

American Well Corporation UK Limited
(Service Provider)

Customer Company Name
(Customer)

TERMS AND CONDITIONS

American Well Corporation UK Limited

124 City Road
London
EC1V 2NX

THESE TERMS AND CONDITIONS are dated: DD/MM/YYYY

PARTIES:

0. **American Well Corporation UK Limited**, a limited liability company incorporated in England (registered no. 10960422), whose registered office is at 124 City Road, London, United Kingdom, EC1V 2NX (the “**Service Provider**”); and
1. **[CUSTOMER NAME]**, an organisation, with an address at [ADDRESS] (the “**Customer**”).

BACKGROUND

- A. The Service Provider is the provider of a hosted “software as a service” wellness/therapy programme delivery platform.
- B. The Service Provider has agreed to provide the Services to the Customer subject to these Terms and Conditions.
- C. The Customer may procure the Services on its own behalf or on behalf of a Customer Client.
- D. Both now wish to develop a commercial relationship that will allow the Customer to provide and deliver wellness programmes to its clients, patients, and users.

The parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following expressions have the following meanings:

“Account Manager”	means an individual nominated by the Service Provider as the key contact with the customer.
“Agreement”	means these Terms and Conditions and any Call-Off Contract, including all clauses and schedules hereto, as may be amended by agreement of the parties from time to time in accordance with the terms and conditions hereof.
“Applicable Law”	means any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law and any applicable codes of conduct, guidance, directions and/or determinations with which the Service Provider or Customer (as applicable) is bound to comply from time to time.

“Authorised User”	means those employees, volunteers, consultants, contractors and End Users of the Customer who are authorised to access the Services.
“Business Day”	means a day (other than a Saturday or a Sunday) on which banks are open for business in London. UK.
“Call-Off Contract”	means an order for the provisions of any Services, subject to this Terms and Conditions and any annexes hereto.
“Change of Control”	means the sale, disposal, transfer or alienation (or the grant or acquisition of any option or similar right in relation to the sale, disposal, transfer or alienation), or the acquisition (or the grant or acquisition of any option or similar right to acquire), by any means of more than 50 per cent of the equity share capital of the company.
“Confidential Information”	has the meaning ascribed to that term in clause 7.2.
“Commencement Date”	means the last date of signature of the applicable Call-Off Contract that incorporates the terms of this Agreement.
“Contract”	means a contract for the provision of Services comprised of this Agreement a relevant Order Form and any associated Statement of Work.
“Contract Period”	means the period set out in an Order Form during which the Service Provider will provide the Services to the Customer.
“Customer”	means a customer of the Service Provider as may be set out in the Call-Off Contract.
“Customer Claim”	has the meaning ascribed to that terms in clause 10.1.
"Customer Client"	means a client of the Customer on whose behalf the Customer has procured the right to use the Services.
“Customer Data”	means information relating to the Customer’s business inputted by or on behalf of the Customer in the course of using the Services but excluding any data, results, content, copyright, database rights or other intellectual property of the Service Provider.
“Customer Contact”	means an individual (or any individuals) nominated by the Customer as the key contact(s) with the Service Provider (as set out in an Order Form or as otherwise notified to the Service Provider).

“Data Protection Legislation”	means all laws relating to the processing of Personal Data, privacy and security including, without limitation, the General Data Protection Regulation (EU) 2016/679 (the “EU GDPR”) and the Data Protection Act 2018, as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, as amended to be referred to as the “UK GDPR” and “DPA 2018” respectively, and where the context so requires, equivalent, amendment or replacement legislation of any applicable jurisdiction, delegated legislation or other national data protection legislation.
“End User”	means any individual to whom the Customer provides any services, using the SilverCloud Platform or any Programme Content, subject to the terms of the Agreement.
“End User Personal Data”	means Personal Data received by the Service Provider from or on behalf of the Customer or as otherwise provided by the Customer in connection with any End User, further details of which are set out in Schedule 3.
“Excluded Unavailable Hours”	means the time periods specified in Schedule 2.
“Fees”	means the fees detailed in any relevant Contract.
“Good Industry Practice”	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the sector in which the Service Provider operates.
“Insolvency Event”	means in respect of a Customer, that the Customer is unable to pay its debts as they fall due or becomes insolvent or an order is made or a resolution is passed for the liquidation, administration, winding-up or dissolution of the Customer (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a liquidator, administrator (whether appointed through the court procedure or outside the court procedure), examiner, trustee or similar officer is appointed over all or any substantial part of the assets of the Customer or the Customer enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.
“Intellectual Property Rights”	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up

and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Personal Data"	means all data which are defined as personal data in the Data Protection Legislation.
"Programme Content"	means all the content (text, video, images, etc.) delivered via the SilverCloud Platform, as selected in the Call-Off Contract.
"Services"	means the provision of certain hosted software as a service to the Customer or the Customer's Clients over the internet and access to the SilverCloud Platform as set out in the relevant Contract.
"Schedules"	means the schedules attached to and forming part of this Agreement.
"Service Levels"	means the service levels to which the Service Provider shall perform the Services as set out in Schedule 2.
"SilverCloud Platform"	means the SilverCloud mental health and behavioural programmes platform.
"Specification"	has the meaning ascribed to that term in clause 6.3.
"Statement of Work"	means any statement of work agreed between the parties detailing a given set of services.
"Technical Support Hours"	means the technical support hours set out in Schedule 2.
"Technical Support Hours"	means the 09.00 to 17.00 UK time on a Business Day.
"Term"	means collectively and separately the Initial Term and the Renewal Term as defined in clause 4.
"Usage Data"	has the meaning ascribed to that term in clause 8.2

1.2 Interpretation

1.2.1 In this Agreement (except where the context otherwise requires):

- (a) any reference to a recital, clause or Schedule is to the relevant recital, clause, or Schedule of or to this Agreement;
- (b) references to paragraphs are to paragraphs of the relevant Schedule to this Agreement;
- (c) the clause headings are included for convenience only and shall not affect the interpretation of this Agreement.
- (d) use of the singular includes the plural and vice versa.
- (e) use of any gender includes the other genders.
- (f) a reference to "writing" or "written" includes faxes but not e-mail.
- (g) any reference to "persons" includes individuals, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not having separate legal personality);
- (h) any reference to any Applicable Law statute, statutory provision, subordinate legislation, regulation, order code, guideline or other enactment shall be construed as referring to the same as may from time to time be amended, modified, extended, varied, superseded, replaced, substituted, or consolidated; and
- (i) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any references to this Agreement includes the Schedules.

1.2.3 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

2 THE SERVICES

2.1 Purpose

This Agreement sets forth the terms and conditions under which the Service Provider agrees to licence certain hosted software as a service to the Customer over the internet and provide access to the SilverCloud Platform (the "Services"), as more specifically described in the Call-Off Contract.

2.2 Control of Services

The method and means of providing the Services shall be via the SilverCloud Platform, as a communications tool to allow the Customer or Customer Client to communicate with End Users.

2.3 Backup and Recovery of the End User Personal Data and Customer Data

As a part of the Services, the Service Provider will keep one backup of the End User Personal Data and Customer Data at the Service Provider's designated hosting centre, for an orderly and timely recovery of such data in the event that the Services may be interrupted.

2.4 Technical Support

During the Technical Support Hours, the Service Provider shall make available an email help desk to provide technical support directly to the Customer in accordance with Schedule 2.

3 RESPONSIBILITIES

Service Provider's Responsibilities

3.1 The Service Provider shall:

- 3.1.1 make the Services available for access via the internet through agreed and specified URLs or IP addresses through standard internet protocols (HTTPS).
- 3.1.2 provide the Services in a data centre environment with security corresponding to the levels of Good Industry Practice.
- 3.1.3 provide the Services in accordance with Schedule 1.

Customer's Responsibilities

3.2 The Customer shall:

- 3.2.1 ensure that the SilverCloud Platform is operated in a proper manner by the Customer, any Customer Client and Authorised Users and that all Authorised Users treat any username, password, or any other access credentials as confidential.
- 3.2.2 obtain prior written approval from the Service Provider (such approval not to be unreasonably withheld or delayed) before making the Silvercloud Platform available to any third party, including any Customer Client; and
- 3.2.3 ensure that the Customer Contact is available to liaise with, and respond to queries from, the Customer Success Team for the resolution of any issues that the Customer Success Team requires to resolve.

4 TERM AND TERMINATION

4.1 Term

4.1.1 This Agreement shall commence on the Commencement Date and shall continue in force until terminated in accordance with its terms.

4.2 Each Contract shall commence on the date stated in the relevant SOW and, subject to earlier termination in accordance with this clause 4 or the relevant Order Form, shall continue until:

4.2.1 in the case of discrete work projects, the end of the Contract Period set out in the Order Form or the completion of the performance of the Services in accordance with the Contract, whichever is the later; and

4.2.2 in the case of on-going Services, the end of the Contract Period set out in the Order Form.

4.3 Termination

4.4 Each party shall be entitled to terminate an individual Contract with immediate effect by notice in writing to the other if the other commits a material breach of that Contract and, where the breach is capable of remedy, has failed to remedy such breach within thirty (30) days of written notice specifying the breach and requiring its remediation.

4.5 Each party shall be entitled to terminate this Agreement (together with any affected Contracts) with immediate effect by notice in writing to the other if the other commits a material breach of this Agreement and, where the breach is capable of remedy, has failed to remedy that breach within thirty (30) days of written notice requiring remediation.

4.6 Each party shall be entitled to terminate this Agreement (together with all Contracts) immediately upon notice in writing to the other if the other suffers an Insolvency Event.

4.7 The Service Provider may terminate this Agreement and / or any Contract by notice in writing to the Customer if there is a Change of Control of the Customer or any Customer Client.

4.8 The expiration or termination of any Contract shall not affect this Agreement as a whole or any other Contracts in place between the parties.

4.9 Payments Upon Termination

Upon termination of this Agreement and /or termination or expiration of any Contract for any reason, the Customer shall pay to the Service Provider all amounts due and payable under any Contract. In the event of a payment dispute, resolution is to be achieved subject to the process detailed in clause 13.2. Only those disputed aspects of invoices shall be referred to such process with all undisputed amounts paid to the Service Provider immediately.

4.10 Return of Materials

Upon termination of this Agreement and /or termination or expiration of any Contract, each party shall return to the other party, or permit the other party to remove, any property of the other party then situated on such party's premises.

- 4.11 In the case of End User Personal Data and Customer Data, and subject to clause 8, the Service Provider shall immediately upon termination of this Agreement and /or termination or expiration of any Contract provide the Customer with a final export of the End User Personal Data and Customer Data and shall certify the destruction of any End User Personal Data and Customer Data within the possession of the Service Provider. The parties agree to work in good faith to execute the foregoing in a timely and efficient manner. This clause shall survive the termination of this Agreement.

5 FEES AND EXPENSES

- 5.1 The Customer shall be responsible for and shall pay to the Service Provider the Fees in accordance with the terms of this clause 5. Any sum due to the Service Provider for which payment terms have not been specified shall be due and payable thirty (30) days after receipt by the Customer of an invoice from the Service Provider.

5.2 Billing Procedures

The Service Provider invoices shall contain:

- 5.2.1 the invoice number and the Customer purchase order number, if any;
- 5.2.2 a description of Services rendered.
- 5.2.3 the Fees or portion thereof that is due.
- 5.2.4 taxes, if any; and
- 5.2.5 the total amount due.

5.3 Non-binding Terms

This Agreement applies to the sale and purchase of the Services as set out in the Order Form to the exclusion of any other terms that the Customer seeks to impose or incorporate under any acknowledgement or confirmation of order, quotation, specification, delivery note, invoice, or similar document, or which are implied by trade, custom, practice or course of dealing. The Service Provider hereby rejects any terms and conditions which may be provided by the Customer prior to or subsequent to receipt by the Service Provider of the Call-Off Contract/or this Agreement.

5.4 Late Payment

If the Service Provider has not received payment within thirty (30) days after the due date, then without prejudice to any other rights and remedies of the Service Provider:

- 5.4.1 the Service Provider may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Service Provider shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 5.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 2% per annum above the Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 5.5 All amounts and Fees stated or referred to in this Agreement:
 - 5.5.1 are non-cancellable and non-refundable; and
 - 5.5.2 unless expressly set out other wise, are exclusive of value added tax or any other government taxes or duties, which shall (if applicable) be added to the Service Provider's invoice(s) at the appropriate rate.

6 REPRESENTATIONS AND WARRANTIES

- 6.1 Each of the Customer and the Service Provider represent and warrant that:
 - 6.1.1 it has all requisite corporate power, financial capacity, authority and consents to execute, deliver, and perform its obligations under this Agreement and / or any Contract; and
 - 6.1.2 it shall comply with laws and regulations applicable to the performance by it of its obligations under this Agreement and / or any Contract and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement and / or any Contract.
- 6.2 Customer Representation and Warranty
 - 6.2.1 Customer represents and warrants that it has reviewed and approved of all Programme Content that is delivered or made available through the Services and that it is fit for its purposes.
- 6.3 Service Provider Warranty
 - 6.3.1 The Service Provider warrants that the Services shall operate materially in accordance with the specification set out in the relevant Order Form ("**Specification**") when used in accordance with this Agreement and the relevant Contract under normal use and normal circumstances during the relevant Contract Period.
- 6.4 Delays, Interruptions & Errors
 - 6.4.1 The Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are

inherent in cloud services and that the Service Provider shall have no liability for any such delays, interruptions, errors or other problems.

6.5 Customer Remedies

If there is a breach of the warranty in clause 6.3, the Service Provider shall at its option:

- 6.5.1 use reasonable endeavours to repair the impacted Services in accordance with the response and resolution times set out in Schedule 2;
- 6.5.2 replace the impacted Services; or
- 6.5.3 (whether or not it has first attempted to repair or replace the impacted Service) refund, on a pro-rata basis to reflect the extent to which the Service Provider (acting reasonably and in good faith) determines that the Customer's or Customer Client's use of the Services has been affected by the breach of warranty, the Fees for the impacted Services which were otherwise payable for the period during which the Service Provider was in breach of such warranty (provided such period is at least seven (7) consecutive days).

To the maximum extent permitted by law, this clause 6.5 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranty in clause 6.3.

6.6 Warranty Exclusions

The warranty granted by the Service Provider under clause 6.3 is subject to the limitations set out in clause 12 and shall not apply to the extent that any error in the Services arises as a result of:

- 6.6.1 incorrect operation or use of the Services by the Customer, Customer Client or any Authorised User;
- 6.6.2 use of any of the Services other than for the purposes for which it is intended;
- 6.6.3 use of any Services with other software or services or on equipment with which it is incompatible (unless the Service Provider recommended or required the use of that other software or service or equipment in the Specification);
- 6.6.4 any act by any third party (including hacking or the introduction of any virus or malicious code);
- 6.6.5 any modification of Services (other than that undertaken by the Service Provider or at its direction); or
- 6.6.6 any breach of this Agreement or any Contract by the Customer (or by any Customer Client or Authorised User).

7 NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

7.1 The parties acknowledge that each may be exposed to or acquire communications or data of the other party that is confidential or privileged and not intended to be disclosed to third parties.

7.2 Meaning of Confidential Information

For the purposes of this Agreement, the term “**Confidential Information**” shall mean all information or documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarised in writing by the disclosing entity and marked “confidential” or with words of similar meaning; (c) any information or documentation that ought reasonably be treated as confidential; (d) any Confidential Information derived from information of a party. The term “Confidential Information” does not include any information or documentation that was: (a) already in the possession of the receiving entity without an obligation of confidentiality; (b) developed independently by the receiving entity, as demonstrated by the receiving entity, without violating the disclosing entity’s proprietary rights; (c) obtained from a source other than the disclosing entity without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any *unauthorised* disclosure by, through or on behalf of, the receiving entity).

7.3 Obligation of Confidentiality

The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give, or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know it in connection with this Agreement or to use it for the performance of their obligations under this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep such information confidential.

7.4 Cooperation to Prevent Disclosure of Confidential Information

Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorised use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

7.5 Return or Destruction of Information

Upon termination of this Agreement each party shall promptly (a) return or destroy (at the election of the other party) all documents and materials (and any copies) containing, reflecting, incorporating, or based on the other party’s Confidential Information; (b) erase all of the other party’s Confidential Information from its computer systems to the extent possible; and (c) certify in writing to the other party that it has complied with the

requirements of this clause, provided that a party may retain documents and materials containing, reflecting, incorporating, or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the party to keep evidence that it has performed its obligations under this Agreement and any Contract.

- 7.6 The provisions of this clause shall survive the termination of this Agreement.

8 END USER PERSONAL DATA AND CUSTOMER DATA

- 8.1 The Customer (or a Customer Client) shall own all rights, title and interest in and to all of the End User Personal Data and Customer Data. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such data used in conjunction with and/or entered into the Services. The Service Provider shall make the Programme Content, the Customer Data available 'as is' and shall not be liable for any reliance placed by the Customer, Customer Client, an End User or any third party on the Programme Content or Customer Data, whether for medical decisions or otherwise.
- 8.2 The Customer hereby permits (and confirms that each Customer Client permits) the Service Provider to anonymise or (where applicable) pseudonymise (and, at the Service Provider's option, aggregate) the End User Personal Data and the Customer Data ("**Usage Data**").
- 8.3 Notwithstanding termination of this Agreement, at any time during and after the Term, the Customer agrees (and confirms that each Customer Client has agreed) that the Service Provider shall be permitted to monitor, analyse and use the Usage Data for any purpose, including without limitation: (a) the provision of statistical and market data or to otherwise improve the Services; (b) to analyse usage statistics of the Services; (c) to analyse how the Service Provider might improve the Services; (d) to improve efficiency and service tools for the use of the SilverCloud Platform; (e) clinical audit purposes; and (f) secondary research, which may involve disclosing the Usage Data to a third party pursuant to a collaboration arrangement and to Processors engaged by the Service Provider.
- 8.4 The Customer shall:
- 8.4.1 procure and confirm that it, or the Customer Client as the case may be, shall issue all fair processing notices (as required by the fairness and transparency requirements of the Data Protection Legislation) and procure the consent of any End Users (where required) or any other individuals to the processing by the Service Provider of their data in accordance with the terms of this Agreement; and
- 8.4.2 agree (and confirms that the Customer Client has agreed) that the Service Provider may access and disclose End User Personal Data and the Customer Data as required by applicable law, as permitted by the Customer (or the Customer Client, as applicable) and as is required to provide the Services.
- 8.5 If and to the extent that the Service Provider is processing End User Personal Data as Processor for and on behalf of the Customer or the Customer Client (as ultimate Controller), the Service Provider shall:

- 8.5.1 process the End User Personal Data only on instructions from the Customer (acting on its own behalf or on behalf of the Customer Client) and in accordance with Schedule 2 (unless the Service Provider is required to process the End User Personal Data otherwise by applicable law of each part of the United Kingdom in which case the Service Provider shall notify the Customer of that legal requirement before such transfer or access occurs or is permitted, unless that law prohibits such notification on important grounds of public interest). The Service Provider shall inform the Customer promptly in writing if it believes the Customer (whether on its own behalf or on behalf of a Customer Client) has given the Service Provider an instruction under this clause 8.5.1 that would infringe the Data Protection Legislation if followed.
- 8.5.2 ensure that all personnel authorised to process the End User Personal Data are party to confidentiality obligations in respect of the End User Personal Data;
- 8.5.3 implement and at all times maintain appropriate technical and organisational measures to ensure the security of the End User Personal Data taking into account:
 - (a) the state of the art;
 - (b) the costs of implementation;
 - (c) the nature, scope, context and purposes of the processing; and
 - (d) the inherent risk of the processing activities to Data Subjects;
- 8.5.4 cooperate as reasonably requested by the Customer:
 - (a) to enable the Customer or Customer Client to comply with any exercise of rights by a Data Subject under the Data Protection Legislation in respect of End User Personal Data, which shall include notifying the Customer within five (5) working days of any communication received by the Service Provider from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation;
 - (b) where the Customer or Customer Client conducts a data protection impact assessment; and
 - (c) with any relevant Supervisory Authority in the performance of its tasks;
- 8.5.5 notify the Customer without undue delay (and in any event within seventy-two (72) hours) of any Personal Data Breach or in the event that any End User Personal Data is otherwise lost, stolen, misappropriated, destroyed or becomes damaged, corrupted or unusable;
- 8.5.6 only transfer the Personal Data to a Restricted Country if: (a) the Customer is notified; and (b) this transfer is lawful under the Data Protection Legislation, using mechanisms such as the Standard Contractual Clauses; whereby "Restricted Country" means a country, territory or jurisdiction outside the UK which is not listed in Schedule 21, Part 3, Paragraph 5 of the Data Protection Act 2018 or which the

Secretary of State does not deem to provide adequate protection in accordance with Article 45 of the UK GDPR; and "**Standard Contractual Clauses**" means the standard data protection clauses referred to in Article 46(2) of the UK GDPR;

- 8.5.7 following the termination of this Agreement, at the written direction of the Customer, delete or return End User Personal Data and copies thereof to the Customer or the Customer Client as the case may be within ninety (90) days of receiving the Customer's written direction unless required by applicable law to store the End User Personal Data or for the defence or pursuit of legal claims; and
 - 8.5.8 make available information reasonably requested by the Customer to satisfy itself that the Service Provider is complying with its data protection obligations under this Agreement provided that: (a) the reasonable costs of such audit shall be borne by the Customer; and (b) the right to such audits and inspections shall not be exercised more than once per calendar year by the Customer, unless in respect of either (a) or (b), the Customer is acting upon the instruction of a Supervisory Authority or other relevant regulator in response to a Personal Data Breach for which the Service Provider is reasonably suspected of being responsible.
- 8.6 The Customer agrees, and confirms that the Customer Client has agreed, that the Service Provider may use the sub-processors set out in Schedule 2 or as otherwise set out on the SilverCloud Platform to process Customer Data and End User Personal Data for the purposes of providing the Services and the SilverCloud Platform, and hereby generally authorises (and confirms that the Customer Client has generally authorised) the Service Provider to appoint other sub-processors. Where the Service Provider engages a sub-processor:
- 8.6.1 the Service Provider shall ensure that such sub-processor has entered into data protection arrangements that are in all material respects similar to those set out in this Agreement as applicable to the sub-processor's data processing;
 - 8.6.2 the Service Provider will notify the Customer in advance of any proposed use of a new sub-processor and Customer shall have the right (on its own behalf or on behalf of the Customer Client) to object on reasonable grounds to the use of or change to any sub-processor within seven (7) days of the Service Provider notifying Customer of the change. In the event of the Customer (or the Customer Client, as the case may be) raising such an objection:
 - (d) the Service Provider shall use reasonable endeavours to find an alternative solution to enable the Customer to continue to use the Services and shall agree any additional costs with Customer; and
 - (e) in the event that no alternative solution can be arranged, the Service Provider or Customer may terminate the part of the Services impacted by the change on 30 days' notice; and
 - 8.6.3 the Service Provider shall remain fully liable for all obligations subcontracted to, and all acts and omissions of, the sub-processor.

8.7 Subject to clause 8.5:

8.7.1 in the event of any loss or damage to End User Personal Data and the Customer Data, the Customer's sole and exclusive remedy shall be for the Service Provider to use reasonable commercial endeavours to have its service providers restore the lost or damaged End User Personal Data and the Customer Data from the latest back-up of such End User Personal Data and the Customer Data; and

8.7.2 the Service Provider shall not be responsible for any loss, destruction, alteration or disclosure of End User Personal Data and the Customer Data caused by any third party (except for a sub-processor engaged by the Service Provider).

8.8 The Customer shall pay the Service Provider's charges calculated on a time and materials basis for any assistance provided under clause 8.5 (whereby such costs shall be reasonably and property incurred).

8.9 For the purposes of this clause 8, the terms "Controller", "Data Subject", "Personal Data Breach", "Supervisory Authority", "Processor", and "processing" shall have the meanings set out in the Data Protection Legislation (and "process" and "processed" shall be construed accordingly).

9 INTELLECTUAL PROPERTY RIGHTS

9.1 The Customer acknowledges and agrees that the Service Provider and/or its licensors own all Intellectual Property Rights in the Programme Content, the SilverCloud Platform and the Services (including any improvements and developments to such whether made by the Service Provider or the Customer). Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights, or any other rights or licences in respect of the Programme Content, the SilverCloud Platform or the Services.

9.2 The Customer shall ensure that all titles, logos, trademarks, copyright and other notices applied by the Service Provider to the Services or any materials provided or produced by the Service Provider or the Services in connection with this Agreement and / or any Contract shall be reproduced and not altered, deleted or removed.

9.3 The Customer agrees that the Service Provider shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into any Service Provider products or services any suggestions, enhancement requests, recommendations or other feedback provided by the Customer or the Authorised Users relating to the operation of the Services or other products of the Service Provider.

9.4 Return of End User Personal Data and Customer Data

9.5 The Customer shall be entitled to an export of End User Personal Data and Customer Data, without charge, upon the request of the Customer and upon termination of this Agreement and / or termination or expiration of any Contract.

9.6 Subject to clause 8, the Service Provider is provided with a licence to use End User Personal Data and Customer Data hereunder for the purpose of providing the Services in accordance with terms of this Agreement and any Contract, including a license to store, record, transmit,

maintain, and display End User Personal Data and Customer Data only to the extent necessary in the provisioning of the Services.

9.7 Data of Service Provider

9.8 The Service Provider's information and any Intellectual Property Rights, or any derivatives thereof (which shall be treated by the Customer as Confidential Information), shall be and remain the sole and exclusive property of the Service Provider. Upon termination of this Agreement and /or termination or expiration of any Contract the Customer shall return or destroy (at the instance of the Service Provider) all copies of the Services Provider's information and any Intellectual Property Rights.

9.9 No Licence

9.10 Except as expressly set forth herein, no licence is granted by either party to the other with respect to the Confidential Information, proprietary rights, End User Personal Data or Customer Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, proprietary rights, End User Personal Data or Customer Data, except as may be provided under a licence specifically applicable to such Confidential Information, proprietary right, End User Personal Data or Customer Data.

9.11 The Customer shall not, except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement or the relevant Contract:

9.11.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, the SilverCloud Platform and/or the Programme Content (as applicable) in any form or media or by any means;

9.11.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SilverCloud Platform;

9.11.3 access all or any part of the Services, the SilverCloud Platform and/or the Programme Content in order to build a product or service which competes with the Services, the SilverCloud Platform and/or the Programme Content;

9.11.4 use the Services, the SilverCloud Platform and/or the Programme Content to provide services to third parties;

9.11.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, the SilverCloud Platform and/or the Programme Content available to any third party except the Authorised Users; or

9.11.6 attempt to obtain, or assist third parties in obtaining, access to the Services, the SilverCloud Platform and/or the Programme Content, other than as provided under this clause 9.

- 9.12 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, the SilverCloud Platform and/or the Programme Content and, in the event of any such unauthorised access or use, promptly notify the Service Provider.
- 9.13 The provisions of this clause 9 shall survive the termination of this Agreement.

10 RESPONSIBILITY AND INSURANCES

- 10.1 The Service Provider accepts no responsibility for the Customer's, or its Authorised Users' use of the Services or the SilverCloud Platform. The Customer will ensure that appropriately trained and qualified staff (be they employees, consultants, contractors, volunteers or as otherwise engaged by the Customer) are engaged to communicate and deliver the Services to the End Users and shall supervise them in connection with all of their interactions with the Services.
- 10.2 The Customer assumes sole responsibility for all results obtained from the use of the Services and the Programme Content by the Customer, and the End Users, and for conclusions drawn from such use.
- 10.3 Notwithstanding any other clauses hereof, the Customer acknowledges and agrees that in using the Services, the Customer, its servants, or agents shall be covered by the Customer's participation in a suitable clinical indemnity scheme or another form of suitable insurance (covering medical malpractice, professional indemnity, etc.). It is understood and agreed by the Customer that the Service Provider will not be required to have medical malpractice insurance or any other form of insurance to cover the use of the Services by the Customer, or Authorised Users.
- 10.4 The Customer agrees at all times to indemnify, defend and to hold harmless the Service Provider its successors and assigns from each and every claim, suit, cost, damage, liability and award arising out of or in connection with use of the Services, including, but not limited to any claim or suit by an End User ("**Clinical Indemnity**"). The Customer confirms that the Clinical Indemnity will be supported by the Clinical Indemnity Scheme or other appropriate liability insurance under which the Customer's or Customer Client's insurer has no right of subrogation against the Service Provider.
- 10.5 During the term of this Agreement and for a period of one (1) year after its termination, the Customer shall maintain in force the following insurance policies with reputable insurance companies:
- 10.5.1 public liability insurance with a limit of at least five million pounds sterling (£5,000,000) per claim.
- 10.5.2 product liability insurance with a limit of at least ten million pounds sterling (£10,000,000) for claims arising from a single event or series of related events in a single calendar year.
- 10.5.3 professional indemnity insurance with a limit of at least five million pounds sterling (£5,000,000) for claims arising from a single event or series of related events in a single calendar year; and

- 10.5.4 employer's liability insurance with a limit of at least five million pounds sterling (£5,000,000) for claims arising from a single event or series of related events in a single calendar year.
- 10.6 The Customer shall ensure that the Service Provider's interest is noted on each insurance policy or that a generic interest clause has been included.
- 10.7 On taking out and on renewing each policy, the Customer shall on request promptly send a copy of the receipt for the premium to the Service Provider.
- 10.8 The Customer shall notify the Service Provider if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 10.9 The Customer's liabilities under this Agreement shall not be deemed to be released or limited by the Customer taking out the insurance policies referred to in clause 10.5.

11 INTELLECTUAL PROPERTY RIGHTS CLAIMS

- 11.1 Subject to clauses 10.4, 10.6 and 12.4.1, the Service Provider undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the SilverCloud Platform or the Programme Content in accordance with the terms of this Agreement and / or any Contract infringes the Intellectual Property Rights registered, existing or enforceable within the United Kingdom or the Republic of Ireland of a third party (a "**Customer Claim**") and shall be responsible for any reasonable losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Customer Claim.
- 11.2 Subject to clauses 10.5 and 12.4.1, the Customer undertakes at its own expense to defend the Service Provider or, at its option, settle any claim or action brought against the Service Provider alleging that the way in which the Customer or any Customer Client uses the SilverCloud Platform or the Programme Content or any content which the Customer or Customer Client uploads or which the Customer or Customer Client asks the Service Provider to upload to the SilverCloud Platform infringes the Intellectual Property Rights registered, existing or enforceable within the United Kingdom or the Republic of Ireland of a third party (a "**Service Provider Claim**") and shall be responsible for any reasonable losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against the Service Provider as a result of or in connection with any such Service Provider Claim.
- 11.3 If any Customer Claim is made, or in the Service Provider's reasonable opinion is likely to be made, against the Customer, the Service Provider may at its sole option and expense:
 - 11.3.1 procure for the Customer and any Customer Client the right to continue to use the SilverCloud Platform and the Programme Content (or any part thereof) in accordance with the terms of this Agreement and / or any Contract;
 - 11.3.2 modify the SilverCloud Platform and the Programme Content so that it ceases to be infringing;

- 11.3.3 replace the SilverCloud Platform and the Programme Content so that it is no longer infringing any third party Intellectual Property Rights; or
- 11.3.4 terminate this Agreement and / or any Contract immediately by notice in writing to the Customer and refund any Fees prepaid by the Customer as at the date of termination (less a sum, calculated pro-rata in respect of the Customer's use of the Services to the date of termination).
- 11.4 If any third party makes a Customer Claim, or notifies an intention to make a Customer Claim against the Customer or Customer Client, the Service Provider's obligations under clause 10.1 are conditional on the Customer and / or the Customer Client as the case may be:
 - 11.4.1 as soon as reasonably practicable, giving written notice of the Customer Claim to the Service Provider, specifying the nature of the Customer Claim in reasonable detail;
 - 11.4.2 not making any admission of liability, agreement or compromise in relation to the Customer Claim without the prior written consent of the Service Provider (such consent not to be unreasonably conditioned, withheld or delayed); and
 - 11.4.3 subject to the Service Provider providing security to the Customer or the Customer Client to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Service Provider may reasonably request to avoid, dispute, compromise or defend the Customer Claim.
- 11.5 If any third party makes a Service Provider Claim, or notifies an intention to make a Service Provider Claim against the Service Provider, the Customer's obligations under clause 10.2 are conditional on the Service Provider:
 - 11.5.1 as soon as reasonably practicable, giving written notice of the Service Provider Claim to the Customer, specifying the nature of the Service Provider Claim in reasonable detail;
 - 11.5.2 not making any admission of liability, agreement or compromise in relation to the Service Provider Claim without the prior written consent of the Customer (such consent not to be unreasonably conditioned, withheld or delayed); and
 - 11.5.3 subject to the Customer providing security to the Service Provider to the Service Provider's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Customer may reasonably request to avoid, dispute, compromise or defend the Service Provider Claim.
- 11.6 In no event shall the Service Provider, its employees, agents and sub-contractors be liable to the Customer under this clause 10 to the extent that the Customer Claim arises in whole or in part from:
 - 11.6.1 a modification of the Services or Programme Content by anyone other than the Service Provider;

- 11.6.2 the Customer's or Customer Client's use of the Services or Programme Content in a manner contrary to the instructions given to the Customer by the Service Provider and other than in accordance with the terms of this Agreement and / or any Contract;
- 11.6.3 the Customer's or Customer Client's use of the Services and the Programme Content in combination with any hardware or software not supplied or specified by the Service Provider; or
- 11.6.4 the Customer's or Customer Client's use of the Services or Programme Content after notice of the alleged or actual infringement from the Service Provider or any appropriate authority.
- 11.7 The foregoing states each party's sole and exclusive rights and remedies, and each party's entire obligations and liability, for infringement of any Intellectual Property Rights.

12 LIMITATION OF LIABILITY

- 12.1 Except as expressly and specifically provided in this Agreement or any Contract:
 - 12.1.1 the Service Provider shall have no liability for any damage caused by errors or omissions in any information, instructions or content provided to the Service Provider by the Customer or any Customer Client in connection with the Services, or any actions taken by the Service Provider at the Customer's or Customer Client's direction;
 - 12.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from this Agreement and all Contracts; and
 - 12.1.3 the Services and the Programme Content are provided to the Customer and any Customer Client on an "as is" basis.
- 12.2 Nothing in this Agreement or any Contract shall limit or exclude:
 - 12.2.1 the liability of either party for any breach of clause 7; or
 - 12.2.2 the liability of either party which cannot legally be limited or excluded under Applicable Law, including liability for:
 - 2.2.1 death or personal injury caused by the other party's negligence; or
 - 2.2.1 fraud or fraudulent misrepresentation;
 - 12.2.3 the liability of the Customer in respect of the Clinical Indemnity.
- 12.3 Subject to clauses 12.1, 12.2 and 12.4:
 - 12.3.1 neither party shall be liable for any special, indirect or consequential loss, costs, damages, charges or expenses;

12.3.2 neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following (whether direct or indirect):

3.2.1 loss of profits;

3.2.1 loss of business;

3.2.1 depletion of goodwill and/or similar losses;

3.2.1 loss or corruption of data or information; or

3.2.1 pure economic loss; and

12.3.3 neither party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any Contract shall exceed one (1) times the total Fees paid or payable under this Agreement and all relevant Contracts during the twelve (12) months immediately preceding the date on which the claim arose.

12.4 Subject to clauses 12.1 and 12.2 and notwithstanding clause 12.3.3:

12.4.1 either party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with a Customer Claim or Service Provider Claim (as applicable) shall not exceed one million pounds sterling (£1,000,000) per claim or series of related claims; and

12.4.2 neither party's liability in respect of any breach of its obligations under clause 8 shall exceed five million pounds sterling (£5,000,000).

13 GENERAL

13.1 Governing Law and Jurisdiction

This Agreement and each Contract and any disputes or claims arising out of or in connection with them, their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

13.2 Dispute Resolution

In the event of any dispute or disagreement between the parties with respect to the interpretation of any provision of this Agreement, or with respect to the performance of either party under this Agreement, the Customer Contact and the Account Manager will meet for the purpose of resolving the dispute or disagreement. For the purpose of this clause 13.2, a dispute or disagreement shall be deemed to have arisen when one party serves on

the other a notice in writing stating the nature of the dispute or disagreement. Unless this Agreement has already been terminated or the relevant Contract has terminated or expired by the date of the notice of dispute or disagreement, the Service Provider shall in every case continue with the performance of the Services with all due diligence and the Customer shall continue to make payments therefor in accordance with this Agreement and the Contract regardless of the nature of the dispute or disagreement. If the parties are unable to resolve the dispute or disagreement within ten (10) working days, or as otherwise agreed, either party will have the right to submit the dispute or disagreement to the Service Provider's Executive Chairman and the Customer's Chief Executive (the "**Representatives**") who will meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all essential, non-privileged information that the parties believe germane to resolution of the matter at issue. During the course of these non-judicial dispute resolution procedures, documents used to resolve the dispute or disagreement shall be limited to essential, non-privileged information. All requests shall be made in good faith and be reasonable considering the economics and time efficiencies intended by the dispute resolution procedures. No formal proceedings for the judicial resolution of any dispute or disagreement may be commenced until twenty-one (21) days following initiation of negotiations under this clause 13.2 or for such shorter period as the parties may mutually agree to in writing. Either party may then seek whatever remedy is available in law or in equity. The provisions of this clause 13.2 shall determine all disputes except any dispute relating to the parties' obligations of non-disclosure and confidentiality as further described herein. Nothing in this clause 13.2 shall prevent either party from abstaining from the procedures herein and obtaining injunctive relief where circumstances deem necessary.

13.3 Cooperation

Where agreement, approval, acceptance, consent, or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. The Service Provider will agree to cooperate at the Customer's expense with any Customer Service Provider performing services, and all parties supplying hardware, software, communication services, and other services and products to the Customer.

13.4 Force Majeure

13.4.1 Neither party shall be liable for delays or any failure to perform the Services or their obligations under this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, an act of God, fire, flood, earthquake, wind, storm or other natural disaster, war, insurrection, riot, act of terrorism, military operations, epidemic or pandemic, malicious damage, compliance with a law or governmental order, rule, regulation or direction, failure of any utility service including electric power, gas, water or telephone service, accident, breakdown of plant or machinery, strikes, lockouts, and other industrial disputes (in each case whether or not relating to the delayed party's workforce), to the extent not occasioned by the fault or negligence of the delayed party ("**Force Majeure Event**"). Any Force Majeure Event shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its

best efforts to minimise the delays caused by the Force Majeure Event. The delayed party must notify the other party promptly upon the occurrence of a Force Majeure Event, or performance by the delayed party will not be considered excused pursuant to this clause 13.4.1, and inform the other party of its plans to resume performance.

13.4.2 Neither the Customer nor the Service Provider shall have any liability to the other in respect of termination of any Contract due to a Force Majeure Event, but rights and liabilities which have accrued prior to termination shall subsist.

13.5 Advertising and Publicity

13.5.1 The Service Provider may list the Customer as a customer of the Service Provider on its website, in press releases and in other marketing material.

13.5.2 At the Customer's discretion, it may be amenable to act as a customer reference for the Service Provider.

13.6 No Waiver

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement and be taken or held to be a waiver of any further breach of the same provision.

13.7 Notices

13.7.1 Any notice given by a party under this Agreement shall be:

7.1.1 in writing and in English;

7.1.1 signed by, or on behalf of, the party giving it (except for notices sent by email);
and

7.1.1 sent to the relevant party at the address set out in clause 13.7.3.

13.7.2 Notices may be given, and are deemed received:

7.2.1 by hand: on receipt of a signature at the time of delivery.

7.2.1 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting.

7.2.1 by Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting; and

7.2.1 by email: on receipt of a delivery email from the correct address.

13.7.3 Notices shall be sent to:

7.3.1 in the case of those to the Service Provider, to American Well Corporation UK Limited for the attention of Contracts Department at:

124 City Road, London, EC1V 2NZ United Kingdom
contracts@silvercloudhealth.com and

copied to UK Customer Success at
Ukcustomersuccess@silvercloudhealth.com

7.3.1 in the case of those to the Customer, to any email or physical address or contact details notified on the relevant Contract (as updated from time to time pursuant to clause 13.7.4).

13.7.4 Any change to the contact details of a party as set out in clause 13.7.3 shall be notified to the other party in accordance with clause 13.7.1 and shall be effective:

7.4.1 on the date specified in the notice as being the date of such change; or

7.4.1 if no date is so specified, five (5) Business Days after the notice is deemed to be received.

13.7.5 This clause 13.7 does not apply to notices given in legal proceedings or arbitration.

13.8 Assignment

The obligations of the Customer under this Agreement are personal to the Customer. The Customer shall not directly or indirectly assign this Agreement, or the rights or duties created by this Agreement, whether such assignment is affected in connection with a sale of the Customer's assets or shares or through merger, an insolvency proceeding or otherwise, without the prior written consent of the Service Provider. Nothing in this clause 13.8 shall prevent the Customer from directly or indirectly assigning this Agreement or the rights or duties created by this Agreement within its group of companies.

13.9 [Reserved]

13.10 Entire Agreement

This Agreement and its attached schedules constitute the entire agreement between the parties and supersede all previous representations, understandings, or agreements between the Customer and the Service Provider as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.

13.11 Cumulative Remedies

All rights and remedies of the Customer herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance

against the Service Provider for the enforcement of this Agreement and each Contract, and temporary and permanent injunctive relief.

13.12 Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

13.13 No Partnership or Agency

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

13.14 Third Party Rights

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

SCHEDULE 1

Details of data processing

Description	Details
Customer Data Backup Location	<i>UK Customer Data Backup Location – UK</i> <i>See details of sub-processors below for further information.</i>
Subject matter of the processing	<i>The subject matter of the Processing is set out in the relevant Order Form.</i>
Duration of the processing	<i>The personal data will be processed for:</i> <i>the duration of the initial term and subsequent renewal term(s);</i> <i>as long as required to comply with the other purposes stipulated in the relevant Order Form;</i> <i>as long as required to comply with Applicable Laws.</i>
Nature and purposes of the processing	<i>The purposes are set out in the relevant Order Form.</i> <i>The purposes include without limitation:</i> <i>to provide the Services</i> <i>to provide technical support</i> <i>to understand usage and improve the Services</i> <i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i> <i>The nature of processing includes without limitation:</i> <i>to solicit and collect End User feedback to the Service Provider through the SilverCloud Platform</i> <i>to anonymise or (where applicable) pseudonymise (and, at the Service Provider's option, aggregate) the Personal Data to create Usage Data for use by the Service Provider and Customer as set out in clause 8 of the Agreement,</i> <i>to monitor, analyse and use the Usage Data.</i>

Description	Details
Type of Personal Data	<i>Name, address, email address, telephone number, and any other Personal Data provided by Authorised Users or End Users</i> • <i>Name and related login information of Customer's or Customer Client's personnel;</i> • <i>Name and related login information of End Users;</i> • <i>Usage Data relating to Personal Data;</i> • <i>Contact details</i> • <i>Health data</i> • <i>Background and demographic data</i> • <i>Feedback and technical support data</i> • <i>Personal Data related to and volunteered by End Users</i>
Categories of Data Subject	<i>Staff (including volunteers, agents, and temporary workers) of Customer or Customer Client and/or any End Users.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>The personal data will be processed for:</i> • <i>the duration of the Contract Period;</i> • <i>as long as required to comply with the other purposes stipulated in the relevant Order Form;</i> • <i>as long as required to comply with Applicable Laws.</i> <i>No data shall be retained longer than it is necessary for the purpose for which the personal data was collected for.</i> <i>Data shall be returned to Customer or Customer Client as the case may be in a suitable format and destroyed using industry standard mechanisms.</i> <i>Non-identifiable aggregate and anonymous Usage Data may be retained indefinitely by the Service Provider.</i> Process for offboarding In this section "Expiry Date" means the date of termination of this Agreement and / or termination or expiry of any Contract. • <i>Upon Expiry Date, the Customer or any Customer Clients listed in the relevant Order Form will be unable to invite new End Users onto the SilverCloud Platform.</i> • <i>End Users with access to the SilverCloud Platform prior to the Expiry Date shall continue to have access to the SilverCloud Platform until 90 days post-Expiry Date (or any earlier date mutually agreed upon between Service Provider and Customer).</i> • <i>Service Provider shall make available the facility to download a final report 120 days post-Expiry Date (or any earlier date mutually agreed upon between Service Provider and Customer).</i> • <i>API or single sign on enabled technology used by the Customer to connect to the SilverCloud Platform will be disconnected 120 days post-Expiry Date (or any earlier date mutually agreed upon between Service Provider and Customer).</i>

Description	Details
	Service Provider shall destroy all personal data held 120 days post-Expiry Date (or any earlier date mutually agreed upon between Service Provider and Customer), and if requested, provide a certificate of destruction to the Customer. The parties agree that this process for offboarding (a) constitutes the Customer's written direction to delete or return End User Personal Data under clause 8.5; and (b) fulfils the Service Provider's obligations for Return of Materials in respect of End User Personal Data under clause 4.10.
Sub-processors	An up to date list of sub-processors are set out at https://www.silvercloudhealth.com/privacy/platform#subprocessors Current sub-processors at the Commencement Date are: Amazon Web Services Amazon Web Services EMEA SARL, 5 Rue Plaetis, L-2338 Luxembourg The Service Provider uses Amazon Web Services to host the SilverCloud platform and database, to store encrypted backups and send email notifications. Location of processing: UK Zendesk Zendesk International Limited, One Grand Parade, Dublin 6, D06 R9X8, Ireland The Service Provider uses Zendesk to handle technical assistance communication. Location of processing: EEA and US Twilio* Twilio Ireland 3 Dublin Landings, North Wall Quay, Dublin 1, Ireland The Service Provider uses Twilio for SMS messaging. *Applicable only to customers using the SMS text messaging feature. Location of processing: US

Schedule 2 – Service Levels & Support

Part A – Definitions

- **“Service Provider Service”** means the use of the SilverCloud by Amwell digital therapy platform accessed via <https://uk.silvercloud.com>.
- **“End User”** means any patient or professional using the SilverCloud by Amwell digital therapy platform accessed via <https://uk.silvercloud.com>.
- **“Uptime”** means the ability for any patient or professional to log in and use the Service at <https://uk.silvercloud.com>.
- **“Service Commitment”** means the service levels that the Service Provider commits to.
- **“Response Time”** means the time from receipt and acknowledgement of an issue during the stated hours of 9 am to 5 pm Monday to Friday and as recorded on Zendesk service support portal.
- **“Resolution Time Objective”** means the period between the hours of 8 am to 8 pm Monday to Saturday (UK time) within which Service Provider takes steps to rectify the issue. This time will be recorded as commencing from the time when the issue is initially reported until resolved to normal, near normal state or satisfactory workaround

Part B – Service Availability

The Service Provider will ensure through all reasonable efforts to provide the service with a minimum availability to end users Uptime of 99%. This will be measured over the course of a four (4) week period and will be average availability over that period, excluding scheduled maintenance and upgrades. This Service Commitment means that the Service Provider guarantees no more than 403 minutes of unavailability in any given four (4) week period.

Part C – Service Responsiveness

The Service Provider will take all reasonable commercial efforts to ensure the Service Provider Service is responsive to the needs of the end users and commit to 95% of pages loading with 1.5 seconds, excluding multimedia content (such as high-resolution images, videos and audio) and attachments (such as pdf or other documents).

Part D – Exclusions

The following services are excluded from the Service Commitments:

Reports and the Learning Centre are excluding from this commitment due to data being analysed and reported, as well as the bandwidth to provide the online learning platform.

The Service Commitment does not apply to factors outside of the control of the Service Provider and includes, but not exclusively:

- any force majeure event;
- issues with internet access, or problems beyond the point of the Service Provider hosted network;
- factors that result from any actions or inactions of the end user or third party;
- factors that result from equipment, software or other technology of the End User or third party (other than third party equipment within our direct control); and
- failures that result from upgrades or maintenance that could have been foreseen with reasonable pre-flight testing.

Part E – Service Failures and Response Times

Criteria	Hours	Logging Method	Resolution Time
Service unavailable (inability to login or use service)	Service Hours (24 hours, 7 days a week)	Email	4 hours
Limited service availability (some pages loading and can use with minor impediment)	Support Hours (9 am - 5pm on a Working Day)	Email	24 hours
Isolated issues: Specific features or functions not available	Support Hours (9 am - 5pm on a Working Day)	Email	5 Business Days
Intermittent issue: feature or functionality not working as intended but can continue to use in some capacity	Support Hours (9 am - 5pm on a Working Day)	Email	10 Business Days

The Resolution times (Resolution Time Objective or RTO) detailed above are part of SilverCloud's internal procedural objectives for first response to a service impacting event and the subsequent return to standard operating state.

Priority 1 issues will result in the Disaster Recovery Plan to be activated in accordance with Service Providers Information Security Management System (ISMS), available upon request. Return to standard operating condition's is Service Providers main priority and the primary measure of this will be Service availability over and above RTO.

Automated System Health Monitoring

Engineering employs automated system monitoring and alerting to be alerted to system outages 24/7/365

Part F – Maintenance and Upgrades

The Service Provider reserves the right to perform emergency maintenance without notification at any time, if it is deemed necessary to protect and maintain the Service Provider Services.

Part G – Support Desk

Amwell provides support for the SilverCloud by Amwell platform via email through a helpdesk ticketing system during the hours of 9 AM to 5 PM (GMT) Monday through Friday. Email support inquiries submitted out of hours will be handled the next business day.

Email	support@silvercloudhealth.com
Internet	n/a
Telephone	n/a
Out of hours, addressed during next business day	support@silvercloudhealth.com

Part H – Escalation Contacts

Technical Support operating hours are as follows:

- Priority Level 1: Monday to Friday 9 am – 5 pm and 'Out of hours'
- Priority level 2 through 4: Monday to Friday 9 am – 5 pm
- Email: technicalassistance@silvercloudhealth.com