out in this Schedule.

2. MEANING OF TERMS

- 2.1 In this Schedule, "**adequate**" shall mean to a standard that would be readily recognised as being in accordance with good clinical practice according to the Health and Care Professions Council Standards of Conduct, Performance and Ethics.

3. OVERALL REQUIREMENTS

- 3.1 Customer shall provide Provider with full details of Customer's arrangements for the continuing provision of care to Members Requiring Support (**New Provision**), including a written protocol for transfer of the duty of care from Provider to Customer (or Customer's nominated replacement provider) in respect of Members Requiring Support. The parties will cooperate in good faith to discuss and agree a final version of this written protocol (the **Transfer Protocol**) prior to the date of termination of this Agreement.
- 3.2 Customer shall ensure that the New Provision and the Transfer Protocol are of an adequate standard, including compliance with Data Protection Legislation.
- 3.3 Subject to Provider's agreement, acting reasonably, that the New Provision and the Transfer Protocol are in accordance with the requirements of this Schedule and any other provisions of this Agreement, Provider shall use all reasonable endeavours to implement the transfer of Members Requiring Support in accordance with the agreed Transfer Protocol.
- 3.4 Both parties agree that they will prioritise the interests of the Members Requiring Support when resolving any potential disagreements regarding the New Provision and the Transfer Protocol.
- 3.5 In the event that, by the Planned Termination Date, the parties have not reached agreement that the New Provision and/or the Transfer Protocol are in accordance with the requirements of this Schedule and any other provisions of this Agreement:
- 3.5.1 the general provision of Services under this Agreement to Members other than Members Requiring Support shall terminate on the Planned Termination Date (unless the parties agree in writing to an extension);
- 3.5.2 the parties shall continue to negotiate in good faith to agree an adequate New Provision and Transfer Protocol; and

3.5.3 the Provider shall continue providing Services to the Members Requiring Support according to the Provider's reasonable opinion as to what Services are required by each individual, and be entitled to receive and the Customer shall pay the Provider's reasonable fees for each therapy session thus provided, until and unless all of the Members Requiring Support either no longer require therapy or have been transferred to an agreed New Provision under an agreed Transfer Protocol, at which time this Agreement shall terminate.

Attestation and Signature

AGREED by the parties through their duly authorised representatives on the date written on the first page of this Agreement.

Execution

Signed	
By:	Name: Title: Date:
Duly authorised for and on behalf of [INSERT CUSTOMER NAME]	
Signed	
By:	Name: Title: Date:
Duly authorised for and on behalf of THRIVE THERAPEUTIC SOFTWARE LTD	



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