

Terms and Conditions

The Customer

And

Sparta Support Services Limited (trading as “Sparta Wellbeing”) correspondence address: 20-22 Wenlock Road, London N1 7GU registered number 11693566.

Please read this Contract carefully. These Terms and Conditions, the Schedules, and the Online Application Form (together ‘this Contract’) relating to the provision of Services by Sparta Wellbeing to the Customer (all as defined below) will constitute a legally binding agreement between the Customer and Sparta Wellbeing on or after the Commencement Date. By receiving the Services on or after the Commencement Date the Customer agrees to this Contract.

References to ‘the Customer’ shall mean the party to this Contract other than Sparta Wellbeing.

1. DEFINITIONS

1.1 In this Contract, unless the context otherwise requires, the following expressions shall have the following meanings:

“**Administrator User**” means the person or persons nominated by the Customer to manage the Services on its behalf.

“**Annual Fee**” means the amount payable each Contract Year per Eligible Employee for GP 24/7 access or such other additional Services offered by Sparta Wellbeing from time to time.

“**Annual Membership Fees**” means the fees to be charged by Sparta Wellbeing and to be paid by the Customer.

“**Applicable Law**” means all applicable laws, in force from time to time, in the United Kingdom:

- (i) legislation (including statute, statutory instrument, treaty, regulation, order, directive, by-law, decree) and common law; and
- (ii) judgments, resolutions, decisions, guidance, orders, notices or demands of a competent court, tribunal, regulatory body or governmental authority.

“**Commencement Date**” means the date of the submission of the Online Application Form and commitment to pay the Fees or the date that the Customer receives the welcome email whichever is later.

“**Confidential Information**” means in the case of either Party all information (in any media) of a confidential nature disclosed by that Party its employees, agents, consultants, or subcontractors to the other including but not limited to all technical or commercial know-how, specifications, inventions, processes, or initiatives.

“Contract” means the Terms and Conditions, the Schedules, and the Online Application Form (as amended from time to time).

“Contract Year” means the 12-month period commencing on the Commencement Date which shall roll-over on these terms for a further period of 12 months (“a Successive Period”). The Contract will renew again for a further Successive Period unless and until terminated in accordance with Clause 8.

“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures” means as defined in the Data Protection Legislation.

“Documents” means any and all drawings, specifications, technical know-how, plans, reports, models, presentation materials, brochures, guides, course notes, training materials, promotional materials and any other documents prepared by or on behalf of Sparta Wellbeing.

“Data Protection Legislation” means 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); and the guidance and codes of practice issued by the relevant data protection or supervisory authority applicable to a party.

“Eligible Employees” means the employees of the Customer with access to the Services, or the benefits of the Services provided.

“Force Majeure Event” means an event or sequence of events beyond the relevant Party's reasonable control preventing or delaying it from performing its obligations under the Contract.

“Group Company” means in relation to either Party, its subsidiaries, its holding companies and their subsidiaries from time to time and ‘holding company’ and ‘subsidiary’ shall have the meanings given to them by section 1159 Companies Act 2006.

“Initial Term” means the period of 12 months from the Commencement Date.

“IPR” means any patents, patent applications, trademarks or trading names (in each case whether or not registered), trademark applications, confidential information, copyright, database rights and all other intellectual property rights including any rights analogous to the same subsisting anywhere in the world at any time.

“Losses” means all and any direct losses, claims, damages, reasonable fees and/or costs (including legal costs) and/or expenses.

“Online Application Form” means the online form used to register as a new Customer for the Services provided by Sparta Wellbeing via the Wellbeing Hub.

“Party/Parties” means a party or the parties to this Contract, as applicable.

“Pay on Use Wellbeing Fund” means the payment collected from the Customer which is held by Sparta Wellbeing to cover the cost of any pay on use Services provided to the Customers Eligible Employees.

“Permitted Recipients” means the Parties to this Contract, the employees of each Party, and any third parties engaged to perform obligations in connection with this Contract.

“Personal Data” means personal data as defined in the Data Protection Legislation.

“Services” means the services to be provided by Sparta Wellbeing as set out in Schedule 3.

“Systems” means such online systems or portals as maybe provided by Sparta Wellbeing as part of the Services in accordance with this Contract, including but not limited to the Wellbeing Hub.

“Term” means the Initial Term and each subsequent Contract Year, together constituting the duration of this Contract.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2016.

“UK Data Protection Legislation” means 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.

“Users” means (i) the Eligible Employee; and/or (ii) the Administrator Users as notified to Sparta Wellbeing in accordance with clause 5.1b

- 1.2 Any reference in this Contract to any provision of a statute or statutory provision, order or any regulation or similar instrument shall be construed as a reference to that statute or statutory provision, order or regulation or similar instrument as from time to time amended or extended.
- 1.3 In the event of any conflict or inconsistency between any provision in this Contract and any provision in the Schedules, the terms in this Contract will prevail but only to resolve that conflict or inconsistency.
- 1.4 Where the words include(s), including or in particular are used in this Contract, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.5 The terms and conditions of this Contract apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade, custom or course of dealings.

2. **Commencement**

- 2.1 This Contract shall start on the Commencement Date and shall (subject to clauses 3.4, 8 and 11) continue for the Initial Term and for subsequent Contract Years.

3. **Fees**

- 3.1 The Customer shall pay the Annual Membership Fees, Annual Fees and Pay on Use Wellbeing Fund (each as applicable) hereinafter referred to as the "Fees" to Sparta Wellbeing in respect of the Services at the rates set out in the Customer's initial Online Application Form.

- 3.2 Payment of the Fees as set out in clause 3.1 will be collected by Direct Debit within 30 days of the Commencement Date.

- 3.3 Without prejudice to any other remedy which Sparta Wellbeing may have, in the event that any sum due under this Contract is not received by Sparta Wellbeing in cleared funds by the due date referred to in this clause 3.3, Sparta Wellbeing may (at its sole discretion):

- (a) charge interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate for the time being from the due date until the date of actual payment; and/or
- (b) withhold or suspend the provision of the Services (in whole or in part) to the Customer until the Customer has met all its outstanding liabilities, being any sum due to Sparta Wellbeing under this Contract; and/or
- (c) terminate this Contract immediately by giving written notice to this effect to the Customer.

- 3.4 All amounts due under this Contract from the Customer to Sparta Wellbeing shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 3.5 The Customer acknowledges that the Fees may be subject to change on each anniversary of the Commencement Date therefore Sparta Wellbeing will, 30 days prior to the anniversary of Commencement Date provide details of the amount of the revised Fees.

4. **Services**

- 4.1 Sparta Wellbeing shall perform the Services: (i) with due diligence, care and skill (including but not limited to good industry practice); (ii) in accordance with Applicable Law, and (iii) in accordance with the reasonable, lawful and good faith instructions from the Customer;

- 4.2 Sparta Wellbeing warrants that it has the full capacity, authority, and necessary consents to enter into and perform its obligations under this Contract.

- 4.3 If Sparta Wellbeing's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees (including Eligible Employees), Sparta Wellbeing shall:

- (a) not be liable for any costs, charges or Losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Fees despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or Losses Sparta Wellbeing sustains or incurs that arise directly or indirectly from such prevention or delay.

4.4 Sparta Wellbeing shall have the right to make any changes to the Services which do not materially affect the nature or quality of the Services and Sparta Wellbeing shall notify the Customer of the relevant change and any consequent amendment to the Fees.

5. **Customer's Obligations**

5.1 The Customer shall:

- (a) co-operate with Sparta Wellbeing in all matters relating to the Services.
- (b) register all Eligible Employees as users onto the online Wellbeing Hub.
- (c) provide, in a timely manner, all documentation, data, information and other materials as Sparta Wellbeing may reasonably require to enable it to provide the Services, and ensure that they are accurate and complete in all material respects.
- (d) procure that all Users (i) operate any relevant System only in accordance with Sparta Wellbeing and/or any relevant licensor of the Systems instructions and shall ensure that no modifications are made to any such Systems; (ii) in respect of access and use of any relevant System by the Users, such Users shall comply with generally accepted principles of internet usage.
- (e) notify Sparta Wellbeing of any problem with the Services immediately, or as soon as reasonably possible, but in any event within 24 hours of identifying such issues arising.
- (f) The Customer warrants that:
 - (i) When a User accesses the System that User will comply at all with times with this section of the Contract and any other terms that Sparta Wellbeing may issue to Users from time to time.
 - (ii) The relevant System is not used by any of the Users fraudulently, in connection with any criminal offence, or otherwise unlawfully or to send or receive any information or material which is offensive, abusive, indecent, defamatory, obscene or menacing or in breach of confidence, copyright, privacy or any other rights, or to send or provide unsolicited advertising or promotional material and
 - (iii) no viruses are introduced into any such System and that, if a virus is found, upon its discovery the Customer will immediately notify Sparta Wellbeing;

5.2 The Customer shall give Sparta Wellbeing written notice of the Users that the Customer would like to access the System. Sparta Wellbeing reserve the right, at any

time, and without providing reasons, to change a User's access rights. Sparta Wellbeing will notify the Customer as soon as reasonably practicable of such action.

- 5.3 The Customer will be responsible for the activities of all individuals that the Customer has nominated as Users and the Customer will use all reasonable endeavours to ensure that those Users comply with the Contract and any user guidance referred to in this clause 5.
- 5.4 The Customer acknowledges that the provision by Sparta Wellbeing of the Services in accordance with this Contract will not absolve the Customer from any obligation, including any statutory obligation to which it may from time to time be subject.
- 5.5 The Customer acknowledges and accepts that Sparta Wellbeing may be required by law to monitor website content and traffic and if necessary, give evidence of the same together with use of log-on identification to support or defend any dispute or actionable cause.

6. Intellectual Property Rights

- 6.1 Title to the Systems shall remain vested in Sparta Wellbeing at all times.
- 6.2 Sparta Wellbeing shall retain legal and equitable ownership of anything (including but not limited to IPR) relating to the Services and in any and all Documents, Systems, any other systems, methods, material and items created by or on behalf of Sparta Wellbeing whether specifically for the purposes of this Contract or otherwise.
- 6.3 If a third party owns any Systems or part thereof such third party shall (if applicable) retain all IPR relating to the Systems.
- 6.4 The Customer hereby acknowledges that Sparta Wellbeing shall have no liability for any misuse by or on behalf of the Customer or any other person of any of the Documents (which shall be determined by reference to the purposes for which the Documents were originally prepared) or any other deliverables generated during the provision of the Services.
- 6.5 The Customer hereby grants Sparta Wellbeing a royalty-free, non-exclusive, and irrevocable licence to copy and use any material provided by the Customer for all reasonable purposes related to the Services. The Customer shall not use the System, Documents, or any deliverables resulting from the Services for any purpose whatsoever other than as necessary to receive the Services.
- 6.6 The Customer shall indemnify Sparta Wellbeing in full against all Losses suffered or incurred by Sparta Wellbeing arising out of or in connection with any claim brought against Sparta Wellbeing, its agents, sub-contractors or consultants for infringement of a third party's rights (including any IPR) arising out of, or in connection with, the receipt, use, copying or modifying of material provided by the Customer to Sparta Wellbeing or its agents, subcontractors or consultants.
- 6.7 Nothing in this Contract shall assign or transfer to either Party any of the IPR owned by the other Party.

7. Liability

- 7.1 Nothing in this Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation.
- 7.2 Subject to clauses 7.1 and 7.3, Sparta Wellbeing's total liability to the Customer in respect of in respect of Losses arising under or in connection with the Contract within any Contract Year, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the total amount of the Fees paid by the Customer to Sparta Wellbeing in that Contract Year.
- 7.3 Subject to clause 7.1, neither Party shall be liable to the other Party in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill;
 - (f) indirect, consequential or special loss.

8. **Termination**

- 8.1 Either Party shall be entitled to terminate this Contract at any time by giving not less than 3 three calendar months' notice of termination in writing to the other.
- 8.2 Without prejudice to any other remedy which it may have, either Party may terminate this Contract immediately by giving written notice of termination to the other Party in the event that:
- (a) the other Party commits any material breach of this Contract and (if capable of remedy) fails to remedy such breach within 30 days after being given written notice to do so; or
 - (b) the other Party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or
 - (c) the other Party makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (other than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, over any of its property or assets.
- 8.3 Upon termination of this Contract
- 8.3.1 the Customer's right to access and/or use the Systems and Services shall cease immediately.

8.3.2 both Parties shall return or dispose of any of the other's Confidential Information and all copies thereof.

8.4 In the event that the Contract is terminated in accordance with this clause 8 or clause 3.4 (c) or clause 11 all Fees outstanding at the date of termination shall immediately become due and payable notwithstanding any previous agreement or arrangement to the contrary.

8.5 Termination or expiry of this Contract shall not affect any of the rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination or expiry.

8.6 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect notwithstanding such termination or expiry.

9. **Confidentiality**

9.1 Either Party ("Receiving Party") must keep secure and confidential, and must not disclose or permit to be disclosed to any person Confidential Information obtained from the other Party ("Disclosing Party") as a result of or in connection with this Contract, except to the extent:

(a) necessary for the purposes of performing its obligations under this Contract (including, inter alia, the provision of information to its legal and financial advisors when necessary and subject to such advisors complying with obligations in this clause 9); or

(b) authorised in writing to do so by the Disclosing Party; or

(c) ordered to do so by a court of competent jurisdiction (provided that the Receiving Party shall immediately notify the Disclosing Party in writing on becoming so required to disclose the Confidential Information unless not legally permitted to do so); or

(d) required to do so by law (provided that the Receiving Party shall immediately notify the Disclosing Party in writing on becoming so required to disclose the Confidential Information unless not legally permitted to do so); or

(e) that such Confidential Information is already in the public domain or subsequently comes into the public domain through no fault of the Receiving Party; or

(f) that such Confidential Information was already known to the Receiving Party free from restrictions.

9.2 Without prejudice to the generality of clause 9, the Receiving Party shall:

(a) only use the Confidential Information of the Disclosing Party for the limited purpose of and to the extent necessary for the purposes of this Contract;

- (b) keep all documentation and other materials incorporating the Confidential Information of the Disclosing Party (whether in electronic format or otherwise) in a safe and secure place; and
- (c) exercise a degree of care in preventing the unauthorised disclosure of the Confidential Information of the Disclosing Party at least equal to the degree of care to that which the Receiving Party would exercise in respect of its own confidential information.

9.3 The provisions of this clause 9 shall remain in full force and effect notwithstanding termination or expiry of this Agreement howsoever caused.

10. Data Protection

10.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation.

10.2 The Parties agree that for the purposes of this Contract each shall be a Data Controller.

10.2.1 In accordance with the Sparta Wellbeing Privacy Policy, the Customer will notify the Eligible Employee's that the Customer and Sparta Wellbeing shall each be a Data Controller

10.3 In either circumstance, the parties agree to the principles and procedures that the parties shall adhere to the responsibilities the parties owe to each other as set out in Schedule 1.

11. Force Majeure

Neither Party shall be liable for any delay in performing or failure to perform any of its obligations under this Contract due to a Force Majeure Event. If either Party is unable to fulfil its obligations in this Contract for a period of more than 60 days due to the occurrence of a Force Majeure Event, then either Party may terminate this Contract immediately by serving written notice of termination on the other Party.

12. Dispute Resolution

12.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("Dispute") then the Parties shall follow the procedures set out in this clause:

- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Parties shall attempt in good faith to resolve the Dispute;
- (b) if the Parties are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the senior management of each of the Parties, who shall attempt in good faith to resolve it; and
- (c) if the senior management of each of the Parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation

Procedure. Unless otherwise agreed by the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (“ADR notice”) to the other Party requesting a mediation and send a copy of the ADR notice to CEDR. The mediation will start not later than 30 days after the service of the ADR notice.

- 12.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 17, which clause shall apply at all times.
- 12.3 If the Dispute is not resolved within 90 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 17.

13. TUPE

- 13.1 In the event that TUPE applies following the cessation or commencement of the Services, both Sparta Wellbeing and the Customer shall comply with their respective obligations pursuant to TUPE.
- 13.2 The Customer and Sparta Wellbeing shall provide each other with such reasonable assistance as the other may require in order to comply with their respective and collective obligations pursuant to TUPE.
- 13.3 In the event that a third party supplier of the Customer is either the transferor or transferee in accordance with TUPE, the Customer shall use all reasonable endeavours to ensure that the supplier complies with TUPE and provides Sparta Wellbeing with such reasonable assistance as Sparta Wellbeing may require in order to comply with its obligations pursuant to TUPE.
- 13.4 The Customer shall indemnify, defend and hold Sparta Wellbeing (including its directors, officers, agents, successors and assigns) harmless from any and all losses, liabilities (including provision for contingent liabilities), fines, compensation, damages, costs and expenses including legal fees and costs of investigation, litigation, settlement, judgment, interest and penalties arising from or in connection with a breach of the Customer’s obligations under TUPE, and/or this clause 13.

14. Assignment and Sub-contracting

- 14.1 This Contract is personal to the Customer, and the Customer shall not assign, transfer or subcontract any its rights and obligations under this Contract.
- 14.2 Sparta Wellbeing may at any time assign, transfer or deal in any manner with its rights under this Contract.
- 14.3 Sparta Wellbeing may subcontract any or all of its rights and obligations under this Contract to a third party, including a Group Company of Sparta Wellbeing.

15. General

- 15.1 Any notice required or permitted to be given by either Party to the other under this Contract shall be in writing addressed to the other Party at its registered office or principal place of business.

- 15.2 Any notice to be served on either of the Parties by the other shall be sent by pre-paid recorded delivery or registered first class post and shall be deemed to have been received by the addressee within 72 hours of posting.
- 15.3 No delay or failure on the part of any Party in enforcing a provision of this Contract shall be deemed to be a waiver or to create a precedent or in any way prejudice any party's rights under this Contract. The rights and remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by law.
- 15.4 If any provision shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 15.5 This Contract constitutes the entire Contract and understanding between the Parties with respect to its subject matter and the terms of this Agreement shall supersede any previous agreements, arrangements and understandings between the Parties relating to its subject matter.
- 15.6 Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to this Contract or not) other than as may be expressly set out in this Contract.
- 15.7 This Contract may not be modified except in writing signed by both Parties.
- 15.8 This Contract may be executed in any number of counterparts, which shall together constitute one agreement. Either Party may enter into this Contract by signing such counterpart.
- 15.9 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute one Party the agent of the other Party, or authorise one Party to make or enter into any commitments for or on behalf of the other Party.
- 15.10 All agreements on the part of either of the Parties which comprise more than one person or entity shall be joint and several.

16. Third Party Rights

This Contract is not intended to confer a benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have any right to enforce any of the provisions of this Contract.

17. Law and Jurisdiction

- 17.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) shall be governed by and construed in accordance with the law of England and Wales.
- 17.2 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

this Contract or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – DATA PROTECTION

Definitions

For the purposes of the Clauses:

‘Personal data’, ‘special categories of data/sensitive data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘the Commissioner’ shall have the same meaning as in the UK GDPR;

‘The data exporter’ shall mean the controller who transfers the personal data;

‘The data importer’ shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system covered by UK adequacy regulations issued under Section 17A Data Protection Act 2018 or Paragraphs 4 and 5 of Schedule 21 of the Data Protection Act 2018;

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

I Obligations of the data exporter

The data exporter warrants and undertakes that:

- I(a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- I(b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- I(c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- I(d) It will respond to enquiries from data subjects and the Commissioner concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- I(e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the Commissioner. However, the data exporter shall abide by a decision of the Commissioner regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the Commissioner where required.

II Obligations of the data importer

The data importer warrants and undertakes that:

- II(a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- II(b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- II(c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the Commissioner where required) if it becomes aware of any such laws.
- II(d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses
- II(e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the Commissioner concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
- II(f) It will process the personal data, at its option, in accordance with:
 - (i) the UK GDPR and DPA 2018, or
 - (ii) the relevant provisions of any UK adequacy regulations pursuant to Section 17A Data Protection Act 2018 or Paras 4,5 & 6 Schedule 21 Data Protection Act 2018, where the data importer complies with the relevant provisions of such adequacy regulations and is based in a country to which such adequacy regulations pertains, but is not covered by such adequacy regulations for the purposes of the transfer(s) of the personal data or
 - (iii) the data processing principles set forth in Annex A

- II(g) It will not disclose or transfer the personal data to a third party data controller located outside the UK, unless it notifies the data exporter about the transfer and
- (i) the third party data controller processes the personal data in accordance with UK adequacy regulations finding that a third country provides adequate protection, or
 - (ii) the third-party data controller becomes a signatory to these clauses, or another data transfer agreement approved by the Commissioner, or
 - (iii) data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
 - (iv) with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer.

III Liability and third party rights

- III(a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third-party rights under these clauses. This does not affect the liability of the data exporter under the UK GDPR or the DPA 2018

ANNEX A

- 1 Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
- 2 Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
- 3 Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
- 4 Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
- 5 Rights of access, rectification, deletion and objection: data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter.

Provided that the Commissioner has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated.

Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort.

A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the Commissioner.

- 6 Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under Clause II.
- 7 Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.
- 8 Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
 - (a) (i) such decisions are made by the data importer in entering into or performing a contract with the data subject, and

(ii) the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.

or

 - (b) where otherwise provided by the law of the data exporter.

ANNEX B

Data subjects

The personal data transferred concern the following categories of data subjects.

- Each category includes current data subjects. Where any of the following is itself a business or organisation, it includes their staff including volunteers, agents, temporary and casual workers
- advisers, consultants and other professional experts

Purpose of the transfer

The transfer is made for the following purposes.

- Provision of services
- Accounts and records, including
 - keeping accounts relating to the data exporter's business or activity;
 - deciding whether to accept any person or organisation as a customer;
 - keeping records of purchases, sales or other transactions, including payments, deliveries or services provided by the data exporter or to the data exporter;
 - keeping customer records
 - records for making financial or management forecasts; and
 - other general record keeping and information management.

Other activities:

- Consultancy and advisory services, including giving advice or rendering professional services, and the provision of services of an advisory, consultancy or intermediary nature.
- IT, digital, technology or telecom services, including use or provision of technology products or services, telecoms and network services, digital services, hosting, cloud and support services or software.

Categories of data

The personal data transferred concern the following categories of data.

- Personal details, including any information that identifies the data subject and their personal characteristics, including: name, address, contact details, date of birth, sex and age.
- Employment details, including information relating to the employment of the data subject,
- Goods or services provided and related information, including details of the goods or services supplied, licences issued, and contracts.

Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients.

- General business
- Health
- Legal and professional advisers

Sensitive Data

The personal data transferred concern the following categories of sensitive data.

- Health

Contact point for data protection enquiries

- Data exporter – Administrative User
- Data importer – Account Manager

SCHEDULE 2 – PRIVACY POLICY

The Sparta Support Services Ltd ('Sparta Wellbeing') Privacy Policy can be accessed online at www.spartawellbeing.co.uk/privacy

SCHEDULE 3 - SERVICES

Annual Membership Benefits

Subject to payment of the relevant Annual Membership Fee by the Customer, Sparta Wellbeing will provide the Customer's Eligible Employees with access to an extensive library of health and wellbeing information, webinars, videos, health checks and useful downloads via its online Wellbeing Hub.

The Administrator Users of the Wellbeing Hub will also be provided with access to help guides and health and wellbeing information for HR staff and managers which is not available to Eligible Employees.

Sparta Wellbeing automatically offers all Eligible Employees access to its surgical and diagnostic services on a self-pay basis (i.e., the Eligible Employee covers 100% of the cost of any service). Sparta Wellbeing's surgical and diagnostic services provides access to a wide range of diagnostic services and surgical procedures, offered through its network of private hospitals or NHS Private Patient Units. Customers have the option to remove this Service from being offered to its Eligible Employees.

Access to the Wellbeing Hub

Upon successful registration, the Customer's nominated Administrator User will be provided with a login to access the Wellbeing Hub. The Administrator User will then be able to add Eligible Employees as users of the Customer's Wellbeing Hub and grant the Eligible Employees access to the Wellbeing Hub via emailed logins automatically provided by Sparta Wellbeing. The Administrator User is also able to create additional Administrator Users should they wish to do so.

Optional Add-On Services to the Annual Membership

Option 1 – Annual Services

Subject to payment of the relevant Annual Service Fee by the Customer, Sparta Wellbeing will provide each of the Customer's Eligible Employees with access to the annual service chosen by the Customer.

The current annual services available from Sparta Wellbeing include;

- Sparta Wellbeing's GP 24/7 service this allows each Eligible Employee unlimited access to advice from a GP 24 hours a day 365 days per year.

Option 2 – Pay on Use Services

Subject to payment of the Pay on Use Wellbeing Fund by the Customer, Sparta Wellbeing will provide access for Eligible Employees to the pay on use services selected by the Customer.

The current pay on use services available from Sparta Wellbeing include;

- Confidential counselling

- Physiotherapy services

The Customer will be required to deposit a Pay on Use Wellbeing Fund with Sparta Wellbeing which will be used to pay for any usage of the pay on use services by the Customer's Eligible Employees. If the Customer's Eligible Employees do not use these services, the Pay on Use Wellbeing Fund or any part remaining amount is returned to the Customer or can be carried forward at the end of the Contract Year.

Pay on Use Fees – Administration

Sparta Wellbeing shall notify the Customer when its Pay on Use Wellbeing Fund has reduced to 50% or less of the original amount deposited. Sparta Wellbeing will request an additional payment to bring the Pay on Use Wellbeing Fund back to 100% of the original deposit value to ensure that the pay on use services can continue to be made available to the Customers Eligible Employees.

Sparta Wellbeing will enable the Customer to set an Eligible Employee contribution level for its pay on use services. This is a percentage amount of the cost of the service that an Eligible Employee is asked to pay, with the remainder deducted from the Customer's Pay on Use Wellbeing Fund. Following a request for services requiring use of the Pay on Use Wellbeing Fund, by an Eligible Employee, if the pay on use service contribution is not paid to Sparta Wellbeing by an Eligible Employee the service will not be arranged or fulfilled.

Management Information

Sparta Wellbeing will provide Customers via the Wellbeing Hub management information showing user requests for Services and the number of Eligible Employees who have accessed the wellbeing hub.

Customer's Administrative Obligations

The Customer will, as soon as is practicable following the completion of registration, input details of all its Eligible Employees into the Wellbeing Hub.

The Customer will ensure that its Eligible Employees details are kept up to date.

The Customer is responsible for deleting Eligible Employees as Users of the online Wellbeing hub as and when an employee ceases to be employed by the Customer.

The Customer will ensure that where it has selected pay on use services that the Pay on Use Wellbeing Fund never falls below 50% of the original deposit amount.

The Customer will ensure that it removes any Services that it no longer requires as soon as practically possible following a decision to cease a particular part of the Services.