

THIS AGREEMENT is made between:

- (1) **4GLOBAL CONSULTING LIMITED** incorporated and registered in England and Wales with company number 04574194 whose registered office is at Building 3 Chiswick Park, 566 Chiswick Park Road, London W4 5YA (the "**Company**"); and
- (2) The organisation on behalf of which this Agreement is entered into by the individual accepting it and more specifically set out in the Heads of Agreement (the "**Client**").

BACKGROUND

The provision of the Company's Services relies on certain types of Client Data (including Personal Data) being captured by the Client and provided to the Company. This Agreement sets out the terms on which that data will be transferred to and handled by the Company.

Both parties to this Agreement are clear that the Company will store all data that it receives from the Client securely, and will never contact individual customers/members of the Client without the Client's prior authorisation.

These terms do not regulate the provision by the Company of Services using its Software. The parties recognise that provision of the Services shall be governed by a separate agreement.

IT IS HEREBY AGREED:

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"Agreement": this agreement and all schedules or annexes attached to it or referred to in its contents.

"Authorised Users": an individual authorised by the Client to use its instance of the Services, whether that individual accesses the Services using an individually named account or otherwise.

"Business Day": a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Change of Control": shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

"Client Data": the data inputted and/or provided by the Client, Authorised Users, or the Company on the Client's behalf for the purpose of using, or enabling or facilitating the use of, the Services. The parties acknowledge and agree that this may include Personal Data.

“Data Controller”: shall have the meaning of ‘data controller’ set out in section 1(1) of the DPA and, from the time of its implementation into law in England and Wales the meaning set out in Article 4(7) of the GDPR or the equivalent provision of any enabling legislation.

“Data Processor”: shall have the meaning of ‘data processor’ set out in section 1(1) of the DPA and, from the time of its implementation into law in England and Wales the meaning of ‘processor’ set out in Article 4(8) of the GDPR or the equivalent provision of any enabling legislation

“Data Protection Legislation” or “DPL”: means all applicable laws, regulations and codes of conduct which relate to the protection of Personal Data and privacy including without limitation the DPA, the PECR, and from the time of its implementation in England and Wales, the GDPR, and such legislation as may update, implement, amend and/or succeed them from time to time.

“Documentation”: the documentation relating to the Services and/or relevant Personal Data made available to the Client by the Company online via the platform or another web address notified by the Company to the Client from time to time.

“DPA”: the Data Protection Act 2018.

“Effective Date”: the date on which this Agreement is accepted by the Client.

“GDPR”: means Regulation (EU) 2016/679 and/or such legislation as may give effect to its terms in England and Wales

“Heads of Agreement”: the heads attached to this Agreement setting out the Client Data sharing arrangement.

“instance”: the individual version of the Service offered to the Client, which may or may not be customised in order to meet specific needs notified by the Client or to reflect changes to the settings made by the Client.

“Linked Software”: third party software used by the Client in the operation of its business through which Client Data may pass and from which the Company may collect that Client Data solely for the performance of its obligations pursuant to this Agreement.

“Linked Software Provider”: a provider of Linked Software, including without limitation: XN Leisure Systems Limited

“PECR”: means the Privacy and Electronic Communications Regulations 2003, or such legislation as may update, replace or amend them from time to time

“Personal Data”: has the meaning set out in section 1(1) of the DPA and, from the time of its implementation into law in England and Wales the meaning set out in Article 4(1) of the GDPR, and for the purposes of this Agreement shall be used solely to refer to Personal Data shared by Client to Company for the purposes of performing the Services.

“processing” or “process”: have the meaning set out in section 1(1) of the DPA and, from the time of its implementation into law in England and Wales the meaning of ‘processor’ set out in Article 4(2) of the GDPR

“Service Agreement”: means an agreement which governs the Company’s supply of the SaaS services in respect of which the Client Data transferred pursuant to this Agreement is provided by the Client.

“Services”: the provided by the Company to the pursuant to the Service Agreement.

“Software”: the software used by the Company in order to provide the Services.

“Special Category Data”: has the meaning set out in section 2 of the DPA and, from the time of its implementation into law in England and Wales the meaning set out in Article 9(1) of the GDPR, and for the purposes of this Agreement shall be used solely to refer to Special Category Data shared by Client to Company for the purposes of performing the Services.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. USE OF DATA

- 2.1 The Client shall provide the Company with Client Data as set out in this clause 2. The types of Client Data collected by the Service are set out in the Documentation and/or the Heads of Agreement, which the Client

acknowledges that it has read, considered and understood prior to accepting this Agreement and initiating such transfer.

- 2.2 The Client agrees that in the course of its use of the Services it may transmit Client Data to the Company in the fashion described in the Documentation and/or this Agreement. The Client specifically authorises the Company to use such Client Data in order to provide the Services and as set out in this Agreement.
- 2.3 The parties acknowledge that for the purposes of Data Protection Legislation that the Client shall be a Data Controller in respect of all Client Data which the Client collates; and that the Company shall be a Data Processor when Client Data is transferred to the Company.
- 2.4 The Company shall have exclusive control over the means of collating the relevant Client Data which does not include Personal Data and the purposes to which those Client Data are put once they have been collected by the Client and transferred to the Company. In the event that the Client receives any Personal Data directly from the Company, the Client acknowledges and agrees that it shall be a Data Processor in respect of all such Personal Data and that the Company shall be the Data Controller in respect of that information.
- 2.5 The parties recognise that the Services may, where specified in the Documentation, involve the contacting by the Company of individuals in respect of whom Personal Data has been provided. Where this is the case the Client specifically notes the warranty given at clause 2.6.1 and authorises the Company to carry out such activity.
- 2.6 The Client warrants to the Company that:
 - 2.6.1 it has obtained and will maintain all necessary rights, licences, consents and authorisations to transmit the Personal Data to the Company and to permit it to be processed and used for the purposes contemplated by this Agreement;
 - 2.6.2 all Client Data (including Personal Data) which it transmits to the Company will be accurate and up to date and that it shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of that data;
 - 2.6.3 where the Client Data contains any element of Special Category Data the Client warrants that it has obtained (and shall maintain) specific consent from the subject or subjects of that Special Category Data for it to be processed by the Company as contemplated by this Agreement
 - 2.6.4 it shall take appropriate technical and organisational measures to secure all relevant Personal Data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to it;

- 2.6.5 it will not transfer any Personal Data outside of the European Economic Area without the prior authorisation of the Company;
 - 2.6.6 it will assist the Company fully in responding to any requests made by any relevant data subject which concern the exercise of that data subject's rights under the DPA or the GDPR;
 - 2.6.7 it shall immediately report to the Company any suspected data breach concerning relevant Personal Data (such as that processed by it in the course of performing the Services) and shall assist the Company to inform the relevant regulator and affected data subjects where the Company considers it appropriate to do so; and
 - 2.6.8 it shall create, retain, and both during and for three (3) years following the termination of this Agreement, make available to the Company, if requested, full records of all consents obtained in connection with this Agreement to prove the validity of all consents, including: (a) the form of request of consent, (b) the data and time consent was received; and (c) any and all unsubscribe requests and actions.
- 2.7 The Client hereby grants to the Company an exclusive, sub-licensable, non-transferable perpetual, irrevocable, fully paid-up right and licence to use the Client Data (including Personal Data) for the provision of the Services and for the Company's business operations, including without limitation the right to use the Client Data to produce aggregated reports for third parties and to enable it to provide consultancy and other services to third parties, and the Client warrants that it has and will maintain all necessary licences, consents, and permissions necessary to grant the rights under this clause 2.7.
- 2.8 The Client recognises that in providing the Services the Company may create anonymised datasets which use the Client Data with which it is provided, and the Client agrees that the Company shall have the right to combine the Personal Data with similar Personal Data received from third parties and to create combined data products using it.
- 2.9 The Company shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Client Data or its accidental loss, destruction or damage. The Company shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except any third parties sub-contracted by the Company to perform services related to Client Data maintenance and back-up).

3. CLIENT'S OBLIGATIONS

- 3.1 The Client shall:
 - 3.1.1 provide the Company with:
 - 3.1.1.1 all necessary co-operation in relation to this Agreement; and

3.1.1.2 all necessary access to such information as may be required by the Company;

in order to enable the Company to lawfully process the Personal Data contemplated by this Agreement;

3.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;

3.1.3 carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Company may adjust any agreed timetable or delivery schedule as reasonably necessary;

3.1.4 ensure that its network, security protocols and systems comply with the relevant specifications provided by the Company from time to time;

3.1.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Company's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

3.2 The Client recognises that, in order to perform its obligations hereunder, the Company may collect Client Data directly from Linked Software used by the Client. The Company specifically consents to Client Data being collected in this fashion and grants all necessary permissions to all Linked Software Providers to make such transfers of Client Data to the Company.

3.3 Where the Client uses Linked Software it may be easier for the Company to use that Linked Software to collect the relevant Client Data rather than obliging the Client to install additional software. Where this is the case the Client specifically consents to the Linked Software Provider collecting such Client Data and transferring it to the Company pursuant to clause 3.2.

3.4 The Client acknowledges that in the circumstances described in clause 3.2 and 3.3 that the Linked Software Provider shall be a mere conduit of the Client Data acting on the instruction of the Company. Accordingly the Client releases the Linked Software Provider from all liability for processing Client Data in accordance with the terms of this Agreement and undertakes to indemnify and hold harmless the Linked Software Provider from any liability that may arise as a result of it doing so.

4. INDEMNITY

4.1 The Client shall defend, indemnify and hold harmless the Company, its officers, directors and employees against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's breach of its obligations under this Agreement. Such indemnity shall, for the avoidance of doubt, include full reimbursement of the cost of any fines levied against

Company by the Information Commissioner's Office (or any similar or analogous authority) which arise as a result of Client's failure to obtain all necessary consents and permissions to permit the Company to use the Personal Data provided to it by Client pursuant to the terms of this Agreement.

4.2 The Company shall defend the Client, its officers, directors and employees against any claim brought against the Client as a result of any breach by the Company of any Data Protection Legislation which does not arise as a result of the Client's failure to obtain the necessary consents to permit the Company to process Personal Data in the fashion contemplated by this Agreement (or any other act or omission of the Client which represents a breach of its obligations hereunder or under the Service Agreement) provided that:

4.2.1 the Company is given immediate notice of any such claim;

4.2.2 the Client makes no admission of liability or offer to settle in respect of any such claim;

4.2.3 the Client provides all requested co-operation to the Company in the defence and settlement of such claim; and

4.2.4 the Company is given sole authority to defend or settle the claim and the Client makes no admission or settlement in respect thereof.

4.3 The foregoing and clause 5.4.2 states the Client's sole and exclusive rights and remedies, and the Company's (including the Company's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

5. LIMITATION OF LIABILITY

5.1 This clause 5 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client:

5.1.1 arising under or in connection with this Agreement;

5.1.2 in respect of any use made by the Client of the Services and Documentation or any part of them; and

5.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

5.2 Except as expressly and specifically provided in this Agreement:

5.2.1 the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use. The Company shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Company by the Client in connection with the Services, or any actions taken by the Company at the Client's direction;

- 5.2.2 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
- 5.2.3 the Services and the Documentation are provided to the Client on an "as is" basis.
- 5.3 Nothing in this Agreement excludes the liability of the Company for:
 - 5.3.1 death or personal injury caused by the Company's negligence;
 - 5.3.2 fraud or fraudulent misrepresentation;
 - 5.3.3 breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or
 - 5.3.4 any other liability which cannot be excluded by law.
- 5.4 Subject to clause 5.2 and clause 5.3:
 - 5.4.1 the Company shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, failure to make anticipated savings, wasted management time or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - 5.4.2 the Company's total aggregate liability in contract (including in respect of the indemnity at clause 4.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid pursuant to the Service Agreement during the 12 months immediately preceding the date on which the claim arose or £1000, whichever is greatest
- 5.5 The Company shall not be liable for any interruptions to the Services arising directly or indirectly from:
 - 5.5.1 interruptions to the flow of data to or from the internet;
 - 5.5.2 changes, updates or repairs to the Software subject to the Company striving to minimise the interruptions/outages that may be caused by such change;
 - 5.5.3 the effects of the failure or interruption of services provided by third parties;
 - 5.5.4 the factors set out in Clause 7;

- 5.5.5 any actions or omissions of the Client (including, without limitation, breach of the Client's obligations set out in this Agreement) or any third parties;
- 5.5.6 problems with the Client's equipment and/or third party equipment;
or
- 5.5.7 interruptions to the Services requested by the Client.

6. TERM AND TERMINATION

- 6.1 This Agreement shall commence on the Effective Date and shall be coterminous to the duration of the Services Agreement. The parties recognise that where this Agreement is signed alongside a Service Agreement, the existence of the Service Agreement is fundamental to the purpose of this Agreement and agree that on the termination or expiry of that agreement for any reason, that this Agreement shall automatically terminate.
- 6.2 Without affecting any other right or remedy available to it, the Company may terminate this Agreement with immediate effect by giving written notice to Client if:
 - 6.2.1 the Client commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 6.2.2 the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 6.2.3 the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 6.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 6.2.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Client;
 - 6.2.6 the holder of a qualifying floating charge over the assets of the Client has become entitled to appoint or has appointed an administrative receiver;

- 6.2.7 a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the other party;
 - 6.2.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Client 's assets and such attachment or process is not discharged within 14 days;
 - 6.2.9 any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 6.2.2 to clause 6.2.8 (inclusive);
 - 6.2.10 the Client suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 6.2.11 there is a Change of Control of the Client which adversely affects the Company.
- 6.3 On termination of this Agreement for any reason:
- 6.3.1 the Client shall cease to provide Client Data to the Company and the Company shall cease collecting the same from the Client;
 - 6.3.2 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced; however
 - 6.3.3 the parties recognise that the termination of this Agreement shall not oblige the Company to delete, destroy or return any Client Data which is not Personal Data which it has received from the Client during the Term and agree that the Company shall have the right to continue to use all such data for the purpose of providing goods and or services to third parties as envisaged by this Agreement. Nothing in this Agreement shall serve to undermine the Company's duty at law to delete/erase Personal Data provided to it by the Client on request.

7. FORCE MAJEURE

The Company shall have no liability to the Client under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Client is notified of such an event and its expected duration.

8. CONFLICT

Where anything in the Service Agreement may be construed as preventing or restricting the rights granted to the Company under the terms of this Agreement, the parties agree that this Agreement shall prevail and that the relevant terms of the Service Agreement shall be disregarded. Where there is any other conflict between the terms of the Service Agreement and this Agreement, then this Agreement shall prevail.

9. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

12. SEVERANCE

12.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

12.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

13. ENTIRE AGREEMENT

13.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

13.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

14. ASSIGNMENT

14.1 The Client shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

14.2 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

15. 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).

16. 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.

17. NOTICES

17.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.

17.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

18. GOVERNING LAW

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

19. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement shall commence on Effective Date.