# PSA Schedule 1 - General Terms and Conditions

CONTENTS


| | |
|---|---|
| INTRODUCTION & BACKGROUND | 1 |
| COMMENCEMENT | 1 |
| CONSULTANCY SERVICES | 1 |
| USE OF THE SERVICES & CLIENT RIGHTS | 2 |
| INTELLECTUAL PROPERTY RIGHTS | 2 |
| CLIENT OBLIGATIONS | 2 |
| CHANGES | 3 |
| REMUNERATION | 3 |
| TERMINATION RIGHTS | 3 |
| TERMINATION FOR CAUSE | 3 |
| CONSEQUENCES OF TERMINATION | 3 |
| REPRESENTATIONS AND WARRANTIES; DISCLAIMERS | 3 |
| DATA PROTECTION & GDPR - INSIDE THE EEA | 3 |
| DATA PROTECTION & GDPR - OUTSIDE THE EEA | 4 |
| CONFIDENTIALITY | 4 |
| LIMITATIONS OF LIABILITY | 4 |
| FORCE MAJEURE | 5 |
| REGULATORY MATTERS | 5 |
| ASSIGNMENT | 5 |
| GENERAL | 5 |
| GOVERNING LAW AND JURISDICTION | 5 |
| DEFINITIONS | 7 |


## 1. INTRODUCTION & BACKGROUND

1.1 This Schedule 1 sets out the general terms and conditions applicable to Exerp's provision of professional services to Client. Exerp will provide professional services to Client in accordance with the Order Form(s) completed between the Parties. The rates and payment terms agreed between the Parties are set out in Schedule 2. Finally, if within EEA, the Parties will conclude a Data Processing Agreement, which, once signed, will form part of this Agreement.

1.2 Provision of Exerp's cloud services to Client is governed by a separate cloud services agreement (the "Cloud Services Agreement"/"CSA")). The Cloud Services Agreement shall govern Exerp's provision of the cloud services, including Client's use of the Exerp Platform, as of the Go-Live Date for each Club.

1.3 If there is any conflict or inconsistency between the documents forming this Agreement, this Schedule 1 (General Terms and Conditions) shall take precedence, followed by the latest Order Form(s) and subsequently the remaining Schedules. For the avoidance of doubt, if an Order Form or other agreed document clearly states that it intends to amend specific Clauses in the Agreement, this shall not be considered a conflict with the Clauses this refers to.

## 2. COMMENCEMENT

2.1 This Agreement shall commence on the earlier of the date of both Parties' signatures or the Start Date as set out in the first Order Form between the Parties and shall continue in full force and effect until terminated in accordance with the terms of this Agreement and the first Order Form (the "Term").

2.2 This Agreement governs the relationship between Client and Exerp in respect of the Services set out in the Agreement.

2.3 The resources to be provided by Exerp under each Order Form shall be provided for the time period set out in the Order Form in question.

## 3. CONSULTANCY SERVICES

3.1 Exerp shall provide consultancy services to Client with the resources and within the time frame set out in the Order Form(s) to Client. Unless the Parties specifically agree in an Order Form that Exerp has undertaken an outcome based obligation, the Services are provided as an in-put based obligation. This means an obligation on Exerp to make the agreed resources available for Client and let them work with support and input from Client, in good faith and professionally, to achieve the desired outcome, but without liability for Exerp to perform a specific result.

3.2 Exerp will make the agreed resources available during the time period agreed, and the scoping of the Services to be provided shall be done in cooperation with Client on an ongoing basis.

3.3 The Services may entail software development and project work, and Exerp will work according to agile processes, using the scrum principles. The Parties will cooperate in order to progress the work in the best possible manner, this being both in any analysis, scoping, development or deployment phase. Client is responsible for the timely provision of all necessary input, resources, facilities etc. in order to scope the Services and make best use of the resources.

3.4 Exerp shall (and will procure its personnel and any subcontractors shall) provide the Services to Client and will perform its obligations under this Agreement in accordance with good industry practice and using all reasonable skill and expertise.

3.5 Exerp shall provide resources to Client as agreed in the Order Form at the experience levels set out therein.

3.6 Unless otherwise agreed between the Parties and where applicable, Exerp shall have sole discretion to determine the location for the performance of the Services.

3.7 To the extent that Documentation is provided under the Agreement, such Documentation shall be in English.

3.8 Client acknowledges and agrees that Exerp uses subcontractors as set forth on Confluence. Client hereby acknowledges and consents to the appointment of the subcontractor(s) listed in Confluence to provide services etc. as subcontractors. Where relevant, the subcontractors and the nature of their services are included in Schedule 3 (Data Processing Agreement).

3.9 Exerp may change the list of subcontractors under this Agreement provided Exerp gives at least sixty (60) days' prior written notice to Client.

3.10 Exerp shall remain responsible for all acts and omissions of any subcontractor as if they were its own. An obligation on Exerp to do, or to refrain from doing, any act or thing shall include an obligation upon Exerp to procure that its subcontractor shall also do, or refrain from doing, such act or thing.

3.11 As part of the initiation of work under one or more Order Forms, Exerp may have provided commercial offers or quotes etc. to Client. For the avoidance of doubt, all estimates, offers etc. from Exerp setting out a time plan and estimating fees are provided on a best estimate basis and are not binding on Exerp.

## 4. USE OF THE SERVICES & CLIENT RIGHTS

4.1 Subject to payment of the agreed remuneration for the Exerp resources provided, Exerp grants to Client a license to install and use the result of the Services, including agreed test/sandbox environment (one sandbox environment is automatically made available free of charge for each production environment) and including pertaining Documentation (the "Results"), as made available to Client by Exerp in any Club in the Territory agreed. If agreed in an Order Form, Client may be granted a licence to more sandbox environments against agreed remuneration. The scope of such license is set out in the following.

4.2 Exerp grants the Client a non-transferable, non-exclusive licence for the Term to use the Results as follows. Client may use and print copies of any Documentation supplied by Exerp for use in association with the Results, in which event all proprietary notices on such Documentation shall be reproduced.

4.3 The licence granted to Client under Clause 4.2:

- permits employees of Client and persons engaged by it to access and use the Results;
- permits an unlimited number of Users to access the Results;
- is granted to this group of persons solely for the purpose of Client undertaking activities in the course of its or Client Group's, or the Client's Franchisees' business in relation to the operation of health clubs.

4.4 The Client will and will ensure that all Users will use the Results and the Services according to the Documentation provided by Exerp. The Client may not copy, adapt, reverse engineer, decompile, disassemble, configure or modify the Results or the Services (save for the Documentation) in whole or in part except as permitted by law.

## 5. INTELLECTUAL PROPERTY RIGHTS

5.1 Notwithstanding anything else in this Agreement, the ownership, Intellectual Property Rights and any other proprietary rights subsisting now or in the future in the Services and all Results provided by Exerp under this Agreement as part of the Services or otherwise or which arises in relation thereto, including all new contributions, improvements, modifications, ideas and discoveries shall at all times vest in and be and remain the sole and exclusive property of Exerp (and its licensors) and nothing in this Agreement is intended to transfer ownership of such Intellectual Property Rights.

5.2 Ownership to all Client Data shall vest and remain vested with the Client.

## 6. CLIENT OBLIGATIONS

6.1 Client shall: (a) provide all reasonable cooperation to Exerp in the performance of its obligations, including participate in agreed cooperation committees; (b) provide Exerp with access to such personnel within Client's staff or subcontractors or suppliers, as is reasonably requested by Exerp to assist Exerp in discharging its obligations; (c) provide such documentation, data and/or other information that Exerp reasonably requests which is necessary to enable Exerp to perform its obligations under this Agreement; (d) to the extent that the following is not expressly provided for elsewhere in this Agreement, use reasonable endeavours to respond to requests for review, approval, validation, guidance or assistance which are reasonably necessary to enable Exerp to perform the Services in a prompt and timely manner; (e) be responsible for its staff and subcontractor compliance with this Agreement; and (f) procure for Exerp such agreed access and use of Client's (or its Group's) premises and facilities, including Clubs, as is reasonably required for Exerp to comply with its obligations under this Agreement.

6.2 Client acknowledges and agrees that Exerp shall have no liability for any breach by Exerp of this Agreement to the extent that the Services cannot be performed or the agreed resources cannot work according to plan due to circumstances for which Client is responsible.

6.3 For the avoidance of doubt, any references to Client obligations in this Agreement, shall also be understood as a Franchisee obligation, as and when relevant, and in such cases Client shall procure that the Franchisee in question shall also do, or refrain from doing, such act or thing. Client shall be responsible for all acts and omissions of any Franchisee as if they were its own. However, any claims to be made under the Agreement shall and can only be made by Client who will be the sole point of contact to Exerp, unless otherwise explicitly agreed. Any damages or loss suffered by any Franchisees under this Agreement shall be eligible for claims for damages and losses towards Exerp to the same extent as is the case for Client's damages and losses. Any such claims must be brought forward by Client on behalf of Franchisees.

7. CHANGES

7.1 Any changes to this Agreement requested by either Party shall be agreed in writing and shall be subject to Exerp's agreement to execute any change requested and to the Client's agreement to agree to any changes to the Charges, timetable or Services resulting from such requested change.

7.2 Changes to the contents of this Agreement shall be approved by the CEO of Exerp.

8. REMUNERATION

8.1 The Charges and applicable payment terms shall be as set forth in the Order Form and Schedule 2 (Charges). Charges shall be payable to Exerp, or its nominated subsidiary as notified to Client from time to time.

9. TERMINATION RIGHTS

9.1 Either Party may terminate this Agreement without cause by notice in writing as set out in the Front Page. An Order Form may be terminated for convenience in accordance with the terms of the Order Form in question. Any termination, regardless of the cause, of the Front Page or any Order Forms shall not automatically affect the Front Page or other Order Forms, respectively, that will continue to be in effect until terminated in accordance with the Agreement.

9.2 A Party's termination according to this Clause 9 shall not give rise to liability to the other Party.

10. TERMINATION FOR CAUSE

10.1 Without affecting any other rights or remedies each Party may have, either Party may terminate this Agreement, or any affected Order Form(s) hereunder, immediately by giving written notice to the other if:

10.1.1 the other Party commits a material breach of this Agreement or the relevant Order Form and, if such a breach is remediable, fails to remedy that breach within thirty (30) days of being notified in writing of the breach; or

10.1.2 the other Party is the subject of an Insolvency Event; or

10.1.3 if a Force Majeure Event affects all or a substantial part in the case of Client, Client's business, and in the case of Exerp, the supply of the Services, and has subsisted for more than sixty (60) Business Days.

10.2 Without affecting any other rights or remedies Exerp may have, Exerp may, in Exerp's discretion, either suspend the Services and/or terminate this Agreement, or parts thereof, where Client has failed to pay any undisputed amounts for more than fourteen (14) days under this Agreement or any other agreement in effect between the Parties.

10.3 A right for Exerp to terminate this Agreement, or to terminate any individual Order Form hereunder, for Client's material breach of either one of these agreements, shall automatically include a cross-default right for Exerp to terminate both this Agreement and any effective Order Forms hereunder for material breach.

10.4 A right for Client to terminate either this Agreement or an Order Form hereunder shall include a right to terminate only the agreements materially affected in accordance with the agreed applicable rules and regulations. I.e. if Exerp's material breach only affects one Order Form, Client shall be entitled to terminate only this Order Form for material breach.

11. CONSEQUENCES OF TERMINATION

11.1 Upon termination of this Agreement for any reason, Client may request that Services shall no longer be provided by Exerp, including during any termination notice period. Unless termination is due to Exerp's default of this Agreement, Exerp is entitled to invoice any resources agreed to be available to Client during the termination notice period, regardless of whether the resources are used by Client or not.

11.2 Upon termination of this Agreement for any reason, each Party shall immediately deliver to the other (without affecting any obligations in this Agreement to return or destroy) all property, including materials, information, documents and access keys (including Confidential Information and data), and all copies of materials, information, documents, access keys and data provided by or on behalf of each Party under this Agreement, including copies of Documentation. Each Party shall certify to the other that it has not retained any copies of the other Party's materials, information, documents, access keys, copies of Documentation or data (including Confidential Information and data), except as required by applicable law.

12. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

12.1 Exerp represents and warrants to Client that Exerp has the right to enter into this Agreement and that Exerp has obtained any and all consents, approvals and other authorizations necessary for the performance of Exerp's obligations under this Agreement.

12.2 SAVE AS EXPRESSLY SET OUT IN THIS AGREEMENT, THE EXERP PLATFORM (INCLUDING THE DOCUMENTATION) AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ALL WARRANTIES OR CONDITIONS OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY DISCLAIMED.

13. DATA PROTECTION & GDPR - INSIDE THE EEA

13.1 This Clause 13 shall apply to Exerp's Services in relation to all Clients with Clubs in the EEA area.

13.2 For the purpose of this Clause 13, the terms "Controller", "Data Subject", "Personal Data", "Personal Data Breach", "Process", "Processed", "Processor" and "Processing" shall have the meanings given to them in the GDPR. Capitalized terms used in this Clause are defined in the Data Processing Agreement.

13.3 Client is the Controller of Client Data and Client appoints Exerp to act as Processor in relation to Client Data made available to it by Client or Processed by Exerp under this Agreement for the purpose of providing the Services. The processing of Personal Data under this Agreement shall be governed by this Agreement and the Data Processing Agreement.

13.4 Client warrants, represents and undertakes that (a) there are no restrictions preventing and Client has the appropriate rights and/or consents (as applicable) to allow for, the sharing of any and all Personal Data it makes available to Exerp, or which Exerp Processes under this Agreement, and (b) no special categories of personal data, CF GDPR article 9 (1) is included in Client data (excluding health and trade union membership), provided this is deemed lawful and strictly necessary, and (c) no data relating to criminal convictions, CF GDPR article 10 is included.

13.5 Client hereby consents to Exerp transferring Client Data to each member of its Group based on the Model Clauses. Client consents to Exerp transferring Client Data to a notified third party hosting provider (if applicable) conditional upon Exerp entering into an appropriate data processing agreement with the third party. Where such transfer to a third party involves a transfer of Client Data from the EEA to a third party outside the EEA, the Client consents to Exerp entering into the Model Clauses for the transfer of Client Data to processors established in third countries, approved by the European Commission, from time to time, in Client's name and on Client's behalf with such third parties.

13.6 All Data entered and stored in or used by the Exerp Platform is and shall remain the sole and exclusive property of Client, and Exerp shall not acquire any right in or title to such Data, which may only be used to the extent necessary for it to provide the Services.

14. DATA PROTECTION & GDPR - OUTSIDE THE EEA

14.1 This Clause 14 shall apply to Exerp's Services in relation to all Clients with Clubs outside the EEA area

14.2 For the purpose of this Clause 14, the terms "Data Controller", "Data Subject", "Personal Data", and "Data Processor" shall have the meanings given to them in the definitions list contained herein.

14.3 Exerp acknowledges that in performing this Agreement it may have access to and/or process Personal Data relating to Client, its agents, employees, clients, members, customers or other parties. To the extent that Exerp has access to or processes any Personal Data as part of the performance of its obligations under this Agreement, the Parties agree that Client is the Data Controller and that Exerp is the Data Processor.

14.4 Exerp shall:

1.1.1 adhere to its generally applicable privacy policy, which can be found on Confluence;

14.4.1 process the Personal Data only on behalf of Client, and only for the purpose of performing the Services and only in accordance with instructions contained in this Agreement, or received from Client, from time to time;

14.4.2 not modify, amend or alter the contents of the Personal Data;

14.4.3 not disclose or permit the disclosure of any of the Personal Data to any third party, unless specifically authorized in writing by Client save in accordance with the commands entered in and information submitted onto, the Exerp Platform by Users. For the avoidance of doubt, the relevant sub-contractors of Exerp shall be considered authorized for the purpose of this Clause;

14.4.4 implement appropriate technical and organizational measures to protect the Personal Data against unauthorized or unlawful processing, access or disclosure and against accidental loss, destruction, damage, alteration or disclosure.

14.4.5 at Client's cost, provide Client with full cooperation and assistance in relation to any complaint or request made by a Data Subject, in respect of any Personal Data of such Data Subject.

14.5 Exerp shall notify Client as soon as Exerp becomes aware of any breach of this Clause by Exerp, Exerp's personnel, or any of the subcontractors authorized to perform Services in connection with this Agreement.

14.6 Exerp shall notify Client, as soon as Exerp becomes aware of any accidental or unauthorized access, acquisition, use, modification, disclosure, loss, damage or destruction of Personal Data and will provide reasonable assistance and co-operation to the Client, at the Client's sole cost and expense to enable the Client to comply with its statutory obligations with respect to such matter.

14.7 Exerp shall not be liable for any breach under this Clause to the extent that such liability has resulted directly from Client's instructions and would not have arisen but for Exerp's compliance with Client's instructions.

14.8 If Exerp is required by law or otherwise compelled by a governmental authority to disclose or otherwise provide Personal Data to a third party (including a governmental authority), then Exerp shall provide Client with prior written notice unless prohibited by applicable law from doing so.

15. CONFIDENTIALITY

15.1 A party ("Receiving Party") shall keep in strict confidence all Confidential Information that have been disclosed to the Receiving Party by the other Party ("Disclosing Party"), its employees, agents or subcontractors, and any other Confidential Information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

16. LIMITATIONS OF LIABILITY

16.1 NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR FRAUD OR FRAUDULENT MISREPRESENTATION OR FOR ANY OTHER LIABILITY THAT CANNOT, AS A MATTER OF LAW, BE LIMITED OR EXCLUDED.

16.2 EXCEPT WITH RESPECT TO CLAUSE 16.1 NEITHER PARTY (INCLUDING ANY MEMBER OF ITS GROUP, AGENTS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS OR LICENSORS) SHALL BE LIABLE FOR ANY OF THE FOLLOWING SUFFERED OR INCURRED BY THE OTHER PARTY, REGARDLESS OF THE CAUSE OF ACTION, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR NEGLIGENCE, AND EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF ANY OF THE FOLLOWING:

16.2.1 ANY LOSS OF DATA,INCIDENTAL,EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE;

16.2.2 LOSS OF OR DAMAGE TO GOODWILL; AND/OR

16.2.3 LOSS OF PROFIT OR REVENUE. ANY LOSS SUFFERED OR INCURRED BY MEMBERS OF CLIENT'S GROUP SHALL NOT BE TREATED AS BEING INDIRECT OR CONSEQUENTIAL, SOLELY BECAUSE IT HAS BEEN SUFFERED OR INCURRED BY MEMBERS OF CLIENT'S GROUP AND NOT BY CLIENT ITSELF

16.3 UNDER NO CIRCUMSTANCES WILL EXERP, ANY MEMBER OF EXERP'S GROUP, AGENTS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS OR LICENSORS BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE, LOSS OR INJURY ARISING OUT OF OR RELATING TO MALWARE, HACKING, TAMPERING OR OTHER UNAUTHORISED ACCESS OR USE OF THE EXERP PLATFORM, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGE, LOSS OR INJURY, SAVE WHERE TO THE EXTENT THAT SUCH DAMAGE, LOSS OR INJURY RESULTS FROM THE FAILURE OF EXERP TO IMPLEMENT APPROPRIATE SECURITY MEASURES IN RELATION TO ITS SYSTEMS AND THE EXERP PLATFORM IN ACCORDANCE WITH GOOD INDUSTRY PRACTICE.

16.4 EXERP IS UNDER NO CIRCUMSTANCES RESPONSIBLE FOR PROBLEMS, INTERRUPTIONS, DAMAGES OR EXPENSES WHICH COULD REASONABLY HAVE BEEN AVOIDED HAD CLIENT FOLLOWED THE WRITTEN REQUIREMENTS, INSTRUCTIONS OR RECOMMENDATIONS OF EXERP.

16.5 EXERP SHALL NOT BE RESPONSIBLE FOR AND IS NOT LIABLE FOR ANY FAILURE TO PERFORM OR DELAY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT OR ANY DELAY OR LOSS INCURRED BY CLIENT ARISING IF AND TO THE EXTENT THAT EXERP'S NON-PERFORMANCE, FAILURE OR DELAY RESULTS FROM THE ACTIONS, INACTIONS, NEGLIGENCE OR DEFAULT OF CLIENT, ITS EMPLOYEES, CONSULTANTS AND/OR SUBCONTRACTORS.

16.6 EXCEPT WITH RESPECT TO CLAUSE 16.1, THE MAXIMUM LIABILITY OF EXERP, ANY MEMBER OF ITS GROUP, AGENTS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS OR LICENSORS, REGARDLESS OF THE CAUSE OF ACTION, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR NEGLIGENCE, INCLUDING FOR ANY LOSSES INCURRED BY THE CLIENT, OR ANY MEMBER OF THE CLIENT GROUP SHALL BE LIMITED TO AN AGGREGATE AMOUNT EQUAL TO THE TOTAL CHARGES PAID BY CLIENT TO EXERP IN RESPECT OF THE SERVICES DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE APPLICABLE CAUSE OF ACTION. ANY EVENTS GIVING RISE TO A CLAIM FROM CLIENT, SHALL NOT BE SUBJECT TO CLAIM UNDER MORE THAN ONE AGREEMENT, AND CONSEQUENTLY, CLIENT MAY NOT RAISE CLAIMS FOR THE SAME EVENT UNDER BOTH THIS AGREEMENT AS WELL AS A CLOUD SERVICES OR OTHER AGREEMENT IN PLACE BETWEEN THE PARTIES.

16.7 FOR THE AVOIDANCE OF DOUBT, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO CLIENT GROUP AS A WHOLE.

17. FORCE MAJEURE

17.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing or failure to perform, any of its obligations under it if such failure results from a Force Majeure Event, including a Force Majeure Event affecting a Party's subcontractor.

18. REGULATORY MATTERS

18.1 REGULATORY COMPLIANCE

18.1.1 Exerp shall be liable for compliance with the Exerp Regulatory Requirements and Client shall be liable for compliance with the Client Regulatory Requirements. For the avoidance of doubt, Exerp undertakes no liability for the Services to comply with local legal requirements to the businesses of health clubs, for example, but not exclusively, local legal requirements to the management of agreements between health clubs and their members or local legal requirements to the bookkeeping or management of health clubs.

19. ASSIGNMENT

19.1 Client is not entitled to assign its rights and obligations under this Agreement to any third party without the prior written approval of Exerp. Notwithstanding the foregoing, Client may assign the Agreement to any member of its Group, subject to Client being liable for such Group member's compliance with the Agreement.

19.2 Exerp may freely assign the Agreement or any of Exerp's rights or obligations under this Agreement to any other member of its Group, or in connection with a reorganisation of Exerp's activities, including a company takeover in full or in part, whether this is obtained by transfer of assets or activities.

20. GENERAL

20.1 NOTICES

20.1.1 Each Party shall appoint a contact person identified in the Order Form, which may be amended by notice in writing to the other Party. All contract notices given in accordance with the provisions of this Schedule 1 must be addressed to both the appointed contact person and to the Client's and Exerp's CEO. Any contract notices required to be given under this Agreement shall be in writing in the English language.

20.2 REFERENCES

20.2.1 Exerp shall be entitled to use the Client's name and/or logo for publicity or marketing purposes and to use the Client as reference in a loyal manner.

20.3 THIRD PARTIES

20.3.1 Unless otherwise expressly stated, nothing in this Agreement is intended to confer, nor shall anything herein confer, on any person other than the Parties and the respective successors or permitted assigns of the Parties, any rights, remedies, obligations or liabilities.

20.4 ENTIRE AGREEMENT

20.4.1 This Agreement constitutes the entire agreement between the Parties as to its subject-matter and is a separate and independent agreement from any other contract between the Parties.

20.5 HEADINGS

20.5.1 The headings of the Clauses of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

20.6 SEVERABILITY

20.6.1 If any Clause or part-Clause of this Agreement 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 Clause or part-Clause shall be deemed deleted. Any modification to or deletion of a Clause or part-Clause under this Clause shall not affect the validity and enforceability of the rest of this Agreement.

20.6.2 If one Party gives notice to the other of the possibility that any provision or part provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. GOVERNING LAW AND JURISDICTION

21.1 DISPUTES

21.1.1 Any dispute, controversy or claim of whatever nature arising between the Parties, including those arising out of, or in connection with, this Agreement, or the breach thereof ("Dispute") shall, prior to commencement of litigation related thereto, other than litigation limited to (a) a debt claim, (b) the seeking of interim or preliminary relief or the specific performance of this Clause 21, be referred to representatives of each Party who shall use their reasonable endeavours to resolve it.

21.1.2 If the Dispute is not resolved within fourteen (14) Business Days of the referral being made under Clause 21.1.1, the Parties may refer the matter to the CEO (or closest senior equivalent) of each Party who shall use their reasonable endeavours to resolve it.

21.1.3 Until the Parties have completed the steps referred to in Clauses 21.1.1 and 21.1.2, and have failed to resolve the Dispute, neither Party shall commence formal legal proceedings or arbitration except that either Party may at any time seek urgent interim relief.

21.2 CHOICE OF LAW AND JURISDICTION

21.2.1 This Agreement and any non-contractual obligations arising out of or in connection herewith will be governed by and construed in accordance with the applicable laws of the following jurisdictions, without regard to international private law regulations or principles leading to the application of other laws:

21.2.1.1 If the Exerp contract entity is domiciled in Europe, the applicable laws of Denmark will apply;

21.2.1.2 If the Exerp contract entity is domiciled in any jurisdiction located in North America, the laws of the State of New York will apply.

21.2.1.3 In all other instances the applicable laws of England and Wales will apply.

21.2.2 Any dispute or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof shall be referred and finally resolved by arbitration in accordance with the below provisions. In each case, the number of arbitrators shall be one (1):

21.2.2.1 If the Exerp contract entity is domiciled in Denmark, arbitration shall take place in Denmark, under the Danish Arbitration Act (in Danish: “Voldgiftsloven”);

21.2.2.2 If the Exerp contract entity is domiciled in any jurisdiction located in North America, arbitration shall take place in the county of New York in the State of New York, in the United States of America, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules;

21.2.2.3 In all other instances, arbitration shall take place in London, under the rules of the London Court of International Arbitration (LCIA).

22. DEFINITIONS

| Term | Meaning |
|---|---|
| “Agreement” & “Professional Services Agreement” | means this agreement being the Order Form, all Schedules and sub-schedules thereto, if any, and any later amendments made in accordance with the terms of the Agreement. |
| “Brand” | means the brand of a health club category managed by Client. |
| “Business Day” | means weekdays, save for holidays in the Territory in question. |
| “Charges” | means the charges agreed to be paid by Client to Exerp for the Services under this Agreement, cf. Schedule 2. |
| “Client Data” | means information about the Client’s business stored in the Exerp Platform, for example member data, prices, product information etc. |
| “Client IT Environment” | means the hardware and computer software of Client used by Client together with or in relation to the Services. |
| “Client Regulatory Requirements” | means the local legal requirements that apply to the business of Client and Client’s Group in the relevant jurisdictions in which Client provides its health club services to its members and where Client and Client’s Group entities have their offices. I.e. legal requirements to health clubs and their holding and management companies. |
| “Cloud Services Agreement”/”CSA” | shall mean the cloud services agreement concluded between the Parties. |
| “Club” | means a health club owned or managed by Client or any member of its Group, or by the Franchisees in scope of this Agreement, from time to time. For the avoidance of doubt,“a Club” is limited to a specific site, Brand and legal entity, and includes all operations at that site for the given Brand and legal entity. If a health club chain is physically spread across several locations, each such location would count as a Club. If a single address offers two different sets of services from two different Brands or legal entities it would count as two Clubs. |
| “Confidential Information” | means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, strategies, trade secrets, know-how, personnel and suppliers of the disclosing Party or any member of its Group, together with all information derived by the recipient from any such information and any other information clearly designated by a Party or any member of its Group as being confidential to it (whether or not it is marked “confidential”), or which ought reasonably be considered to be confidential and, for certainty but without limiting the foregoing, includes the data and all information derived from the data. For the avoidance of doubt, Exerp’s Confidential Information shall include, but not be limited to Exerp’s data model,API’s, Documentation, screenshots of the Exerp Platform or any screenshots within the Exerp Services or datawarehouse solution showing the Exerp architecture and design. |
| “Confluence” | the Confluence site, which Exerp operates, located at https://clublead.atlassian.net/wiki/x/AwAv |
| “Data Controller” | the person who alone or jointly with others determines the purposes and means of the processing of Personal Data. |
| “Data Processor” | the person which alone or jointly with others processes Personal Data on behalf of and in accordance with the instructions of the Data Controller. |
| “Data Processing Agreement” | means the data processing agreement concluded between the Parties, and forming part of this Agreement, . |
| “Data Subject” | living individual to whom Personal Data relates. |
| “Documentation” | the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable form relating to the Exerp Platform, the latest copies of which are as set out on Confluence |
| “Exerp Platform” | means the proprietary software of Exerp “the Exerp Platform” comprised of the Base Package Features’ and Optional Features offered by Exerp and elected by Client in Schedule 2. |
| “Exerp Regulatory Requirements” | means the local legal requirements that apply to the business of Exerp in the jurisdictions where Exerp has its main office and from where Exerp provides its Services, i.e. legal requirements applicable to software providers. |
| “Go-Live Date” | means the date the Exerp Platform is first being used by Client for its intended purposes in relation to a Club. |
| “Force Majeure Event” | means any cause affecting the performance by a Party of its obligations under this Agreement arising from acts of God, riots, acts of terrorism, governmental acts, war, fire, flood, explosion, civil commotion or strikes, supplier failure, storm or earthquake and any disaster, global pandemic or any other event of a similar nature (i) which is directly caused by circumstances beyond the Party's reasonable control, (ii) that the Party, at the conclusion of the Agreement, could not reasonably have foreseen, and (iii) that the Party could not have avoided or overcome; |
| “Franchisee(s)” | means any franchisees of Client’s that conduct business within the health club industry and will make use of the Services in accordance with its franchise agreement with Client; |
| “Group” | means, in relation to a Party, that Party, its ultimate holding company and all subsidiaries of that ultimate holding company. |
| “Insolvency Event” | means an event where a Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or any encumbrancer takes possession of or a receiver, administrative |

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| | receiver or similar officer is appointed over any of the property or assets of a Party or if a Party makes any voluntary arrangement with its creditors or (being a company) becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on a Party) or is the subject of a bankruptcy petition or order, or anything analogous to any of these events under the law of any jurisdiction occurs in relation to a Party or if a Party ceases or threatens to cease to carry on business. |
| "Intellectual Property Rights" | means any and all intellectual property rights of any nature anywhere in the world (whether registered, registrable or otherwise) including, without limitation, any intellectual property right protected through legislation, any intellectual property rights in or to patents, utility models, trademarks, domain names, trade or business names, goodwill, copyrights and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in data, computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, including applications and registrations for any of the foregoing. |
| "Model Clauses" | means the European Commission's standard contractual clauses for the transfer of Personal Data to processors established in third countries. |
| "Order Form" | means an Order Form which the Parties fill in and sign in accordance with the terms of this Agreement. |
| "Party" and "Parties" | means the Client and Exerp, individually or collectively, as the case may be. |
| "Personal Data" | means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. |
| "Results" | means the results of the Services provided under this Agreement, as further defined in Clause 4.1. |
| "Schedule(s)" | means the schedules to this Agreement. |
| "Services" | means the services to be provided by Exerp under this Agreement. |
| "Standard Rates" | means the Exerp standard rates as these rates are set out in Schedule 2. |
| "Start Date" | means the start date as defined in the Front Page. |
| "Term" | means the contract term as defined in the Front Page. |
| "Territory"/ "Territories" | means the geographical areas, subjected to the same legal, compliance or system requirements such as a country, a state or community of countries, as further defined on a per Client basis in the Front Page. |
| "Users" | means the users of the Services, being Client employees, employees of the Franchisees of Client in scope of this Agreement, or external parties using the Services in agreement with Client. |