DATA PROCESSING ADDENDUM

Where applicable, this Data Processing Addendum is hereby incorporated in the Sparkbay Terms of Service (the **"Terms of Service"**), found at https://sparkbay.com/terms, unless Customer has entered into a superseding written agreement with Sparkbay, in which case, it forms a part of such written agreement.

1. **DEFINITIONS AND INTERPRETATION**

   The following capitalized terms shall have the meaning ascribed to them below:

   a. "**Data Controller**" has the meaning set out in GDPR;
   b. "**Data Processor**" has the meaning set out in GDPR;
   c. "**Data Protection Regulator**" means the applicable supervisory authority with jurisdiction over either party, and in each case any successor body from time to time;
   d. "**Data Subject**" has the meaning set out in GDPR;
   e. "**Privacy Laws**" means all applicable data protection and privacy legislation, regulations and guidance governing the protection of Personal Information including but not limited to Regulation (EU) 2016/679 (the "**General Data Protection Regulation**" or "**GDPR**"); and
   f. "**Process**", "**Processing**" or "**Processed**" have the meaning set out in GDPR.
   g. "**Sparkbay**" means Sparkbay Technologies inc, incorporated in Canada, having its working address at "407, McGill Street, Suite 501, Montreal, H2Y 2G3, Canada" and represented in the European Union by Maetzler Rechtsanwalts GmbH & Co KG, Walter-Gropius-Straße 17, 80807 Munich, Germany.

2. **PROTECTION OF PERSONAL INFORMATION**

   Supersedence. This Data Processing Addendum shall supersede any and all provisions of the Terms of Service inconsistent herewith.

   Data Controller and Data Processor. The Parties acknowledge that the Customer is the Data Controller and Sparkbay is the Data Processor of the Customer Personal Information. Sparkbay will Process Personal Information in accordance with Section 3 of this Data Processing Addendum.

   Customer's Obligations as Data Controller. The Customer warrants that the Customer Personal Information has been obtained fairly and lawfully and, in all respects in compliance with the Privacy Laws.

Sparkbay's Obligations as Data Processor. Sparkbay shall:

a. Process the Customer Personal Information only in accordance with Section 3 of this Data Processing Addendum and any other reasonable documented instructions as provided by the Customer to Sparkbay from time to time ("**Instructions**"), including with regard to transfers of Customer Personal Information to a third country, save where:
   i. such Instructions are unlawful;
   ii. such Instructions would cause Sparkbay to breach its own obligations under Privacy Laws or the Terms of Service or any other agreement with a third party;
   iii. Sparkbay is under a legal obligation to Process the Customer Personal Information, in which case Sparkbay shall inform the Customer of the legal obligation, except to the extent the law prohibits it from doing so; and/or
   iv. such Instruction delays or prevents performance of the Services.
b. inform the Customer if, in its opinion, an Instruction received from the Customer infringes the Privacy Laws;
c. ensure that all Sparkbay employees and personnel who are involved in the Processing of Customer Personal Information have committed themselves to confidentiality or are under statutory obligations of confidentiality;
d. not provide any new third party, with access to the Customer Personal Information or sub-contract any of its obligations under the Terms of Service that involve Processing Customer Personal Information without noticing in advance the Customer and/or publishing the changes in this Data Processing Addendum on the Website. The Customer hereby approves those third parties listed below, or any further third party that is compliant with GDPR requirements regarding transfers of Customer Personal Information to a third country (the "**Subprocessors**"):
   i. Microsoft Azure. Sparkbay's internal database is hosted in Microsoft Azure data centers in Ireland.
e. ensure that any sub-contract entered into by Sparkbay (where Customer Personal Information is Processed by a Subprocessor) contains provisions which comply with Privacy Laws and in any event are no less onerous than those imposed under Section 2 of this Data Processing Addendum, and where a Subprocessor fails to fulfil its data protection obligations under GDPR, Sparkbay shall remain liable to Customer for the performance of that Subprocessor's obligations;
f. implement and maintain appropriate technical and organizational security measures to protect against unauthorized or unlawful Processing of the Customer Personal Information and against accidental loss, disclosure or destruction of, or damage to, the Customer Personal Information, taking into account the state of the art, costs of implementation and nature, scope, context and purposes of Processing, as described in the Privacy Policy, found at https://sparkbay.com/privacy, and including:

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the anonymization, pseudonymization and/or encryption of Customer Personal Information;
the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
the ability to restore the availability and access to Customer Personal Information in a timely manner in the event of a physical or technical incident; and
a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing.

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taking into account the nature of the Processing, assist the Customer (at the Customer's cost) by appropriate technical and organizational measures, to enable the Customer to comply with its obligations under Privacy Laws in responding to requests from Data Subjects (insofar as this is possible);
assist the Customer (at the Customer's cost), to comply with the following obligations under the GDPR, taking into account the nature of Processing and information available to Sparkbay, including:
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notification and assistance to Customer without undue delay, in accordance with the provision set forth in Section 9 of the Privacy Policy, and notification to the Data Protection Regulator and Data Subjects of a breach of security which leads to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Information transmitted, stored or otherwise Processed; and
the Customer's obligations to carry out data protection impact assessments and any subsequent consultation with the Data Protection Regulator;

make available to Customer or an independent third party auditor mandated by the Customer (but not being a competitor of Sparkbay), at the Customer's reasonable cost, to a maximum of once a year or when a breach of Customer Personal Information is reasonably suspected, all reasonable information that Sparkbay deems necessary to demonstrate compliance with the obligations imposed on Sparkbay under Section 2 of this Data Processing Addendum, and allow for and contribute to audits, including inspections for the sole purpose of demonstrating such compliance; and
unless required by law, at Customer's request following termination or expiry of the Terms of Service for whatever reason, at the Customer's reasonable cost, securely delete all of the Customer Personal Information.

3. **INSTRUCTIONS FOR PROCESSING OF CUSTOMER PERSONAL INFORMATION**

Sparkbay will Process Customer Personal Information in accordance with the following instructions:

Categories of Customer Personal Information collected by Sparkbay	Categories of Data Subjects for which Customer Personal Information is Processed	Purposes for which Sparkbay Processes Customer Personal Information	Nature of Processing	Duration of Processing
Users credentials (such as emails, names, etc.) User credentials permit the Users to access the Platform and include emails and password hashes.	Account administrator that purchases the subscription and manages the account. Company managers and group managers which use the answers and comments provided by the survey respondents to improve their leadership skills. Employees answering the surveys and providing comments.	Provide, maintain and improve the Platform. Prevent or address service, security, support or technical issues with the Platform.	Handling, storing, sharing with Subprocessors, accessing and reviewing Customer Personal Information for the Processing purposes set out adjacent.	As long as necessary for the purposes described in this Data Processing Addendum, unless a longer retention is required by law.
Employee profiles	Company managers and group managers which use the answers and	Provide, maintain and improve the Platform.	Handling, storing, sharing with Subprocessors,	As long as necessary for the purposes described in this Data Processing

The account administrator creates a profile for each of his employees, which contains the first name, last name, job title and email of the employee. Each employee has access to his employee profile and can update his information. He can specify his survey language, his time zone and his preferences for the survey delivery (including survey day, survey time, survey method). The employee can also upload his own picture in his profile.	comments provided by the survey respondents to improve their leadership skills. Employees answering the surveys and providing comments.	Prevent or address service, security, support or technical issues with the Platform.	accessing and reviewing Customer Personal Information for the Processing purposes set out adjacent.	Addendum, unless a longer retention is required by law.
Answers to surveys Answers to surveys can reveal a wide range of Personal information. Employees answer surveys such as "Do you have the freedom to try new tools that will help you do your work	Employees answering the surveys, which may include company managers and group managers.	Prevent or address service, security, support or technical issues with the Platform. Create statistics based on the aggregated Customer Personal Information for	Handling, storing, sharing with Subprocessors, accessing and reviewing Customer Personal Information for the Processing purposes set out adjacent.	As long as necessary for the purposes described in this Data Processing Addendum, unless a longer retention is required by law.

better?" and "How do you feel about your level of stress at work?" Sparkbay's internal database includes the identity of the Survey Respondents.		benchmarking and marketing purposes.		
Comments Comments given by Survey Respondents can reveal a wide range of Personal Information. Sparkbay can encourage employees to share comments with questions such as "What would make your relationship with your manager better?" Sparkbay's internal database includes the identity of the comment providers.	Employees providing comments, which may include company managers and group managers.	Provide, maintain and improve the Platform. Prevent or address service, security, support or technical issues with the Platform.	Handling, storing, sharing with Subprocessors, accessing and reviewing Customer Personal Information for the Processing purposes set out adjacent.	As long as necessary for the purposes described in this Data Processing Addendum, unless a longer retention is required by law.

User attributes	Employee answering the surveys and providing comments, which may include company managers and group managers.	Provide, maintain and improve the Platform. Prevent or address service, security, support or technical issues with the Platform.	Handling, storing, sharing with Subprocessors, accessing and reviewing Customer Personal Information for the Processing purposes set out adjacent.	As long as necessary for the purposes described in this Data Processing Addendum, unless a longer retention is required by law.
The account administrator creates his own categories of User attributes (e.g. gender, age, salary) and inputs the User attributes relating to the categories he created in each of the employee profiles. The Personal Information collected according to those User attributes will therefore vary accordingly. Sparkbay's internal database includes the identity of the employee in respect of which User attributes are provided.				