

Kiku

Terms and Conditions

BACKGROUND

- (1) These Terms apply to the Order and the Specification and together those documents constitute and are incorporated into the Contract (as each term is defined below) made between Kiku and the Therapy Provider (as identified in the Specification).
- (2) "Kiku" is a trading name of Sixten Eighty Limited, a private limited company incorporated and registered in England and Wales with company number 10151824 whose registered office is at 49 Myrtle Grove, Newcastle upon Tyne NE2 3HT.
- (3) The Therapy Provider (as defined below) wishes to use the Software in its business operations.
- (4) Kiku has agreed to provide and the Therapy Provider has agreed to take and pay for the Software subject to these Terms.

AGREED TERMS

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in these Terms.

"Authorised Users": those employees, agents and independent contractors of the Therapy Provider who are authorised by the Therapy Provider to use the Software, as further described in clause 3.2(d).

"Business Day": a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Change of Control": the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be construed accordingly.

"Client(s)": a recipient of therapy services provided by the Therapy Provider in the course of using the Software.

"Client Data": personal data belonging to Clients.

"Commencement Date": has the meaning given to it in clause 2.3.

"Confidential Information": information that is proprietary or confidential or is identified as Confidential Information in clause 12.

“Contract”: the contract between Kiku and the Therapy Provider for the purchase of the Software in accordance with these Terms, comprising these Terms, the Order and the Specification, together with any additional terms agreed in writing between the parties from time to time.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

"Data Protection Legislation": the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

"Documentation": any documents made available to the Therapy Provider by Kiku in the course of providing the Software, including (but not limited to) any template terms and conditions for the provision of therapy services or related services.

"Initial Subscription Term": the initial term of the Contract as set out in the Specification.

"Intellectual Property Rights": patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

"Normal Business Hours": 8.00am to 6.00pm local UK time, each Business Day.

“Order”: the Therapy Provider’s order for licensed use of the Software (which shall be subject to these Terms) as made by the Therapy Provider online at ***www.wearekiku.com***.

"Renewal Period": the period described in clause 2.4.

"Software": the online practice management and therapist directory software application provided by Kiku to the Therapy Provider and the Documentation (where relevant).

"Specification": the description or specification of the Software generated by Kiku, based on the Therapy Provider's Order, which shall also specify:

- (a) the Subscription Term; and
- (b) the Subscription Fees.

"Subscription Fees": the subscription fees payable by the Therapy Provider to Kiku for the User Subscriptions, as initially set out in the Specification and including any fees payable upon renewal in accordance with clause 2.4.

"Subscription Term": as defined in clause 2.4, being the term of this Contract, including for the avoidance of doubt, the Initial Subscription Term and any Subscription Renewal Period.

"Support Services": the standard support services to be provided by Kiku to the Therapy Provider in respect of the Software from time to time.

"Therapy Provider": the entity that purchases the Software from Kiku and is identified as the Therapy Provider in the Specification.

"Therapy Provider Data": the data inputted by the Therapy Provider, Authorised Users, or Kiku on the Therapy Provider's behalf for the purpose of using the Software or facilitating the Therapy Provider's use of the Software.

"UK Data Protection Legislation": all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

"User Subscriptions": the user subscriptions purchased by the Therapy Provider pursuant to clause 10.1 which entitle Authorised Users to access and use the Software in accordance with the Contract.

"Virus": any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

"Vulnerability": a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a

negative impact to the confidentiality, integrity, or availability, and the term "**Vulnerabilities**" shall be construed accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- 1.9 A reference to writing or written includes e-mail.
- 1.10 References to clauses and the schedule are to the clauses and the schedule of these Terms; references to paragraphs are to paragraphs of the schedule to these Terms.

2. Basis of Contract

- 2.1 These Terms apply to the Contract to the exclusion of any other terms that the Therapy Provider or any third party seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Therapy Provider to purchase licensed use of the Software in accordance with these Terms and the Specification. The Therapy Provider is responsible for ensuring that the terms of the Order and Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Kiku confirms acceptance of the Order, at which point the Contract shall come into existence ("**Commencement Date**").
- 2.4 The Contract shall, unless otherwise terminated in accordance with clause 15, commence on the Commencement Date and shall continue for the Initial

Subscription Term and, thereafter, the Contract shall be automatically renewed for such period as is stated in the Specification (each a "**Renewal Period**"), unless:

- (a) either party notifies the other party of termination, in writing, at least 7 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of the Contract;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".

3. User subscriptions

3.1 Subject to the Therapy Provider purchasing the User Subscriptions in accordance with clause 4.3 and clause 10.1, and the restrictions set out in this clause 3, Kiku hereby grants to the Therapy Provider a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to access and use the Software during the Subscription Term solely for the Therapy Provider's internal business operations.

3.2 In relation to the Authorised Users, the Therapy Provider undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Software shall not exceed the number of User Subscriptions it has purchased from time to time;
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software;
- (c) each Authorised User shall keep a secure password for his or her use of the Software, that such password shall be changed no less frequently than every six months and that each Authorised User shall keep his or her password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Kiku within 5 Business Days of Kiku's reasonable written request at any time or times;
- (e) it shall permit Kiku or Kiku's designated auditor to audit the Therapy Provider's use of the Software in order to establish the name and password of each Authorised User to audit compliance with the Contract;
- (f) if any of the audits referred to in clause 3.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then

without prejudice to Kiku's other rights, the Therapy Provider shall promptly disable such passwords and Kiku shall not issue any new passwords to any such individual; and

- (g) if any of the audits referred to in clause 3.2(e) reveal that the Therapy Provider has underpaid Subscription Fees to Kiku, then without prejudice to Kiku's other rights, the Therapy Provider shall pay to Kiku an amount equal to such underpayment within 10 Business Days of the date of the relevant audit.

3.3 The Therapy Provider shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) promotes unlawful violence;
- (d) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (e) is otherwise illegal or causes damage or injury to any person or property;

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

3.4 The Therapy Provider shall not:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
- (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (c) access all or any part of the Software in order to build a product or service which competes with the Software; or
- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 3; or

(f) introduce or permit the introduction of, any Virus or Vulnerability into Kiku's network and information systems.

3.5 The Therapy Provider shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify Kiku.

3.6 The rights provided under this clause 3 are granted to the Therapy Provider only, and shall not be considered granted to any subsidiary or holding company of the Therapy Provider.

4. Additional user subscriptions

4.1 Subject to clause 4.2 and clause 4.3, the Therapy Provider may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Specification and Kiku shall grant access to the Software to such additional Authorised Users in accordance with the provisions of these Terms.

4.2 If the Therapy Provider wishes to purchase additional User Subscriptions, the Therapy Provider shall notify Kiku in writing. Kiku shall evaluate such request for additional User Subscriptions and respond to the Therapy Provider with approval or rejection of the request. Where Kiku approves the request, Kiku shall activate the additional User Subscriptions within five Business Days of its approval of the Therapy Provider's request.

4.3 If Kiku approves the Therapy Provider's request to purchase additional User Subscriptions, the Therapy Provider shall, within 30 days of the date of Kiku's invoice, pay to Kiku the relevant fees for such additional User Subscriptions as set out in the Specification and, if such additional User Subscriptions are purchased by the Therapy Provider part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Kiku for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

5. The Software

5.1 Kiku shall, during the Subscription Term, provide access to and use of the Software to the Therapy Provider on and subject to the terms of the Contract.

5.2 Kiku shall use commercially reasonable endeavours to make the Software available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out during the maintenance window of 10.00pm to 2.00am UK time; and

(b) unscheduled maintenance performed outside Normal Business Hours, provided that Kiku has used reasonable endeavours to give the Therapy Provider at least 6 Normal Business Hours' notice in advance.

5.3 Kiku will, as part of its provision of the Software, provide the Therapy Provider with Kiku's standard Support Services during Normal Business Hours. Kiku may amend the scope of the Support Services in its sole and absolute discretion from time to time.

6. Therapy Provider data

6.1 The Therapy Provider and/or the Client (where relevant) shall own all right, title and interest in and to all of the Therapy Provider Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Therapy Provider Data.

6.2 Kiku shall follow its standard archiving procedures in relation to the storage of Therapy Provider Data, details of which are available upon the reasonable request of the Therapy Provider, which may be amended by Kiku in its sole discretion from time to time. In the event of any loss or damage to Therapy Provider Data, the Therapy Provider's sole and exclusive remedy against Kiku shall be for Kiku to use reasonable commercial endeavours to restore the lost or damaged Therapy Provider Data from the latest back-up of such Therapy Provider Data maintained by Kiku in accordance with its standard archiving procedure. Kiku shall not be responsible for any loss, destruction, alteration or disclosure of Therapy Provider Data caused by any third party.

6.3 Kiku shall, in providing the Software, comply with its Privacy Policy relating to the privacy and security of the Therapy Provider Data available at **www.wearekiku.com**, as such policy may be amended from time to time by Kiku in its sole discretion.

6.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

6.5 The parties acknowledge that:

- (a) if Kiku processes any personal data on the Therapy Provider's behalf when performing its obligations under the Contract, the Therapy Provider is the controller and Kiku is the processor for the purposes of the Data Protection Legislation;
- (b) the Schedule sets out the scope, nature and purpose of processing by Kiku, the duration of the processing and the types of personal data and categories of data subject; and
- (c) the personal data may be transferred or stored outside the EEA or the country where the Therapy Provider and the Authorised Users are located in order to provide the Software and Kiku's other obligations under the Contract.

- 6.6 Without prejudice to the generality of clause 6.4, the Therapy Provider will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Kiku (including, but not limited to, relevant Client Data) for the duration and purposes of the Contract so that Kiku may lawfully use, process and transfer the personal data in accordance with the Contract on the Therapy Provider's behalf.
- 6.7 Without prejudice to the generality of clause 6.4, Kiku shall, in relation to any personal data processed in connection with the performance by Kiku of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Therapy Provider unless Kiku is required by the laws of any member of the European Union or by the laws of the European Union applicable to Kiku and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**);
 - (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - (a) the Therapy Provider or Kiku has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) Kiku complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (d) Kiku complies with reasonable instructions notified to it in advance by the Therapy Provider with respect to the processing of the personal data;
 - (c) assist the Therapy Provider, at the Therapy Provider's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (d) notify the Therapy Provider without undue delay on becoming aware of a personal data breach; and
 - (e) at the written direction of the Therapy Provider, delete or return personal data and copies thereof to the Therapy Provider on termination of the agreement unless required by Applicable Law to store the personal data.

- 6.8 Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.
- 6.9 The Therapy Provider consents to Kiku appointing third-party processors of personal data under the Contract.

7. Third party providers

The Therapy Provider acknowledges that the Software may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Kiku makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Therapy Provider, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Therapy Provider and the relevant third party, and not Kiku. Kiku recommends that the Therapy Provider refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Kiku does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Software.

8. Kiku's obligations

- 8.1 Kiku undertakes that access and use of the Software will be provided substantially in accordance with the Specification and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to Kiku's instructions, or modification or alteration of the Software by any party other than Kiku or Kiku's duly authorised contractors or agents. If the Software do not conform with the foregoing undertaking, Kiku will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Therapy Provider with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Therapy Provider's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.
- 8.3 Kiku:
- (a) does not warrant that:

- (a) the Therapy Provider's use of the Software will be uninterrupted or error-free;
 - (b) that the Software and/or the information obtained by the Therapy Provider through the Software will meet the Therapy Provider's requirements; or
 - (c) the Software will be free from Vulnerabilities; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Therapy Provider acknowledges that the Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.4 The Contract shall not prevent Kiku 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 the Contract.

9. Therapy Provider's obligations

9.1 The Therapy Provider shall:

- (a) provide Kiku with:
 - (a) all necessary co-operation in relation to the Contract; and
 - (b) all necessary access to such information as may be required by Kiku;

in order to provide the Software, including but not limited to Therapy Provider Data, security access information and configuration services;
- (b) be solely responsible for any services it provides to third parties, including but not limited to, therapy services to Clients;
- (c) comply with all applicable ethical codes and practices, including the obligation to only provide therapy services where it is qualified to do so;
- (d) without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;
- (e) ensure that the Authorised Users use the Software in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of these Terms;

- (f) maintain the necessary qualifications and regulatory registrations to provide therapy services of the type provided to its Clients;
- (g) maintain valid and appropriate professional indemnity insurance in relation to the provision of therapy services;
- (h) obtain and maintain all other necessary licences, consents, and permissions necessary for Kiku, its contractors and agents to perform their obligations under the Contract, including without limitation the Software;
- (i) ensure that its network and systems comply with the relevant specifications provided by Kiku from time to time; and
- (j) be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Kiku's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Therapy Provider's network connections or telecommunications links or caused by the internet.

10. Charges and payment

10.1 The Therapy Provider shall pay the Subscription Fees to Kiku for the User Subscriptions in accordance with this clause 10 and the Specification.

10.2 The Therapy Provider shall on the Commencement Date provide to Kiku valid, up-to-date and complete credit card details acceptable to Kiku and any other relevant valid, up-to-date and complete contact and billing details and, upon the Therapy Provider providing its credit card details to Kiku, the Therapy Provider hereby authorises Kiku to bill such credit card:

- (a) on the Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term or (if otherwise stated in the Specification) bill such credit card on the first Business Day of each month for the pro-rated monthly proportion of the Subscription Fees;
- (b) subject to clause 2.4, on each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period or (if otherwise stated in the Specification) bill such credit card on the first Business Day of each month for the pro-rated monthly proportion of the Subscription Fees payable in respect of the relevant Renewal Period; and
- (c) charge a percentage fee, to be stated in the Specification, for each card transaction processed by Kiku.

- 10.3 If payment under clause 10.2 is unsuccessful, and the Therapy Provider does not make payment of the outstanding monies within 24 hours of receiving notice from Kiku:
- (a) Kiku may (without prejudice to any other rights and remedies of Kiku and without liability to the Therapy Provider) disable the Therapy Provider's password, account and access to all or part of the Software and Kiku shall be under no obligation to provide any or all of the Software while payment remains outstanding; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.4 All amounts and fees stated or referred to in the Contract:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 14.3(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to Kiku's invoice(s) at the appropriate rate.
- 10.5 Kiku shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3 and any fees payable for the Support Services at the start of each Renewal Period upon 30 days' prior notice to the Therapy Provider and the Specification shall be deemed to have been amended accordingly.
- 10.6 Any text messaging service credits purchased by the Therapy Provider are non-refundable. Kiku shall not be obliged to refund the value of such credits in any circumstances, including in the event of termination of the Contract for any reason.

11. Intellectual Property Rights and other Proprietary rights

The Therapy Provider acknowledges and agrees that Kiku and/or its licensors own all Intellectual Property Rights in the Software. Except as expressly stated herein, the Contract does not grant the Therapy Provider any Intellectual Property Rights or any other rights or licences in respect of the Software.

12. Confidentiality

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.5 The Therapy Provider acknowledges that the Software constitutes Kiku's Confidential Information.

12.6 The above provisions of this clause 12 shall survive termination of the Contract, however arising.

13. Indemnity

The Therapy Provider shall defend, indemnify and hold harmless Kiku against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Therapy Provider's use of the Software.

14. Limitation of liability

14.1 Except as expressly and specifically provided in the Contract:

- (a) the Therapy Provider assumes sole responsibility for results obtained from the use of the Software by the Therapy Provider, and for conclusions drawn from such use. Kiku shall have no liability for any damage caused

by errors or omissions in any information, instructions or scripts provided to Kiku by the Therapy Provider in connection with the Software, or any actions taken by Kiku at the Therapy Provider's direction;

- (b) the Therapy Provider assumes sole responsibility for all services it provides to any third party, including (but not limited to) any therapy services provided to Clients and Kiku shall not be liable whatsoever in respect thereof;
- (c) the Therapy Provider agrees and acknowledges that any template terms and conditions for the provision of therapy services, or related services, are provided as guidance only and the Therapy Provider assumes sole responsibility for ensuring that any such template terms and conditions are appropriate, tailored and sufficient for its services and hereby agrees that Kiku shall have no liability whatsoever in respect of the same;
- (d) 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 the Contract; and
- (e) the Software is provided to the Therapy Provider on an "as is" basis.

14.2 Nothing in the Contract excludes the liability of Kiku:

- (a) for death or personal injury caused by Kiku's negligence; or
- (b) for fraud or fraudulent misrepresentation.

14.3 Subject to clause 14.1 and clause 14.2:

- (a) Kiku shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and
- (b) Kiku's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Subscription Fees paid by the Therapy Provider for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

15. Termination

15.1 Without affecting any other right or remedy available to it, Kiku may terminate the Contract with immediate effect or suspend the provision of the Software by giving written notice to the Therapy Provider if:

- (a) the Therapy Provider fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- (b) the Therapy Provider commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the Therapy Provider fails to comply with any of its obligations under clause 9;
- (d) Kiku receives a complaint in respect of the conduct of the Therapy Provider, which Kiku (in its sole and absolute discretion) considers to be reasonably substantiated;
- (e) the Therapy Provider 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, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (f) the Therapy Provider 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 the Therapy Provider;
- (g) 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 the Therapy Provider other than for the sole purpose of a scheme for a solvent amalgamation of the Therapy Provider with one or more other companies or the solvent reconstruction of the Therapy Provider;
- (h) 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 Therapy Provider;
- (i) the holder of a qualifying floating charge over the assets of the Therapy Provider has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Therapy Provider or a receiver is appointed over the assets of the Therapy Provider;

- (k) a creditor or encumbrancer of the Therapy Provider 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 Therapy Provider's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the Therapy Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(c) to clause 15.1(i) (inclusive);
- (m) the Therapy Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (n) there is a change of control of the Therapy Provider.

15.2 On termination of the Contract for any reason:

- (a) Kiku may bill the credit card of the Therapy Provider for any monies outstanding to Kiku under this Contract, including (but not limited to) any refunds due to Clients for therapy sessions booked by Clients and due to take place after the date of termination of this Contract;
- (b) all licences granted under the Contract shall immediately terminate and the Therapy Provider shall immediately cease all use of the Software;
- (c) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- (d) Kiku may destroy or otherwise dispose of any of the Therapy Provider Data in its possession in accordance with clause 6.7(c), unless Kiku receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Therapy Provider of the then most recent back-up of the Therapy Provider Data. Kiku shall use reasonable commercial endeavours to deliver the back-up to the Therapy Provider within 30 days of its receipt of such a written request, provided that the Therapy Provider has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Therapy Provider shall pay all reasonable expenses incurred by Kiku in returning or disposing of Therapy Provider Data; and
- (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. Force majeure

Kiku shall have no liability to the Therapy Provider under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Kiku or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

17. Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

20.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

20.2 If any provision or part-provision of the Contract is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire agreement

21.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 21.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or the Specification.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms or the Specification.
- 21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. Assignment

- 22.1 The Therapy Provider shall not, without the prior written consent of Kiku, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 22.2 Kiku may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23. No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. Third party rights

the Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. Notices

- 25.1 Any notice required to be given under the Contract shall be in writing and shall be delivered by e-mail to the other party at its e-mail address set out in the Specification, or such other e-mail address as may have been notified by that party for such purposes.
- 25.2 A notice delivered by e-mail shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

26. Governing law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE
Processing, Personal Data and Data Subjects

1. Processing by Kiku

1.1 Purpose of processing

- To provide access and use of the Software to the Therapy Provider.

1.2 Duration of the processing

- The Subscription Term and in accordance with Kiku's standard archiving procedures thereafter.

2. Types of personal data

2.1 It may be necessary for Kiku to have access to the following types of personal data about the Therapy Provider and Clients of the Therapy Provider:

- Personal details including name, contact information and address.
- Date of birth.
- Professional Qualifications and membership details
- Professional indemnity insurance details
- Bank, credit card and payment details.
- Sensitive personal data included in therapy session notes, correspondence or otherwise (Clients only).
- Beneficiary and emergency contact information (Clients only).

3. Categories of data subject

3.1 The Therapy Provider.

3.2 Employees of the Therapy Provider.

3.3 Clients of the Therapy Provider.

3.4 Emergency Contact person of the Client.