

# WOMN-KIND APP USER TERMS AND CONDITIONS

## 1. INTRODUCTION

- 1.1 The Womn-Kind App and the Services made available through the mobile application are owned and operated by Womn-Kind Pty Ltd (ACN 656 668 861) (**Womn-Kind, our, us or we**).
- 1.2 By downloading, using, browsing or accessing the Womn-Kind App and the Services, you acknowledge that you have read, understood and accept these Womn-Kind App User Terms and Conditions (**agreement**), together with our Privacy Policy, and agree to abide by them. If you do not accept this agreement, you must not access and use the Womn-Kind App and the Services.
- 1.3 In this agreement, **you** and **your** means the individual who accesses or uses the Womn-Kind App and the Services, and whose details are listed in the User Access Portal (and includes anyone acting on your behalf or with your express or implied authority).

## 2. WOMN-KIND APP

- 2.1 The Womn-Kind App is a mobile application that promotes mental health, wellbeing and personal development for girls and women aged 12 to 25 by creating an online community where users can safely access and share mental health, personal development and wellbeing tools, resources, support, mentoring and advice (collectively, the **Services**). If you are younger or older than the above age range, the Womn-Kind App and the Services may not be appropriate for your needs, and therefore recommend that you do not access and use the Womn-Kind App and the Services.
- 2.2 Although our Mentors (as independent contractors) provide support and advice to users in relation to mental health, well-being and personal development, Womn-Kind (and our Mentors) are not health care providers, registered counsellors, clinical psychologists or registered psychiatrists and we (and our Mentors) are not providing medical or healthcare advice or medical services of any kind. Womn-Kind App is a mere online tool for connecting users who require mental health, wellbeing and personal development support and mentoring. Our role in providing you with access and use of the Womn-Kind App and the Services should be construed strictly in this context only.
- 2.3 By download, accessing and using the Womn-Kind App, Womn-Kind grants you a non-exclusive, non-transferable, personal, revocable and non-sublicensable licence to download, install, access and use the Womn-Kind App and the Services for the Subscription Term. You will not acquire or be entitled to any rights other than those rights expressly set out in this agreement.

## 3. SUBSCRIPTION TERM

This agreement will commence on the date you download and access the Womn-Kind App (**Commencement Date**) and shall continue until terminated in accordance with clause 16 (**Subscription Term**).

## **4. REGISTRATION AND ACCESS**

4.1 To access and use the Womn-Kind App and the Services, you must create and setup an account on the Womn-Kind App (**User Profile**). Your User Profile will be operated by a username (**User Name**) and password (**Password**). You can change your User Name and Password at any time by you accessing the User Access Portal.

4.2 To setup a User Profile on the Womn-Kind App, you:

- (a) will be required to provide, and keep us up-to-date with, accurate registration information and Personal Information (including full name, email address, gender, date of birth and profile image or photograph). You have the option to select your preferred pronoun and your location (city only) and post or publish short biography about yourself which will be displayed on your User Profile (and which can be viewed by other users of the Womn-Kind App). All Personal Information as well as the information you provide to setup your User Profile is subject to our Privacy Policy; and
- (b) must be over 18 years of age, and legally able to enter into contractual relations. If you are under the age of 18 years, you may only access and use the Womn-Kind App and Services if:
  - (i) you have your parents'/guardians' permission to access and use the Womn-Kind App and Services. Your continued use of the User Profile constitutes an acknowledgement by you that you are: (i) over 18 years of age; or (ii) under 18 years of age, but have your parents'/guardians' permission to access and use the Womn-Kind App and Services and that your parents/ guardians have agreed to abide by this agreement; and
  - (ii) you provide your parents'/guardians' contact details to us for the sole purpose of contacting your parents/guardians in the event of an emergency (for example, if you post on the newsfeed on the Womn-Kind App that you are contemplating self-harm or suicide).

4.3 You are responsible for:

- (a) maintaining control over, and the confidentiality of, your User Profile, User Name and Password;
- (b) keeping your User Profile registration information current, complete, accurate, and truthful. You must not impersonate another account holder or provide false identity information to gain access to or use the Womn-Kind App or the Services;
- (c) notifying us in writing of any unauthorised access to, or use of, your User Profile, User Name or Password; and
- (d) for all activities or transactions that occur using your User Profile. We are not liable for any loss or damage arising out of, or in connection with, any unauthorised access or use of, your User Profile, User Name and Password.

4.4 At any time, you may edit, update, de-activate or change your User Profile.

## **5. YOUR OBLIGATION**

5.1 When accessing and using the Womn-Kind App and the Services, you must at all times:

- (a) obtain and maintain all hardware, software and communications equipment necessary to download, access, and use, the Womn-Kind App and the Services;
- (b) comply with all Relevant Laws with respect to your obligations under this agreement; and
- (c) comply with all of our directions, policies and guidelines advised in writing to you or as displayed on the Womn-Kind App from time to time (including, but not limited to, the Acceptable Use Policy).

5.2 Womn-Kind will not be liable to you or anyone else if, for any reason, the Womn-Kind App and the Services is unavailable at any time or for any period. From time to time, Womn-Kind may suspend or restrict access to all, or some parts of the Womn-Kind App and the Services. You are responsible for making all arrangements necessary for you to download, access and use the Womn-Kind App and the Services.

5.3 You must not:

- (a) introduce, access, store, distribute or transmit any viruses, worm, trojan or other malicious code into the Womn-Kind App;
- (b) violate any Womn-Kind IP or any third party's Intellectual Property Rights;
- (c) copy, modify, duplicate, create derivative works from, frame, mirror, republish, transmit or distribute all or any portion of the Womn-Kind App, or any other third party software that you may access or use through the Womn-Kind App, in any way;
- (d) access all or any part of the Womn-Kind App and/or the Services in order to build a product, service or code which competes or reproduces the Womn-Kind App and/or the Services (in full or part);
- (e) modify, alter, adapt, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Womn-Kind App in any way, or otherwise learn the source code or algorithms underlying the Womn-Kind App;
- (f) license, sell, rent, lease, sub-let, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, encumber or otherwise make the Womn-Kind App and the Services available to any third party;
- (g) use the Womn-Kind App or the Services for any unlawful purpose or other purpose not authorised by Womn-Kind in writing; and
- (h) share, use, publish or post User Content displayed or published by other users (including Mentors) on the newsfeed outside of the Womn-Kind App (including making copies of the User Content for distribution outside of the Womn-Kind);
- (i) claim ownership over any User Content posted or published by another user, unless you have a legitimate basis for making such a claim; and
- (j) engage in any activity or conduct that is in breach of any Relevant Laws.

## **6. USER CONTENT**

6.1 When you create your User Profile and access the Womn-Kind App and/or the Services, you will be required to provide User Content to Womn-Kind. You will retain ownership of your User Content and you will have sole responsibility for the legality, reliability, integrity,

accuracy and quality of your User Content. To the maximum extent permitted by Relevant Laws, we do not warrant that any User Content displayed on the Womn-Kind App by you (or your Personnel), another user of the Womn-Kind App or our Mentors (or any Third Party Products or Services displayed or published on the Womn-Kind App by a third party) is accurate, complete, reliable, current or error-free, nor do we make any warranty about the standard or quality of any products, services, User Content or Third Party Products or Services displayed on, or via, the Womn-Kind App. You (and not Womn-Kind) are solely responsible for the completeness, accuracy, reliability, legality and quality of any User Content published by you (or your Personnel) on, or via, the Womn-Kind App.

- 6.2 You grant Womn-Kind a worldwide, non-recoverable, non-exclusive, royalty-free and perpetual licence to use, disclose, share, reproduce, store, distribute, publish, export, adapt, edit, translate, produce derivative works from or copy, the User Content (and all Intellectual Property Rights contained therein) for any purpose, including for the purpose of:
- (a) enabling Womn-Kind to provide the Womn-Kind App and the Services and otherwise perform its obligations and exercising its rights under this agreement (including sharing your User Content with our Mentors and other users of the Womn-Kind App when you post on the newsfeed within the Womn-Kind App);
  - (b) informing the user of other products or services that Womn-Kind may offer from time to time or in relation to Third Party Products and Services;
  - (c) complying with a legal requirement, such as a law, regulation, court order, subpoena, warrant, legal proceedings or in response to a law enforcement agency request;
  - (d) using usage patterns, trends, and other statistical or behavioural data derived from use of the Womn-Kind App and/or the Services for the purposes of providing, operating, maintaining, or improving the Services, the Womn-Kind App, or our other products and services; and
  - (e) sharing User Content with an Affiliate or other third party (with whom Womn-Kind may contract or be affiliated with from time to time) for the purposes of performing or improving the Womn-Kind App and/or the Services.
- 6.3 When you publish or post User Content on or, via, the Womn-Kind App, your User Content will be displayed on your User Profile and on the newsfeed of the Womn-Kind App for other users of the Womn-Kind App (including Mentors) to view, read, share, 'love', save or comment on. You acknowledge and agree that once you publish or post User Content on the Womn-Kind App, such User Content will no longer be confidential or private (unless you anonymously post the User Content using the 'anonymous function' within the Womn-Kind App at the time you post or publish such User Content).
- 6.4 You may use the Womn-Kind App and the Services to:
- (a) publish or post User Content for other users of the Womn-Kind App and Mentors to view, read, share, 'love', save or comment on a range of topics, including, but not limited to, mental health, wellbeing, life and relationships and work;
  - (b) seeking general mental health and wellbeing guidance, counselling and support from our Mentors; and
  - (c) access and use the Third Party Products and Services (if you pay the Subscription Fee).
- 6.5 Womn-Kind shall use reasonable endeavours to follow its archiving procedures for User Content in accordance with its standard back-up policy from time to time. In the event of any Loss of User Content, your sole and exclusive remedy shall be for Womn-Kind to use

reasonable endeavours to restore the User Content, that is lost or damaged, from the latest back-up of User Content, maintained by Womn-Kind.

- 6.6 Womn-Kind shall not be responsible for any Loss, destruction, alteration, corruption or disclosure of User Content caused by your (or your Personnel's) acts or omissions or the acts of omissions of other users of the Womn-Kind App or any third party.
- 6.7 You agree to make your own enquiries to verify information displayed on, or via, the Womn-Kind App (including User Content and Third Party Products and Services) and to assess the suitability of any information before relying upon such information. If you choose to rely upon any information displayed or listed on, or via, the Womn-Kind App and/or the Services (including User Content and Third Party Products and Services) you do so at your own risk. We make no representations or warranties that use of User Content and Third Party Products and Services will not infringe any third party's Intellectual Property Rights.

## **7. ACCEPTABLE USE POLICY**

- 7.1 By downloading, accessing and using the Womn-Kind App and each time you publish, upload, submit, post or share User Content on, or via, the Womn-Kind App, you agree to comply with the rules for the acceptable use of the Womn-Kind App as specified herein (**Acceptable Use Policy**).
- 7.2 You are solely responsible for the accuracy, currency, completeness and use of User Content published or posted by you on, or via, the Womn-Kind App, and you agree to post or publish User Content on, or via, the Womn-Kind App at your own risk. Womn-Kind accepts no responsibility and assume no liability for any User Content posted, published or otherwise transmitted by you, any other user or any third party on, or via, the Womn-Kind App.
- 7.3 Womn-Kind is under no obligation to monitor, review, or otherwise control the Services or any User Content listed, published or posted on, or via, the Womn-Kind App by you, any other user or any third party. However, Womn-Kind (and our Mentors) reserve the right, but is not obligated to edit, remove or refuse to edit or remove any User Content published, posted or otherwise made available on, or via, the Womn-Kind App.
- 7.4 You must access and use the Womn-Kind App and the Services only for lawful purposes. You must not access and use the Womn-Kind App and/or the Services (including the public forum contained within the Womn-Kind App):
- (a) in any way that breaches any Relevant Laws;
  - (b) in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
  - (c) to publish, post or upload User Content intended to harm someone in any way or that is libelous, defamatory, obscene, vulgar, offensive, pornographic, indecent, racist, harassing, threatening, seditious, blasphemous, invasive of privacy or publicity rights, abusive, inflammatory, discriminatory otherwise objectionable;
  - (d) to publish, post or upload any User Content that is false, misleading or deceptive or is likely to be false, misleading or deceptive (including, but not limited to, impersonating another person or user or misrepresenting your identity to users of the Womn-Kind App);

- (e) to publish, post or upload any User Content that contains confidential, secret or proprietary information of another person;
- (f) to upload or transmit any User Content that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware; and
- (g) to publish, post or upload User Content that may infringe the Intellectual Property Rights or other rights of Womn-Kind or any third party;
- (h) to promote any illegal activity or advocate, promote or assist any unlawful act; and
- (i) sell any goods or services on, or via, the Womn-Kind App (or unsolicited marketing or promotional materials).

7.5 By accessing or using Womn-Kind App and/or the Services (including the newsfeed contained within the Womn-Kind App), you acknowledge and agree that it is your responsibility to:

- (a) ensure that all communications with other users and Mentors, are polite, respectful and courteous and in the best interests of the intended recipient;
- (b) ensure that any User Content posted or transmitted through the Womn-Kind App by you is accurate, reliable, up-to-date, and complete;
- (c) respect the privacy rights of other users and third parties. You must not use Womn-Kind App to publish or post the name of any person without their consent; and
- (d) ensure that you have adequate legal rights to publish, post, transmit, reproduce or otherwise use the User Content transmitted through the Womn-Kind App.

7.6 The Womn-Kind App and the Services are subject to a 'fair use' policy, which means you must not use the Womn-Kind App and the Services in a way that a reasonable person would consider to be unreasonable.

7.7 Womn-Kind App reserve the right, at our absolute discretion, to determine with the Acceptable Use Policy (including 'fair use' policy) has been breached and to terminate this agreement in accordance with clause 16.

## **8. SUBSCRIPTION FEES AND PAYMENT**

8.1 We do not charge you a fee to download, access and use the Womn-Kind App and Services. However, if you wish to access the advanced or premium features and functions of the Womn-Kind App and Services (including Third Party Products and Services), except for during the Trial Period, you must pay us the Subscription Fees and other amounts owing to us under this agreement during the Subscription Term. The Subscription Fees are payable in advance (either on a monthly or annual basis) in accordance with the Direct Debt Authority.

8.2 During the Trial Period, you will not be required to pay the Subscription Fees to access and use the advanced or premium features and functions of the Womn-Kind App and Services (including Third Party Products and Services).

- 8.3 All Subscription Fees are in Australian Dollars and are inclusive of any goods and services taxes. To the maximum extent permitted by Relevant Laws and except as otherwise contemplated in this agreement, the Subscription Fees and all other amounts owing to Womn-Kind under this agreement are non-refundable.
- 8.4 When setting up your User Profile, you will be offered payment options to pay the Subscription Fees. Womn-Kind may, at our absolute discretion and without notice to you, change the payment methods that can be used to access and use the Womn-Kind App and Services at any time.
- 8.5 Payment of the Subscription Fees and all other amounts owing to Womn-Kind under this agreement are made by means of direct debit in accordance with the Direct Debt Authority in clause 9. By making payment of the Subscription Fees or any other amount owing to Womn-Kind under the agreement, you will provide Womn-Kind's Third Party Payment Processor with accurate and complete billing information, and you authorise Womn-Kind and/or its Third Party Payment Processor to access your billing information (including Personal Information) for the purpose of processing your payment.
- 8.6 Womn-Kind may increase our Subscription Fees for the provision of the Womn-Kind App or charge additional fees to access new functions or features of the Womn-Kind App at any time upon 30 days' written notice to you. The fee increases will come into effect in the next billing cycle. If you do not agree to these fee increases, you may terminate this agreement by written notice to Womn-Kind no later than 14 days after the date you received written notice of the fee increases.

## **9. DIRECT DEBIT AUTHORITY**

- 9.1 By accepting this agreement, you authorise us to arrange for the Subscription Fees or any other amount owing to Womn-Kind under this agreement to be debited from your credit card or bank account (as applicable) as and when such fees are due and payable under this agreement (**Direct Debt Authority**).
- 9.2 You may cancel, defer or change your Direct Debit Authority by notifying Womn-Kind in writing at least 14 days before the day on which your next debit is due. If you cancel or defer Direct Debit Authority, Womn-Kind may not be able to provide you with access to, and use of, the Womn-Kind App and Services, unless you provide Womn-Kind with new Direct Debit Authority.
- 9.3 It is your responsibility to ensure that there are sufficient funds available on your credit card or bank account (as applicable) to allow each debit to be made in accordance with the Direct Debit Authority. If there are insufficient funds:
- (a) the transaction will be rejected and the payment will be treated as if it were never made;
  - (b) your financial institution may charge you a fee and/or interest;
  - (c) Womn-Kind may charge you a dishonour fee at our prevailing rate at the time; and
  - (d) you must arrange for the debit to be made by another method or arrange for sufficient funds to be available by an agreed time so that Womn-Kind can process the debit.
- 9.4 It is your responsibility to check your credit card or bank account statement (as applicable) to verify that the amounts debited from your credit card or bank account are correct.

- 9.5 If you believe that an error has been made in debiting your credit card or bank account (as applicable), you should notify Womn-Kind as soon as possible in writing and Womn-Kind will promptly investigate and Womn-Kind will adjust your credit card or bank account balance as required.
- 9.6 If you cancel the Direct Debit Authority, your right to access and use the Womn-Kind App and Services will cease at the end of the current billing cycle. If you wish to re-activate your subscription, you will need to pay a re-activation fee at Womn-Kind's prevailing rates at the time.

## **10. INTELLECTUAL PROPERTY**

- 10.1 You acknowledge that Womn-Kind, or its licensors, are the owners of the Womn-Kind App (and any Intellectual Property Rights contained therein) including any information, Content or technology that may be provided to, or accessed by, you in connection with your use of the Womn-Kind App and the Services (including any modifications, enhancements of the foregoing) (collectively, **Womn-Kind IP**). Accessing and using the Womn-Kind App and the Services does not give you (or anyone else) ownership of, or any right, title or interest in Womn-Kind IP.
- 10.2 Ownership of any User Content will vest in the creator of that User Content, but excluding Womn-Kind IP.

## **11. OUR OBLIGATIONS**

- 11.1 Subject to your compliance with the terms of this agreement, during the Subscription Term, Womn-Kind shall use reasonable endeavours to provide you with:
- (a) access to and use of the Womn-Kind App and the Services; and
  - (b) Support Services during Normal Business Hours. To request Support Services, you may contact us by email at [ruby@womn-kind.com.au](mailto:ruby@womn-kind.com.au).
- 11.2 The undertaking in clause 11.1 shall not apply in the event of:
- (a) any non-conformance which is caused, or contributed, by use of the Services and the Womn-Kind App contrary to our instructions or the terms of this agreement;
  - (b) modification or alteration of the Services and the Womn-Kind App by any party other than Womn-Kind or its duly authorised Personnel;
  - (c) the unsuitability or malfunction of the computer hardware or computer software used by you in conjunction with which the Womn-Kind App and the Services are used;
  - (d) Force Majeure Events; and
  - (e) the unsuitability or malfunction of the Services when used in conjunction with any software, apps, applications and tools supplied by a third party provider.
- 11.3 In the event that Womn-Kind fail to provide you with access and use of the Womn-Kind App and the Services in accordance with clause 11.1, Womn-Kind shall use reasonable endeavours to correct any such non-conformance, or provide you with an alternative means



of accomplishing the desired performance. The foregoing constitutes your sole and exclusive remedy for any breach of clause 11.1.

## **12. THIRD PARTY PRODUCTS AND SERVICES**

- 12.1 You acknowledge that the Womn-Kind App and Services may require you to use or access Third Party Products and Services and that you do so solely at its own risk.
- 12.2 We make no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of any such Third Party Products and Services, or any transactions completed, and any contract entered into by you, with the owner, licensor or operator of such Third Party Products and Services.
- 12.3 Womn-Kind recommends that you refer to the third party's terms and conditions and privacy policy prior to using the relevant Third Party Products and Services.
- 12.4 Womn-Kind does not endorse, sponsor or approve any Third Party Products and Services used in conjunction with the Womn-Kind App and Services. It your sole responsibility to determine that specific products or services, meet your business and are suitable for the purposes for which they are used.
- 12.5 Any rights you may have to access Third Party Products and Services shall be limited to:
- (a) the extent of Womn-Kind's ability to pass on such rights to you; or
  - (b) the relevant third party licensor terms.

## **13. NO WARRANTIES**

- 13.1 You acknowledge that Womn-Kind (and our Mentors) are not health care providers, registered counsellors, clinical psychologists or registered psychiatrists and we (and our Mentors) are not providing medical or healthcare advice or medical services of any kind. While User Content and Third Party Products and Services generated, published or created through the Womn-Kind App by other users, Mentors and third party providers are designed to provide you with personal development, mentoring and wellbeing support, tools and resources, it is not a substitute for professional medical advice or healthcare treatments. If you suffer from anxiety, depression and other mental health conditions, we encourage you to seek advice from a medical professional. Reliance on, and use of, the User Content and Third Party Products and Services is at your own risk.
- 13.2 To the maximum extent permitted by Relevant Laws, Womn-Kind exclude all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), in connection with the Womn-Kind App and the Services.
- 13.3 Nothing contained in this agreement excludes, restricts or modifies the application of any condition, warranty or other obligation, the exercise of any right or remedy, or the imposition of any liability under the *Competition and Consumer Act 2010 (Cth)* or any other international, national, State or Territory legislation where to do so is unlawful.
- 13.4 You acknowledge, and agree that to the maximum extent permitted by Relevant Laws, Womn-Kind make no representation, warranty or guarantee in relation to the availability, continuity, reliability, accuracy, currency, validity or security of the Womn-Kind App and the

Services (or any User Content and Third Party Products and Services generated or made available through the Womn-Kind App and Services) and Womn-Kind will not be liable if the Womn-Kind App or the Services, or becomes unavailable for any reason, including directly, or indirectly as a result of:

- (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
- (b) negligent, malicious, willful acts or omissions of third parties (including third party service providers) or other users;
- (c) maintenance or repairs carried out by Womn-Kind or any third party service provider in respect of any of the systems used in connection with the provision of the Services or the Womn-Kind App;
- (d) services provided by third parties (including internet service providers) ceasing or becoming unavailable; or
- (e) a Force Majeure Event.

13.5 You acknowledge that, to the maximum extent permitted by Relevant Laws, Womn-Kind do not make any warranty or representation that:

- (a) your access to, and use of, the Womn-Kind App and the Services will be uninterrupted, virus-free or error-free; and/or
- (b) the Womn-Kind App and the Services (or any User Content and/or Third Party Products and Services), will be accurate, complete, reliable, current or is suitable for any particular purpose or use under any specific conditions, and so is provided on an "as is" basis.

13.6 You acknowledge that your access to, and use of, the Womn-Kind App and Services (including Third Party Products and Services) may be interrupted or unavailable during scheduled or unscheduled maintenance.

#### **14. LIMITATION OF LIABILITY**

14.1 To the maximum extent permitted by Relevant Laws, Womn-Kind will not be liable to you or any third party for:

- (a) any Claims or Losses (including Consequential Loss); or
- (b) loss of, or damage to, any property or any personal injury, illness or death to you, any third person,

arising out of, relating or connected to, the provision or use of the Womn-Kind App and Services (including User Content and/or Third Party Products and Services generated or made available through the Womn-Kind App or the Services) and this agreement, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring.

14.2 All risk in using the Womn-Kind App and the Services passes to you upon creating a User Profile, or otherwise using the Womn-Kind App and the Services (whichever is earlier). Womn-Kind assume no responsibility and Womn-Kind have no liability to you or anyone else for any use of, or reliance on, any User Content and/or Third Party Products and Services obtained or generated from your access to, and use of, the Womn-Kind App and the Services.

- 14.3 To the maximum extent permitted by Relevant Laws, under no circumstances will Womn-Kind's aggregate liability to you or anyone else, whether based upon warranty, contract, statute, tort (including negligence) or otherwise, exceed the amount you paid to Womn-Kind under this agreement in the 1 month immediately preceding the date on which the Claim giving rise to such liability arose.
- 14.4 You agree to defend, indemnify and hold Womn-Kind, its Affiliates and its Personnel (collectively, the **Indemnified**) harmless from and against any and all Claims or Losses, that may be brought against the Indemnified or which the Indemnified may pay, sustain or incur as a direct or indirect result of or arising out of:
- (a) your access to, and use of, or reliance on the Womn-Kind App or the Services (including the User Content and Third Party Products and Services);
  - (b) the use by you (or your Personnel) or any third party of the Womn-Kind App or the Services;
  - (c) any breach of our or any third party's Intellectual Property Rights or other rights caused by you; or
  - (d) any breach by you of this agreement.

## 15. PRIVACY

All Personal Information you provide to open a User Profile and any User Content you upload, generate, share, or publish on, or via, the Womn-Kind App, is subject to Womn-Kind's Privacy Policy, which is incorporated into this agreement. Womn-Kind will not share, sell or disclose your User Content to any third party. You warrant that, in relation to any Personal Information comprising User Content or any other information disclosed to Womn-Kind on, or via, the Womn-Kind App:

- (a) it has been collected in accordance with Privacy Laws;
- (b) you have the authority to upload, post, publish or otherwise transmit such information on, or via, the Womn-Kind App; and
- (c) you have obtained the informed consent of the individuals who are the subject of such Personal Information in order for Womn-Kind to use, disclose, store, transfer, process or handle it.

## 16. TERMINATION

- 16.1 During the Subscription Term you may terminate this agreement at any time by selecting the 'cancel subscription' function in your User Profile or this agreement will automatically terminate at the end of the billing cycle if you do not pay the Subscription Fee in advance for the next billing period. In this case, you will not be entitled to a pro rata refund of the Subscription Fees for the unused portion of the Subscription Term.
- 16.2 Womn-Kind may terminate the agreement any time (without liability to you except Womn-Kind will provide you with a pro rata refund of the Subscription Fees for the unused portion of the Subscription Term) by giving you 14 days' written notice.
- 16.3 Either party may terminate this agreement by giving notice with immediate effect if the other party:

- (a) commits a breach of any of its material obligations under this agreement, and if the breach is capable of remedy, does not remedy that breach within 14 days after receipt of notice of the breach or any further time allowed by the party; or
- (b) suffers an Insolvency Event.

16.4 You agree that Womn-Kind may, at any time and at its sole discretion, with or without cause or any notice to you, terminate, suspend or block your access to (either temporarily or permanently):

- (a) your User Profile and/or the User Access Portal; and/or
- (b) the Womn-Kind App and/or Services;
- (c) any social media pages linked to its business or the Womn-Kind App; or
- (d) any other products and services offered on, or via the Womn-Kind App (including Third Party Products and Services).

16.5 Cause for such suspension or termination under clause 16.4 may include, but are not limited to:

- (a) any serious or repeated breaches or violations of this agreement, our policies and guidelines (including our Privacy Policy and Acceptable Use Policy) and any other agreements entered into between the parties;
- (b) serious or repeated breaches or violations of Womn-Kind's or another person's Intellectual Property Rights or privacy rights;
- (c) your failure to pay the Subscription Fees to access and use the advanced or premium features and functions of the Womn-Kind App and Services;
- (d) your activities, conduct or transactions on, or, via, the Womn-Kind App, brings, or has the capacity to bring, Womn-Kind into disrepute;
- (e) requests by law enforcement or other government agencies.

16.6 If Womn-Kind terminates the agreement in accordance with clause 16.4, you acknowledge and agree that you are not entitled to pro rata refund of the Subscription Fees for the unused portion of the Subscription Term.

16.7 You agree that all such suspensions or terminations shall be made at Womn-Kind's sole discretion and that Womn-Kind shall not be liable to you or any third party for any such suspension or termination.

## **17. EFFECT OF TERMINATION**

On termination of this agreement for any reason:

- (a) Womn-Kind will disable your User Profile and your User Content will no longer be accessible by you through the Womn-Kind App. All information that is no longer needed will be securely destroyed or de-identified; however, Womn-Kind will be required to retain Personal Information (including basic registration information) in accordance with documentation retention and destruction laws; and
- (b) all licences to use the Services and rights of access to the Womn-Kind App granted under this agreement will immediately terminate.

## 18. FORCE MAJEURE

Womn-Kind shall not be responsible to you (or anyone else) if Womn-Kind are prevented from or delayed in performing our obligations, by acts, events, omissions or accidents beyond our reasonable control, including but not limited to, acts of God, governmental actions, shipping, postal or other relevant transport strike, failure or accident, lockouts or other labour difficulty, war or national emergency, acts of terrorism, fire, explosion, flood, an act or omission of a third party, epidemic, pandemic, mandatory government shutdown or lockdown, shortage of or inability to obtain any necessary materials, equipment, facilities or services, the failure of performance provided by others, hacker attacks, denial of service attacks, internet interruption or virus, accidents or breakdown of plant, machinery, software, hardware or communication network, or default of hosting or data centre providers (**Force Majeure Event**).

## 19. DISPUTE RESOLUTION

19.1 Any party claiming a dispute exists under the agreement must notify the other party in writing of the nature of the dispute (**Dispute Notice**), except where urgent interlocutory relief is being sought.

19.2 The parties must in good faith attempt to resolve any dispute between them.

19.3 If the dispute cannot be resolved within 30 days of receipt of a Dispute Notice, either party may commence legal proceedings in relation to the dispute.

19.4 Each party must continue to perform its obligations under this agreement notwithstanding the existence of any unresolved dispute.

## 20. UPDATES AND VARIATIONS

20.1 Without notice to you, Womn-Kind may, at our absolute discretion, from time to time:

- (a) change, add or delete the functions, features, performance, or other characteristics of the Womn-Kind App; or
- (b) apply or install updates to, or new versions of, the Womn-Kind App.

20.2 You acknowledge that the Content on the Womn-Kind App are subject to change at any time and may be out of date at any given time. Womn-Kind are under no obligation to:

- (a) update, correct or fix any Content or errors in the Womn-Kind App; and/or
- (b) notify you of any changes to the Content or the Womn-Kind App unless required by a Relevant Law to do so.

20.3 Some of the provisions contained in this agreement may also be superseded by provisions or notices published elsewhere on the Womn-Kind App. Any changes are effective immediately upon posting to the Womn-Kind App. Your continued use of Womn-Kind App thereafter constitutes your acceptance of all such changes to the agreement.

20.4 Please read this agreement before using the Womn-Kind App as the agreement may have changed since the last time you accessed and used the Womn-Kind App. If you do not agree to any change, then you must immediately stop using the Womn-Kind App and the Services.

## 21. SEVERABILITY

If any provision in this agreement is found to be invalid or unenforceable by a court of law, such invalidity or unenforceability will not affect the remainder of this agreement which will continue in full force and effect.

## 22. RELATIONSHIP

No agency, principal-agent, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created between you and us by this agreement.

## 23. ASSIGNMENT

Neither party shall, without the prior written consent of the other party (which will not be unreasonably withheld), assign or transfer all or any of its rights or obligations under this agreement, except that Womn-Kind may assign, sell or transfer our rights or obligations under this agreement to an Affiliate or bona fide third party purchaser of Womn-Kind's business.

## 24. ENTIRE AGREEMENT

This agreement, and any other documents referred to in it, represent the entire agreement between us and you in relation to the subject matter and supersedes any previous arrangements, agreements, representations, understandings or statements (whether verbal, in writing, or in some other format).

## 25. JURISDICTION AND APPLICABLE LAW

The laws of the State of New South Wales, Australia govern this agreement. You agree to submit to the exclusive jurisdiction of the Courts of New South Wales, Australia.

## 26. DEFINITIONS

In this agreement, the following words shall have the following meanings:

- (a) **Acceptable Use Policy** has the meaning in clause 7.1.
- (b) **Affiliate** means in relation to any party, a person which, directly or indirectly, (i) is Controlled by that party; or (ii) Controls that party; or (iii) is Controlled by a person referred to in (ii) above, and for this purpose **Control** means the power of a person to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes.
- (c) **Business Days** means each day excluding Saturdays, Sundays and public holidays in New South Wales.
- (d) **Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise.
- (e) **Commencement Date** has the meaning in clause 3.

- (f) **Content** means all the information, text, materials, graphics, logos, button icons, images, video and audio clips, trade marks (whether registered or not), User Content, layout, arrangement, graphical user interface, look and feel, databases, functionality and control features of the Womn-Kind App.
- (g) **Consequential Loss** means the following, however arising and even if it is reasonably contemplated by the parties on the Commencement Date as a likely result of breach of the agreement:
- (i) direct, indirect, consequential, incidental, special, remote or unforeseeable loss, damage, cost or expense;
  - (ii) loss of revenue, profit, income, bargain, opportunity (including marketing or advertising opportunity), use, production, customers, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing, loss of or corruption to data, loss of use of data;
  - (iii) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or
  - (iv) loss or damage of the nature set out above in clauses (i) to (iii) (inclusive) that is incurred or suffered by or to a third party.
- (h) **Force Majeure Event** has the meaning in clause 18.
- (i) **Insolvency Event** means the bankruptcy, liquidation or winding up, the appointment of a controller, administrator, receiver, manager, trustee in bankruptcy or similar insolvency administrator to a party or any substantial part of its assets or any event that has a substantially similar effect to the above events.
- (j) **Intellectual Property Rights** means designs, copyright, trade marks, patents, operations, software or systems, trade names and domain names, rights in goodwill, rights in confidential information or other intellectual property rights, whether under statute, common law, equity, and whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights and all similar rights which subsist or will subsist now or in future in any part of the world.
- (k) **Loss** means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs including Consequential Loss.
- (l) **Mentor** means any independent contractors engaged by Womn-Kind to provide general advice or support in relation to mental health, well-being and personal development. Our Mentors are not medical practitioners, registered counsellors, clinical psychologists or registered psychiatrists.
- (m) **Normal Business Hours** means 9:00am to 5:00pm on Business Days.
- (n) **Password** has the meaning given to it by clause 4.1.
- (o) **Personnel** means any director, officer, or employee or contractor, of a party (in your case, includes any person acting for or on your behalf and in Womn-Kind's case, includes our Mentors).
- (p) **Personal Information** has the same meaning that it has under Privacy Laws, namely information or an opinion about an identified individual or an individual who is reasonably identifiable, whether the information or opinion is true or not and recorded in a material form or not.

- (q) **Privacy Laws** means any applicable laws and codes of practice dealing with privacy, including the *Privacy Act 1988 (Cth)* (as amended), the Australian Privacy Principles and any other legislation, codes and policies relating to the handling of Personal Information.
- (r) **Privacy Policy** means our privacy policy available on the Womn-Kind App or Website (or such other web address notified by us to you from time to time), which is incorporated into this agreement.
- (s) **Relevant Laws** means any relevant rules of common law, principles of equity, international, federal, state and local laws, statutes, rules, regulations, proclamations, ordinances and by-laws and other subordinate legislation, rulings, or legal requirements and Privacy laws, anywhere in the world.
- (t) **Services** has the meaning in clause 2.1 (and includes Support Services).
- (u) **Subscription Fees** means the fees payable by you to access and use the advanced or premium features and functions of the Womn-Kind App and Services (including Third Party Products and Services) as further described on the Womn-Kind App.
- (a) **Subscription Term** has the meaning in clause 3.
- (v) **Support Services** means our standard customer support and maintenance services provided to users in relation to the Womn-Kind App and Services.
- (w) **Third Party Products and Services** means any software, products, services or content (including all Intellectual Property Rights contained therein) that:
  - (i) are provided by third party providers;
  - (ii) interoperate with the Womn-Kind App or Services; or
  - (iii) may be identified as third party products or services (such as yoga, meditation, Pilates and breathing training and instructional videos).
- (x) **Third Party Payment Processor** means Stripe and any other a third party payment processor permitted by Womn-Kind from time to time.
- (b) **Trial Period** means 7 consecutive days from the date you register and setup your User Profile.
- (y) **User Access Portal** means the portal provided to you to access and use the Womn-Kind App and the Services.
- (z) **User Content** means all data, content, materials and information (including information, text, images, graphics, logos, video and audio clips and links):
  - (v) uploaded to, or stored on, the Womn-Kind App by you (or your Personnel) or another user of the Womn-Kind App;
  - (vi) transmitted by the Womn-Kind App at your (or your Personnel's) instigation or at the instigation of another user of the Womn-Kind App;
  - (vii) supplied by you (or your Personnel) or another the user of the Womn-Kind App to Womn-Kind for uploading to, transmission by, or storage on, the Womn-Kind App; or
  - (viii) generated by the Womn-Kind App as a result of the use of the Services by you (or your Personnel) or another the user of the Womn-Kind App,



but excluding Womn-Kind IP.

- (aa) **User Name** has the meaning in clause 4.1.
- (bb) **User Profile** has the meaning in clause 4.1.
- (cc) **Womn-Kind, our, us or we** has the meaning in clause 1.1, and where the context permits, includes its Personnel and Affiliates.
- (dd) **Womn-Kind App** means the software made available through the mobile application, and used by Womn-Kind to provide you with Services, including the application and database software for the Services, the system and server software used to provide the Services, the computer hardware on which that application, database, system and server software is installed, and all Intellectual Property Rights contained therein, provided or otherwise made available by us on, or via, the Womn-Kind App.
- (ee) **Womn-Kind IP** has the meaning given to it by clause 10.1.
- (ff) **Website** means the website located at [www.womn-kind.com.au](http://www.womn-kind.com.au), and any other website notified by us from time to time.
- (gg) **you or your** has the meaning in clause 1.3.

Yes, I have read, understood and accept this agreement.