

CSA Schedule 1 - General Terms and Conditions

CONTENTS

INTRODUCTION & BACKGROUND	1
COMMENCEMENT	1
SERVICES	1
USE OF THE SERVICES & CLIENT RIGHTS	2
INTELLECTUAL PROPERTY RIGHTS	2
SUPPORT & MAINTENANCE, SERVICE LEVELS AND SERVICE CREDITS	2
CLIENT OBLIGATIONS	3
CLIENT IT ENVIRONMENT	3
CHANGES TO THE BASELINE SERVICES	3
CHANGES	3
REMUNERATION	4
TERMINATION RIGHTS	4
TERMINATION FOR CAUSE	4
CONSEQUENCES OF TERMINATION	4
REPRESENTATIONS AND WARRANTIES; DISCLAIMERS	4
DATA PROTECTION & GDPR - INSIDE THE EEA	4
DATA PROTECTION & GDPR - OUTSIDE THE EEA	5
CONFIDENTIALITY	5
LIMITATIONS OF LIABILITY	5
FORCE MAJEURE	6
REGULATORY MATTERS	6
ASSIGNMENT	6
GENERAL	6
GOVERNING LAW AND JURISDICTION	6
DEFINITIONS	7

1. INTRODUCTION & BACKGROUND

- 1.1 This Schedule 1 sets out the general terms and conditions applicable to Exerp's provision of the Services, as a standard software as a service. The Services in scope of the Agreement are set out in an Order Form, the applicable Service Level Agreement is set out in Schedule 3 and the Charges agreed between the Parties are set out in Schedule 4. Finally, the Parties will conclude a Data Processing Agreement, which, once signed, will form part of this Agreement.
- 1.2 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.

2. COMMENCEMENT

- 2.1 This Agreement shall commence on the earlier of the Start Date or the date on which the Exerp Platform is being used by the Client in one or more Clubs (even in a test environment) and shall continue in full force and effect until terminated in accordance with the terms of this Agreement (the "Term").
- 2.2 This Agreement governs the relationship between Client and Exerp in respect of the Services set out in the Agreement.

3. SERVICES

- 3.1 Exerp shall provide the Services as set out in the Order Form(s) (the "Baseline Services"), to Client.

- 3.2 The first Order Form (also referred to as “the Front Page”) will set out the Baseline Services. Subsequently, the Parties can agree to changes to the Baseline Services in accordance with Clause 9. Any such subsequent Order Forms will be supplements to the first, and the general terms of the first Order Form shall apply to all Order Forms, unless otherwise specifically agreed.
- 3.3 Exerp shall (and will procure that its personnel and any subcontractors shall) provide the Services to the Client in the Territories and to the Clubs agreed and will perform its obligations under this Agreement in accordance with good industry practice and using all reasonable skill and expertise.
- 3.4 Unless otherwise agreed between the Parties and where applicable, Exerp shall have sole discretion to determine the location for the performance of the Services.
- 3.5 To the extent that Documentation is provided under the Agreement, such Documentation shall be in English.
- 3.6 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 the Data Processing Agreement.
- 3.7 Exerp may change the list of subcontractors under this Agreement provided Exerp gives at least sixty (60) days’ prior written notice to Client.
- 3.8 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.
- 3.9 The Services may be updated by Exerp from time to time to include updated functions and bug fixes. Exerp will inform Client of updates by email, release notes, documentation or through the Services.
- 3.10 Exerp reserves the right to refuse to provide the Services at any time in the following circumstances: (a) Client makes changes to the IT Environment contrary to Exerp’s requirements and without Exerp’s consent. Exerp is entitled to claim future exemption from any obligation in relation to the Exerp Platform or the Services, including remedying of defects; and/or (b) where Client fails to provide Exerp with reasonable access to all relevant information, resources, equipment and systems required to provide the Services.
4. USE OF THE SERVICES & CLIENT RIGHTS
- 4.1 Exerp grants the Client a non-transferable, non-exclusive licence for the term of this Agreement to:
- use the Services for the Brands, in the Clubs and Offices and in the Territories, as specifically agreed in the Order Form(s);
 - use and print copies of any Documentation supplied by Exerp for use in association with the Baseline Services in which event all proprietary notices on such Documentation shall be reproduced; and
 - permit Users access to and use of the Baseline Services and the Documentation.
- 4.2 The licence granted to the Client under Clause 4.1:
- permits employees of the Client and persons engaged by it to access and use the Baseline Services;
 - permits an unlimited number of Users to access the Baseline Service;
 - is granted to this group of persons solely for the purpose of the Client undertaking activities in the course of its or the Client Group’s, or the Client’s Franchisees’ business in relation to the operation of health clubs.
- 4.3 Notwithstanding the foregoing, the licence grant under this Clause 4, shall not be granted for the benefit of Competitors of Exerp. Any use of the Services by Competitors of Exerp requires prior written acceptance from Exerp or that the use in question falls within the scope of use granted to the Competitor under an agreement (Partner Agreement) between the Competitor and Exerp.
- 4.4 The Client shall and shall ensure all Users shall use the Services according to the Documentation provided by Exerp.
- 4.5 The Client shall not copy, adapt, reverse engineer, decompile, disassemble, configure or modify the Services (including 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 deliverables 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. Exerp may use any company names and trademarks of the Client solely to provide support the Services. Further, Exerp shall be permitted to refer to the cooperation with Client in Exerp marketing and promotional activities and material.
6. SUPPORT & MAINTENANCE, SERVICE LEVELS AND SERVICE CREDITS
- 6.1 Exerp shall provide support and maintenance as set out in Schedule 2 and shall ensure that the Services perform in accordance with the Service Levels in Schedule 3.
- 6.2 Exerp shall measure its performance against the Service Levels.
- 6.3 Exerp will use its reasonable endeavours to notify the Client in advance of scheduled maintenance but the Client acknowledges that it may receive no advance notification for emergency maintenance or downtime caused by a Force Majeure Event.
- 6.4 If at any time any failure to meet any Service Level occurs the Client may recover Service Credits in accordance with the terms set out in Schedule 3.
- 6.5 Service Credits may be recovered by the Client as a credit against the next invoice which may subsequently be due for issue under this Agreement or, if no such invoice is due, as a debt due from Exerp and payable within thirty (30) days after demand.
- 6.6 Service credits are the total liability of Exerp in relation to a failure to meet the Service Levels and the Client acknowledges and agrees that the Service Credits are its sole and exclusive

remedy for the failure by Exerp to provide the Services in accordance with the agreed Service Levels.

7. CLIENT OBLIGATIONS

7.1 Client shall: (a) provide all reasonable cooperation to Exerp in the performance of its obligations; (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) be responsible for its staff and subcontractor compliance with this Agreement; and (d) 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, such access to be provided during Client's normal working hours or otherwise as agreed by Client (such agreement not to be unreasonably withheld or delayed).

7.2 Client acknowledges and agrees that Exerp shall have no liability for any breach by Exerp of this Agreement to the extent that the interoperability of the Exerp Platform with the Client IT Environment fails, or the compatibility of the Exerp Supported Peripherals fails as a result of: (a) the information provided by Client to Exerp in relation to the Client IT Environment or any Exerp Supported Peripherals not being true or accurate; (b) the Exerp Supported Peripherals or Client IT Environment ceasing to be compatible with new releases or versions of third party software not supplied by Exerp but which are required for the operation of the Exerp Platform; (c) the Exerp Supported Peripherals or Client IT Environment being operated through terminal server solutions or other solutions where the instance of the Exerp Client Application is not executed on the local computer but as a remote session on the terminal server i.e. thin client; or (d) Client having requested a Change and such Change giving rise to a change being required in the Client IT Environment or the Exerp Supported Peripherals.

8. CLIENT IT ENVIRONMENT

8.1 Client shall be liable for and shall take such action as is necessary to ensure that the Client IT Environment meets the System Requirements. Exerp is not obliged to provide any remedies for issues or errors in operations that do not comply with the System Requirements.

8.2 Client shall procure and set up operational equipment, and operate the needed Client IT Environment (including hardware) in compliance with Exerp's requirements. Client is solely responsible for preparing staff and relevant Client IT Environment in the Clubs (including Offices).

8.3 Notwithstanding any other provision to the contrary in this Agreement, to the extent that Exerp would have been able to perform its obligations under this Agreement but has failed to do so as a result of Client's failure to ensure that its Client IT Environment meets the System Requirements then Exerp shall not be in breach of this Agreement and Exerp shall have no liability for any resulting failure or delay to provide the Services or to, in either case, meet its obligations under this Agreement. Any work undertaken by Exerp to assist Client to remedy any such failure or as a result of such failure will be charged for in addition at Exerp's standard Daily Rates.

8.4 Without prejudice to the foregoing, the Parties acknowledge and agree that Exerp may remove or change functionality or any functionality requiring improvement or updating (including for example, without limitation, legacy, obsolete, out of date or unused functionality) within the Services, including for the avoidance of doubt within the Exerp Platform or the Exerp Client Application, except where to do so would materially adversely affect the Client's use of the Services.

8.5 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.

9. CHANGES TO THE BASELINE SERVICES

9.1 Client acknowledges and agrees that the Charges have been calculated based upon the Baseline Services included in the at any time concluded Order Forms. Consequently, any changes to the Baseline Services must be agreed in writing and will have an impact on Charges. For the avoidance of doubt, a change in the number of Brands, Clubs or Offices, a change in the Territories, as well as a change in the Optional Features in relation to a Brand or in relation to one or more Clubs of Offices, will be considered a change to the Baseline Services.

9.2 The Services to be provided by Exerp consist, among other things, of Base Package Features and Optional Features. During the term of the Agreement, the Client cannot change the Base Package Features. The Optional Features can be changed upon prior written agreement with Exerp. Conditions according to Exerp's business requirements to Clients apply and impact on Charges may occur. Upon twelve months' prior written notice, Client shall be entitled to terminate more than twenty percent of all Clubs and Offices within one Brand, globally at any one time, or twenty per cent of all Clubs and Offices within one Brand, globally during any twelve month period. Further, any drop below the Minimum Number of Clubs, after the first date that this Minimum Number of Clubs are Live, entitles Exerp to change agreed volume discounts as of the date the number of Clubs are below the Minimum Number of Clubs. Other conditions may apply.

9.3 If Client wishes to add to or reduce the number of Clubs, within the band and frame set out in Clause 9.2 above, then Client can do so by placing a request in the ticket system. Other changes to the Baseline Services will be done using Order Form templates as provided and approved by Exerp. One Order Form template is used for changes to Brands and Territories and another Order Form template is used for changes to the Optional Features. Both types of Order Forms must subsequently be approved by Exerp.

9.4 Once an Order Form request is approved by Exerp and the terms and Charges to be applied following such request are approved by both Parties, Exerp shall notify the Client when such change shall be implemented, for example when a new Club will be live. Any changes to the Charges shall be calculated from the Go-Live Date of such Club or Optional Feature, unless otherwise agreed (charges calculated on a pro-rata basis for the first month and included in the current month's invoice if Go-Live Date is prior to the 15th of the month or in the next month's invoice if go-live is on the 15th day or later of the month);

10. CHANGES

10.1 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 any changes to the Charges, timetable or Services resulting from such requested change. Changes in the Baseline Services shall be dealt with in accordance with the process set out in Clause 9.

10.2 Changes to the Baseline Services and changes to the contents of this Agreement shall be approved by the CEO of Exerp, save for changes in the number of Clubs.

11. REMUNERATION

11.1 The Charges shall be as set forth in the Order Form and Schedule 4 (Charges).

11.2 If less than 80% of all Clubs in scope are not Live six calendar months after the Early Termination Date, as defined in the Front Page (the "Late Go-Live Date"), and up until the last day of the first full calendar month all Clubs in scope are Live with the Baseline Services, all Services will be charged in accordance with Exerp's standard rates, excluding any agreed volume discounts, and Exerp will be entitled to terminate this Agreement with a prior written notice of three (3) months. This principle shall not apply if a delay in Go-Live Dates is due to circumstances for which Exerp is liable.

11.3 Charges shall be payable to Exerp, or its nominated subsidiary as notified to Client from time to time. All expenses related to the Services, including support and maintenance, are included in the Charges (Schedule 4).

11.4 Any directions which would incur additional costs or amount to a Change shall be dealt with in accordance with Clause 9 of the Agreement

12. TERMINATION RIGHTS

12.1 Either Party may terminate this Agreement without cause by notice in writing as set out in the first Order Form (the Front Page).

12.2 Exerp may further terminate the Agreement in part, i.e. in relation to the affected part only, by notice in writing as follows on three (3) months' notice when the termination concerns one or more Optional Features and a Force Majeure Event relating to such Optional Features has subsisted for more than sixty (60) Business Days.

13. TERMINATION FOR CAUSE

13.1 Without affecting any other rights or remedies each Party may have, either Party may terminate this Agreement immediately by giving written notice to the other if:

13.1.1 the other Party commits a material breach of this Agreement 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

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

13.1.3 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.

13.2 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.

14. CONSEQUENCES OF TERMINATION

14.1 Upon termination of this Agreement for any reason all licenses and all other rights in the Exerp Platform, the Services or any other Intellectual Property Rights granted by Exerp to Client under this Agreement shall automatically expire.

14.2 Exerp shall provide a copy of Client's data in a format and on a medium decided by Exerp and free of charge. Any other Services to be provided by Exerp under this Clause shall be provided at Exerp's then current standard & market rates. For the avoidance of doubt, Exerp shall not be required to provide any information for this purpose which amounts to disclosure of Exerp's Confidential Information

15. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

15.1 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.

15.2 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.

16. DATA PROTECTION & GDPR - INSIDE THE EEA

16.1 This Clause 16 shall apply to Exerp's Services in relation to all Clients with Clubs in the EEA area.

16.2 For the purpose of this Clause 16, 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 Parties' Data Processing Agreement.

16.3 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.

16.4 Client warrants, represents and undertakes that (a) there are no restrictions preventing, and (b) 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.

16.5 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.

16.6 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.

17. DATA PROTECTION & GDPR - OUTSIDE THE EEA

- 17.1 This Clause 17 shall apply to Exerp's Services in relation to all Clients with Clubs outside the EEA area
- 17.2 For the purpose of this Clause 17, the terms "Data Controller", "Data Subject", "Personal Data", and "Data Processor" shall have the meanings given to them in the definitions list contained herein.
- 17.3 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.
- 17.4 Exerp shall:
- 17.4.1 adhere to its generally applicable privacy policy, which can be found on Confluence;
- 17.4.2 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;
- 17.4.3 not modify, amend or alter the contents of the Personal Data;
- 17.4.4 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 Client users. For the avoidance of doubt, the relevant sub-contractors of Exerp shall be considered authorized for the purpose of this Clause;
- 17.4.5 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.
- 17.4.6 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.
- 17.5 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.
- 17.6 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.
- 17.7 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.
- 17.8 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.

18. CONFIDENTIALITY

- 18.1 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.

19. LIMITATIONS OF LIABILITY

- 19.1 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.
- 19.2 EXCEPT WITH RESPECT TO CLAUSE 19.1 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:
- 19.2.1 ANY LOSS OF DATA, INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE;
- 19.2.2 LOSS OF OR DAMAGE TO GOODWILL; AND/OR
- 19.2.3 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
- 19.3 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. THIS EXEMPTION OF LIABILITY SHALL NOT APPLY, IF 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.
- 19.4 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.
- 19.5 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.
- 19.6 EXCEPT WITH RESPECT TO CLAUSE 19.1, 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 PROFESSIONAL SERVICES OR OTHER AGREEMENT IN PLACE BETWEEN THE PARTIES.
- 19.7 FOR THE AVOIDANCE OF DOUBT, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO CLIENT GROUP AS A WHOLE.
20. FORCE MAJEURE
- 20.1 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.
21. REGULATORY MATTERS
- 21.1 REGULATORY COMPLIANCE
- 21.1.1 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.
22. ASSIGNMENT
- 22.1 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.
- 22.2 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.
23. GENERAL
- 23.1 NOTICES
- 23.1.1 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.
- 23.2 REFERENCES
- 23.2.1 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.
- 23.3 THIRD PARTIES
- 23.3.1 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.
- 23.4 ENTIRE AGREEMENT
- 23.4.1 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.
24. GOVERNING LAW AND JURISDICTION
- 24.1 DISPUTES
- 24.1.1 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 24, be referred to representatives of each Party who shall use their reasonable endeavours to resolve it.
- 24.1.2 If the dispute is not resolved within fourteen (14) Business Days of the referral being made under Clause 23.1.1, 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.
- 24.1.3 Until the Parties have completed the steps referred to in Clauses 23.1.1 and 23.1.2, 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.
- 24.2 CHOICE OF LAW AND JURISDICTION
- 24.2.1 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:
- 24.2.1.1 If the Exerp contract entity is domiciled in Europe, save for the United Kingdom of Great Britain (the UK), the applicable laws of Denmark will apply;
- 24.2.1.2 If the Exerp contract entity is domiciled in any jurisdiction located in North America, the laws of the State of New York will apply.
- 24.2.1.3 In all other instances the applicable laws of England and Wales will apply.
- 24.2.1.4 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):
- 24.2.1.5 If the Exerp contract entity is domiciled in Denmark, arbitration shall take place in Denmark, under the Danish Arbitration Act (in Danish: "Voldgiftsloven");

24.2.1.6 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;

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

25. DEFINITIONS

Term	Meaning
“Agreement” & “Cloud Services Agreement”	means this agreement being the Order Form(s), all Schedules and sub-schedules thereto, if any, as well as a Data Protection Agreement between the Parties concluded for data processing activities covered by this Cloud Services Agreement, and any later amendments made in accordance with the terms of the Agreement.
“Base Package Features”	means the features included in the Exerp Platform as standard base features which cannot be removed. Base Package Features are referred to as such in Schedule 2.
“Baseline Services”	means the Services, cf. Schedule 2, to be provided by Exerp to Client within the Territories and to the Clubs and Offices listed in an Order Form. For the avoidance of doubt, thus, any change in the Services to be provided to a Club or an Office in a Territory, any change in the number of Clubs, Offices or of the Territories in scope, as agreed from time to time, will be a change to the Baseline Services.
“Brand”	means the brand of a health club category managed by Client.
“Business Day”	means weekdays, save for Danish holidays.
“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.
“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.
“Competitor”	means provider of products or services that in part or fully competes with the products and services of Exerp.
“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 discloser 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.
“Confluence”	the Confluence site, which Exerp operates, located at https://clublead.atlassian.net/wiki/x/AwAv
“Data Controller”	the person which 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.
“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 Client Application”	means the software provided by Exerp as part of the Services to be installed by Client in the Client IT Environment which enables use of the Services.
“Exerp Platform”	means the proprietary software of Exerp “the Exerp Platform” comprised of the basic and optional features offered by Exerp and elected by Client in Order Forms.
“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.
“Exerp Supported Peripherals”	means the hardware peripherals which Exerp has confirmed are compatible with the Services.
“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;
“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”	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 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;
“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 any encumbrancer takes possession of or a receiver, administrative 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.
“Minimum Number of Clubs”	means the minimum number of Clubs agreed in the Front Page / Order Form, or as amended in any later Order Forms.
“Office(s)”	means any office or other administrative center or headquarters of Client, as notified by Client to Exerp from time to time, which includes head office and administrative activities of Client, whether performed from a physical head office address or otherwise.
“Optional Features”	means the features that Exerp offers as optional features as part of the Exerp Platform. Optional Features are referred to as such in Schedule 2.
“Order Form”	means the front page of the agreement, named “Order Form”, which the Parties fill in and sign as well as any later order forms which the Parties 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.
“Schedule(s)”	means the schedules to this Agreement”
“Service Level Agreement”	means the applicable service level agreement, cf. Schedule 3.
“Services”	means the services to be provided by Exerp under this Agreement, as such services are listed in the Order Form. Further, the Services comprise the Exerp Platform, the Exerp Client Application as well as pertaining services such as support and maintenance and the hosting service provided by Exerp (as further described in Schedule 2), enabling the Client to connect to the Services.
“System Requirements”	means the requirements to the Client IT Environment, as such requirements are communicated by Exerp, including as set out in Schedule 2.
“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.