

## Client Agreement – Membership Terms v3.1

### AGREED TERMS

#### 1. INTERPRETATION

##### 1.1 Definitions:

<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for usual commercial non-automated business.
<b>Charges</b>	the charges payable by the Client for the supply of the Services by SAHL, as set out in the Contract Details.
<b>Conditions</b>	these terms and conditions, being the Membership Terms.
<b>Contract</b>	the contract between the Client and SAHL for the supply of the Services in accordance with the Contract Details and the Conditions.
<b>Client Materials</b>	all materials, information, and other data supplied by the Client to SAHL including but not limited to the Client's logo and trading style.
<b>Deliverables</b>	those documents, products and materials developed by SAHL or its agents, subcontractors and personnel as part of or in relation to the Services in any form as set out in the Contract Details including but not limited to any live training or educational sessions, webinars or workshops (or recordings of such sessions).
<b>Group</b>	means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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.

<b>Membership</b>	the Client's subscription to the Services on a recurring yearly basis.
<b>Membership Year</b>	each year beginning on the Services Start Date and each anniversary of such date.
<b>Party</b>	each of the Client or SAHL as the context requires, and the Parties is both of them.
<b>Restricted Person</b>	as defined at clause 10.6.
<b>SAHL</b>	Smart About Health Limited, incorporated and registered in England and Wales with company number 11721092 whose registered office is at Ground Floor, Cooper House, 316 Regents Park Road, London, N3 2JX. VAT number 374082102.
<b>Services</b>	the services, including the ongoing Membership (if any) and any Deliverables, to be provided by SAHL pursuant to the Contract, as described in the Contract Details.
<b>Services Start Date</b>	the day on which SAHL is to start provision of the Services, as set out in the Contract Details.
<b>SAHL IPRs</b>	all Intellectual Property Rights subsisting in the Deliverables excluding any Client Materials incorporated in them.

## 1.2 Interpretation:

1.2.1 A reference to legislation or a legislative provision:

- (a) is a reference to it as amended, extended or re-enacted from time to time; and
- (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes email but not fax or any other form of electronic communication.

## 2. COMMENCEMENT AND TERM

2.1 The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than 20 Business Days' written notice in accordance with clause 11.9 to terminate it with effect from the end of the then current Membership Year.

- 2.2 For Services that include a Membership component, SAHL may provide the Client with an updated version of these Membership Terms and notice of revised Charges for the new Membership Year no later than 40 Business Days before the start of the new Membership Year. Unless following such notice, the Client terminates the Contract in accordance with clause 2.1, any further use of the Services by the Client shall amount to an acceptance of those new Membership Terms and Charges.

### **3. SUPPLY OF SERVICES**

- 3.1 SAHL shall supply the Services to the Client from the Services Start Date in accordance with the Contract.

- 3.2 In supplying the Services, SAHL shall:

- 3.2.1 perform the Services with reasonable care and skill;
- 3.2.2 comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- 3.2.3 offer topics for the Services in line with those advertised for the given calendar year and which may be revised in subsequent calendar years that form part of any given Membership Year.

- 3.3 The Client acknowledges that the Services and Deliverables are provided for training and educational purposes only and do not constitute or replace individual medical advice. SAH encourages the Client to direct its employees or other attendees to any sessions that form part of the Deliverables to seek medical advice from their GP, doctor or other health professional for any health concerns.

### **4. CLIENT'S OBLIGATIONS**

- 4.1 The Client shall:

- 4.1.1 co-operate with SAHL in all matters relating to the Services;
- 4.1.2 provide, for SAHL, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, IT, data, support, and other facilities as reasonably required by SAHL or any of them if reasonably required for proper delivery of the Services;
- 4.1.3 comply with all applicable laws, statutes, regulations and codes from time to time in force;
- 4.1.4 provide, in a timely manner, such information as SAHL may reasonably require, and ensure that it is accurate and complete in all material respects; and
- 4.1.5 have access to suitable IT hardware, software, and internet connections to enable it to receive the delivery of any Services or Deliverables including but not limited to webinars. For the avoidance of doubt, SAHL shall not be required to provide any such hardware, software, or connections and shall not be liable if any such non-performance prevents or hinders the Client's ability to receive the Services or the Deliverables.

- 4.2 If SAHL's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, SAHL shall:
- 4.2.1 not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;
  - 4.2.2 be entitled to payment of the Charges despite any such prevention or delay; and
  - 4.2.3 be entitled to recover any additional costs, charges or losses SAHL sustains or incurs that arise directly or indirectly from such prevention or delay.
- 4.3 The Client shall ensure that its employees or staff attending a session facilitated by SAHL:
- 4.3.1 do not disclose any confidential information of the Client in front of attendees from other businesses;
  - 4.3.2 do not disclose any Intellectual Property Rights of the Client or purport to allow another business to use such rights;
  - 4.3.3 comply with all applicable laws and regulations;
  - 4.3.4 act responsibly and sensibly at all times; and
  - 4.3.5 follow any safety warnings or instructions displayed or given to them by SAHL.
- 4.4 In the absence of any negligence or other breach of duty by SAHL, SAHL shall not be responsible for liability arising to the Client or to any other business attending a session as a result of the acts or omissions of the Client's employees or staff.

## 5. **INTELLECTUAL PROPERTY**

- 5.1 SAHL and its licensors shall retain ownership of all SAHL IPRs. The Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials.
- 5.2 SAHL grants the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to use SAHL IPRs for the purpose of receiving and using the Services and the Deliverables internally in the Client's business for the duration of time from the date of the Deliverables to be provided to the Client as detailed in the Contract Details ("**Licence of Materials**").
- 5.3 At the end of the duration of the Licence of Materials if SAHL has recorded the Deliverables and provided access to the Client, the materials will be automatically deleted and the Client shall have no further access to the Deliverables, unless the Client wishes to renew the Licence of Materials for a further term or purchase updated materials from SAH, both of which SAH is willing to offer the client as a cost to be agreed at the time
- 5.4 For the avoidance of doubt, unless otherwise agreed by SAHL, the Client:
- 5.4.1 is not permitted to incorporate any SAHL IPRs into the Client's own materials;
  - 5.4.2 is not permitted to provide the SAHL IPRs to any of the Client's customers; and

- 5.4.3 is not permitted to share the Deliverables or any SAHL IPRs publicly or online or on any social media platform.
- 5.5 The SAHL Licence of Materials at clause 5.2 above is non-transferable, non-assignable, and non-sub-licensable.
- 5.6 SAHL may terminate the SAHL Licence of Materials at clause 5.2 at any time with immediate effect on written notice to the Client. For the avoidance of doubt, on termination of the SAHL Licence of Materials in accordance with this clause 5.6, the Client may terminate the Contract with immediate effect on written notice to SAHL and the provisions of clause 9.3 shall apply.
- 5.7 The Client grants SAHL, its agents, subcontractors, consultants and employees, a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of the Contract for the purpose of providing the Services to the Client in accordance with the Contract.
- 5.8 SAHL warrants to the Client that the Deliverables and the SAHL IPR's are accurate as at the date that they are provided to the Client.
- 5.9 SAHL offers no representation, warranty or assurance of any kind as to the ongoing accuracy of the SAHL IPR's or the Deliverables after the date that they are provided to the Client, and SAHL excludes all such liability.
- 5.10 SAHL has no obligation to inform the Client of any developments which may have implications for the accuracy of the Deliverables or the SAHL IPR's after the date that they are provided to the Client.

## **6. SERVICE CHANGES**

- 6.1 The Client may reschedule the agreed date of a one-off bespoke booked session upon no less than 14 days' prior written notice.
- 6.2 The Client shall be responsible for all of SAHL's reasonable costs and VAT in rescheduling any one-off bespoke session changed at the Client's request in accordance with clause 6.1.
- 6.3 SAHL may, entirely at its own discretion and without any obligation on it to do so, waive its costs in rescheduling a session if such request is made for reasons outside of the Client's control and an alternative venue or location cannot be provided where such session cannot be delivered remotely as a webinar.
- 6.4 Any cancellation of a one-off bespoke session upon less than 14 days' prior written notice will incur a 50% fee charge. Cancellation less than 7 days; prior written notice will incur the full charge.
- 6.5 The Client may cancel its staff's attendance at a booked session provided as part of its Membership at any time, however an alternative session outside the planned curriculum will not be available. Where a set number of sessions was prescribed as a Membership entitlement in the Contract Details, such sessions must be selected from the planned curriculum and schedule. It is a Client's responsibility to select the required sessions from those offered and any failure of a Client to select the prescribed number of sessions or

cancellation of the Client's attendance will not entitle the client to a refund, repeat session or Membership extension.

6.6 If any of SAHL's session participants are unable to attend the event due to sickness, bereavement or other unforeseen extreme circumstance outside of its control, SAHL will use its reasonable endeavours to offer the event by either:

6.6.1 rescheduling of the event; or

6.6.2 an alternative speaker at the original time.

## **7. CHARGES AND PAYMENT**

7.1 In consideration for the provision of the Services, the Client shall pay SAHL the Charges in accordance with this clause 7.

7.2 All amounts payable by the Client exclude amounts in respect of value added tax (**VAT**), which the Client shall additionally be liable to pay to SAHL at the prevailing rate.

7.3 SAHL shall submit invoices for the Charges plus VAT if applicable to the Client in advance or as otherwise agreed between the parties. In respect of Memberships, SAHL shall submit further invoices in respect of each Membership Year.

7.4 The Client shall pay each invoice due and submitted to it by SAHL within 28 days of receipt by direct bank transfer to such bank account as SAHL shall from time to time advise.

7.5 If the Client fails to make any payment due to SAHL under the Contract by the due date for payment, then, without limiting SAHL's remedies under clause 9 (Termination):

7.5.1 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.

7.5.2 SAHL may suspend all Services, including Membership and online access to recordings of Deliverables, until payment has been made in full.

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

## **8. LIMITATION OF LIABILITY**

8.1 SAHL has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5 million per claim. The limits and exclusions in this clause reflect the insurance cover SAHL has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 8.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 8.4 Nothing in this clause 8 shall limit the Client's payment obligations under the Contract.
- 8.5 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 8.5.1 death or personal injury caused by negligence;
  - 8.5.2 fraud or fraudulent misrepresentation; and
  - 8.5.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.6 Subject to clause 8.3 (No limitation in respect of deliberate default), clause 8.5 (Liabilities which cannot legally be limited), and clause 8.7 (Liabilities that are wholly excluded) SAHL's total liability to the Client for all other loss or damage shall not exceed the total Charges due or paid by the Client pursuant to the Contract during the 12 months immediately prior to the date that the event causing the liability first occurred.
- 8.7 Subject to clause 8.3 (No limitation in respect of deliberate default) and clause 8.5 (Liabilities which cannot legally be limited), this clause 8.7 sets out the types of loss that are wholly excluded:
- 8.7.1 loss of profits;
  - 8.7.2 loss of sales or business;
  - 8.7.3 loss of agreements or contracts;
  - 8.7.4 loss of anticipated savings;
  - 8.7.5 loss of use or corruption of software, data or information;
  - 8.7.6 loss of or damage to goodwill; and
  - 8.7.7 indirect or consequential loss.
- 8.8 Unless the Client notifies SAHL that it intends to make a claim in respect of an event within the notice period, SAHL shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred or of it having grounds to make a claim in respect of the event and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## **9. TERMINATION**

- 9.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:
- 9.1.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

- 9.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 9.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 9.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without affecting any other right or remedy available to it, SAHL may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment and fails to remedy that breach within a period of 14 days after being notified in writing by SAHL to do so.
- 9.3 On termination of the Contract for whatever reason:
- 9.3.1 the Client shall immediately pay to SAHL all of SAHL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, SAHL may submit an invoice, which shall be payable immediately on receipt;
  - 9.3.2 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
  - 9.3.3 termination or expiry of the 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 the Contract which existed at or before the date of termination or expiry.

## **10. NON-SOLICITATION**

- 10.1 In order to protect the legitimate business interests of each Party, each Party covenants with the other Party that it shall not:
- 10.1.1 attempt to solicit or entice away; or
  - 10.1.2 solicit or entice away,
- from the employment or service of the other Party the services of any Restricted Person.
- 10.2 In order to protect the legitimate business interests of each Party, each party covenants with the other that it shall not employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.

- 10.3 Each Party covenants with the other Party that it shall not say anything which may be harmful to the reputation of the other Party whether defamatory or otherwise.
- 10.4 Each Party shall be bound by the covenants set out in clauses 10.1, 10.2, and 10.3 during the term of this Contract, and for a period of 12 months after termination or expiry of the Contract.
- 10.5 Each of the covenants set out in clauses 10.1, 10.2, and 10.3 is a separate covenant and shall be enforceable by a Party separately and independently of their right to enforce any one or more of the other covenants contained in this clause.
- 10.6 For the purposes of this clause 10 a **Restricted Person** shall mean any firm, company or person employed or engaged by a Party during the term of this Contract who has been engaged in the provision of the Services or the management of this Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement.
- 10.7 For the purposes of this clause 10, a reference to a Party shall include any member of its Group.

## **11. GENERAL**

- 11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 **Assignment and other dealings.**
- 11.2.1 The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without SAHL's prior written consent.
- 11.2.2 SAHL may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.
- 11.3 **Confidentiality.**
- 11.3.1 Each party undertakes that it shall not at any time during the term of this Contract and for a period of two years after termination or expiry of this Contract disclose to any person any confidential information concerning the business, affairs, clients or customers of the other party or of any member of the Group to which the other party belongs, except as permitted by clause 11.3.
- 11.3.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3.3 Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.

11.4 **Entire agreement.**

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

11.4.2 Subject to any variation under clause 11.6, the Contract applies to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).

11.4.3 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.5 **Inadequacy of Damages.** Without prejudice to any other rights or remedies that SAHL may have, the Client acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of clause 5 (Intellectual Property), clause 10 (Non-Solicitation) and 11.3 (Confidentiality) by it. Accordingly, SAHL shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of clause 5 (Intellectual Property), clause 10 (Non-Solicitation) and 11.3 (Confidentiality) of this Contract.

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

11.7 **Waiver.**

11.7.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

11.7.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 11.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 11.8 shall not affect the validity and enforceability of the rest of the Contract.
- 11.9 **Notices.**
- 11.9.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by email to the address, in the case of the Client, specified in the Contract Details, and in the case of SAHL to the address by which the Contract Details were provided .
- 11.9.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.9.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 11.9.3 This clause 11.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.9.4 A notice given under the Contract is not valid if sent by any electronic form other than email.
- 11.10 **Third party rights.** This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England.
- 11.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.