



TERMS AND CONDITIONS

1. INTERPRETATION

1.1. In addition to the definitions set out in the Order Form, the definitions and rules of interpretation in this Clause 1 apply:

Applicable Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision or use of the Services, Platform(s) and/or Deliverables;
Active User: means an Authorised User who connects to the Challenge;
Authorised Users: subject to any restrictions in the Order Form, those employees, officers, contractors, agents or customers of you who are authorised by you to use the Services, Platform(s) and/or Deliverables pursuant to User Subscriptions;
Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Challenge: has the meaning given in the Order Form;
Challenge Term: means the challenge term set out in the Order Form;
Charges: the charges set out in the Order Form;
Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, subcontractors or agents to the other party and that party's employees, officers, subcontractors or agents whether before or after the date of this Agreement and in particular: <ul style="list-style-type: none">(a) information concerning the business, affairs, customers, clients or suppliers of the disclosing party or of any member of the group of companies to which the disclosing party belongs;(b) details of the Services, Platform(s) and/or Deliverables is Wellgiving's Confidential Information; and(c) the Customer Data, is the Customer's Confidential Information;
Customer Data: the data (whether or not Personal Data) inputted by you, Authorised Users, or us on your behalf, for the purpose of using the Services, Platform(s) and/or Deliverables; or facilitating your use of the Services, Platform(s) and/or Deliverables;
Data Protection Legislation: means all Applicable Law protecting the fundamental rights and freedoms of individuals in relation to their Personal Data and right to privacy, including all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 (and regulations made thereunder) (" DPA 2018 "); the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the DPA 2018) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, as amended and updated from time to time;
Deliverables: any output of the Services provided by us to you and any documentation made available to you by us online via the relevant Platform(s) or such other web address notified by us to you from time to time, which sets out a description of the Services and/or Platform(s) and the user instructions for the Services and/or Platform(s);

Intellectual Property Rights: patents, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Business Hours: 9.00 am to 5.00 pm UK time, each Business Day;

Personal Data: as defined in the Data Protection Legislation;

Platform(s):

(a) The application WellGiving; and

(b) The website at <https://app.wellgiving.co.uk>,

or such other website or platform notified to you by us in writing from time to time.

Renewal Period: the period described in the Order Form;

Services: the Services set out in the Order Form and such other Services as may be agreed by the parties in writing from time to time;

Total Challenge Funds: means all amounts raised by or on behalf of the Customer, the Authorised Partner and any Authorised User(s) in connection with the Challenge;

User Subscriptions: the user subscriptions purchased by you pursuant to this Agreement which entitle an equivalent number of Authorised Users to access and use the Services, Platform(s) and/or Deliverables in accordance with this Agreement;

VAT: value added tax or any equivalent tax;

Virus: any thing, software, code, or device which may: prevent, impair or otherwise adversely affect the operation of any computer software, data, hardware or network, any telecommunications service, equipment or network.

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

1.3. A reference to a statute or statutory provision:

1.3.1. is a reference to it as it is in force as at the date of this Agreement; and

1.3.2. shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.4. A reference to "writing" or "written" includes e-mails.

2. USE OF THE SERVICES AND PLATFORMS

2.1. We hereby grant to you a non-exclusive, non-transferable right, without the right to grant sublicences, to use and to permit the



Authorised Users to use, the Services, Platform(s) and/or Deliverables during the Challenge Term. This right is granted:

2.1.1. solely for the purposes of you setting motivational exercise challenges for individuals you are involved with, as part of your internal operations;

2.1.2. subject to:

- (a) this Agreement; and
- (b) such User Subscriptions and acceptable use policies or other "end-user licence" agreements ("EULA") as We may reasonably include on the Platform(s) from time to time (save that such policies and agreements may not vary the Charges or impose any additional costs in respect of the use of the Platform(s)).

2.2. Where you are contracting on behalf of an Authorised Partner you agree to procure that they comply with this Agreement. You agree that you will be liable for any breach of this Agreement by any Authorised Partner or Authorised User and hereby indemnify us in respect of the same. Neither Authorised Partners nor Authorised Users are permitted to enforce this contract.

2.3. In relation to the Authorised Users, you undertake that:

2.3.1. the maximum number of Authorised Users that you authorise to access and use the Services, Platform(s) and/or Deliverables shall not exceed the number of User Subscriptions you have purchased from time to time;

2.3.2. you will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services, Platform(s) and/or Deliverables;

2.3.3. each Authorised User shall keep a secure password for their use of the Services, Platform(s) and/or Deliverables, that such password shall be changed no less frequently than 12 weeks and that each Authorised User shall keep their password confidential;

2.3.4. you shall maintain a written, up to date list of current Authorised Users and provide such list to us within 5 Business Days of our written request at any time or times; and

2.3.5. if we discover that any password has been provided to any individual who is not an Authorised User, then without prejudice to our other rights, you shall promptly disable such passwords and we will not be required to issue any new passwords to any such individual.

2.4. You shall not, and shall procure that the Authorised Users do not:

2.4.1. access, store, distribute or transmit any Viruses, or any material during the course of your or their use of the Services, Platform(s) and/or Deliverables that:

- (a) is harmful, threatening, defamatory, obscene, infringing, harassing, sexually explicit, or racially or ethnically offensive;
- (b) promotes unlawful violence;

(c) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(d) is otherwise illegal or causes damage or injury to any person or property;

2.4.2. except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between us and you and except to the extent expressly permitted under this Agreement:

(a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, Platform(s) and/or Deliverables (as applicable) in any form or media or by any means; or

(b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services;

2.4.3. access all or any part of the Services, Platform(s) and/or Deliverables in order to build a product or service which competes with the Services, Platform(s) and/or Deliverables;

2.4.4. use the Services, Platform(s) and/or Deliverables to provide services to third parties other than Authorised users granted access pursuant to this Agreement;

2.4.5. subject to Clause 13.7 (Assignment and Sub-Contracting), license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Platform(s) and/or Deliverables available to any third party except the Authorised Users; or

2.4.6. attempt to obtain, or assist third parties in obtaining, access to the Services, Platform(s) and/or Deliverables, other than as provided under this Clause 2 (or as otherwise agreed with us in writing).

2.5. We reserve the right, without liability or prejudice to our other rights, to:

2.5.1. disable your access to any Platform if you breach the provisions of this Agreement; and

2.5.2. disable any Authorised User's access to any Platform if the Authorised User breaches any provision of this Agreement or the EULA.

2.6. You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Platform(s) and/or Deliverables and, in the event of any such unauthorised access or use, promptly notify us.

2.7. The rights provided under this Clause 2 are granted to you only, and shall not be considered granted to any subsidiary or holding company of you.

3. ADDITIONAL USER SUBSCRIPTIONS

3.1. Subject to Clause 3.2 and Clause 3.3, you may, from time to time, request to purchase additional User Subscriptions in excess of the number set out in the Order Form. If accepted, we shall grant access to the Services, Platform(s) and/or Deliverables to such additional Authorised Users in accordance with the provisions of this Agreement.



3.2. If you wish to purchase additional User Subscriptions, you shall notify us in writing. We shall evaluate such request for additional User Subscriptions and respond to you with approval or rejection of the request. Where we approve the request, we shall activate the additional User Subscriptions within 5 Business Days of our approval of your request.

4. CUSTOMER DATA

- 4.1. Save as expressly set out in this Agreement, you shall:
- 4.1.1. own all right, title and interest in and to all of the Customer Data that is not Personal Data; and
 - 4.1.2. have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 4.2. In the event of any loss or damage to Customer Data, your sole and exclusive remedy against us shall be for us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by us in accordance with the archiving procedure described in our Back-Up Policy.
- 4.3. We shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by us to perform services related to Customer Data maintenance and back-up for which we shall remain fully liable under Clause 4.11 below).
- 4.4. You agree that we may complete credit or other financial checks and retain and process the results of those checks when determining if and how to contract with you.

Personal Data

- 4.5. Each party will comply with all applicable requirements of the Data Protection Legislation. This Clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.6. Each party acknowledges that:
- 4.6.1. if we process any Personal Data on your behalf when performing obligations under this Agreement, you are the controller and we are the processor for the purposes of the Data Protection Legislation (where "Controller" and "Processor" have the meanings as defined in the Data Protection Legislation);
 - 4.6.2. The scope, nature and purpose of processing by us, the duration of the processing and the types of Personal Data is as set out in our Privacy Policy. The data subjects are Authorised Users and any of your, or your Authorised Partner's agents and representatives.
- 4.7. Without prejudice to the generality of Clause 4.5 above, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this Agreement so that we may lawfully use, process and transfer the Personal Data in accordance with this Agreement on your behalf.
- 4.8. Without prejudice to the generality of Clause 4.5 above, we shall, in relation to any Personal Data processed in

connection with the performance by us of our obligations under this Agreement:

- 4.8.1. process that Personal Data only on the written instructions of you or as otherwise required by Data Protection Legislation;
 - 4.8.2. not transfer any Personal Data outside of the European Economic Area unless we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - 4.8.3. assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and
 - 4.8.4. notify you without undue delay on becoming aware of a Personal Data breach.
- 4.9. Each party shall ensure that it has in place appropriate technical and organisational measures to protect against:
- 4.9.1. unauthorised or unlawful processing of Personal Data; and
 - 4.9.2. accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.
- 4.10. Each party agrees that Wellgiving:
- 4.10.1. may appoint third party processors of Personal Data;
 - 4.10.2. will enter into a written agreement with such third party processors substantially on that third party's standard terms of business, in accordance with the "EU Model Clauses" or otherwise incorporating terms which are substantially similar to those set out in this Clause 4; and
 - 4.10.3. as between you and us, shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this Clause 4.11.

5. OUR OBLIGATIONS

- 5.1. We warrant that:
- 5.1.1. during the Challenge Term, the Services will be provided to you with reasonable skill and care;
 - 5.1.2. we will use commercially reasonable endeavours to make the Platform(s) available 24 hours a day, seven days a week, except for:
 - (a) reasonable planned maintenance; and
 - (b) unscheduled maintenance for the purposes of resolving urgent or critical issues;
 - 5.1.3. where required to provide support services, we will provide you with our standard customer support services during Business Hours; and
 - 5.1.4. we will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Agreement.



5.2. Clause 5.1 above shall not apply to the extent of any non-conformance which is caused by:

5.2.1. use of the Services, Platform(s) and/or Deliverables by you or Authorised Users contrary to our instructions; or

5.2.2. modification or alteration of the Services, Platform(s) and/or Deliverables by any party other than us or our duly authorised personnel.

5.3. We:

5.3.1. do not warrant that:

(a) your use of the Services, Platform(s) and/or Deliverables will be uninterrupted or error-free; or

(b) the Services, Platform(s) and/or Deliverables and/or the information obtained by you through them will meet your requirements; and

(c) the Services will be free from Viruses.

5.3.2. are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the internet or other communications networks and facilities. You acknowledge that the Services, Platform(s) and/or Deliverables may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.4. If the Services do not conform with Clauses 5.1 to 5.3 above, we shall, at our option and expense:

5.4.1. use all reasonable commercial endeavours to correct any such non-conformance promptly; or

5.4.2. provide you with an alternative means of accomplishing the desired performance.

Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in Clause 5.1 above.

5.5. This Agreement shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation products and/or services which are similar to those provided under this Agreement.

6. CUSTOMER'S OBLIGATIONS

6.1. You shall:

6.1.1. be solely responsible for administering charity donations in accordance with all charity points earned by Authorised Users via the Services / Platform(s) and shall provide us with any evidence of such donations made, as we may reasonably require from time to time:

(a) at the end of the Challenge Term; and

(b) thereafter to the extent any further donations are raised in connection with the Challenge;

6.1.2. provide us with:

(a) all necessary co-operation in relation to this Agreement; and

(b) all necessary access to information as may be required by us,

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

6.1.3. comply with all Applicable Law with respect to your activities under and in relation to this Agreement;

6.1.4. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by us and you, we may adjust any agreed timetable or performance/delivery schedule as reasonably necessary;

6.1.5. ensure that the Authorised Users use the Services, Platform(s) and/or Deliverables in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of your obligations under this Agreement;

6.1.6. obtain and maintain all necessary licences, consents and permissions necessary for us, our employees, officers, subcontractors and agents to perform their obligations under this Agreement, including without limitation the Services;

6.1.7. ensure that your network and systems comply with the relevant specifications provided by us from time to time;

6.1.8. be, to the extent permitted by Applicable Law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing your network connections and telecommunications links (whether from your systems to our data centres or otherwise) and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet;

6.1.9. in respect of individuals who are under 18 years old, who you permit to become Authorised Users:

(a) notify us in advance of granting such permission;

(b) procure that the parents or legal guardians of that individual register the Authorised User's account on the Platform(s) and by doing so give consent and assume responsibility for that individual's use of the Services, Platform(s) and/or Deliverables;

(c) provide us with evidence of your compliance with 6.1.9(b) above as we may require; and;

(d) be solely responsible for any loss or damage arising as a result of a failure to comply with this Clause 6.1.9.

7. CHARGES AND PAYMENT

7.1. We will invoice you for the Charges after the end of the Challenge Term. In the event that the Charges are a fixed % of Challenge donations, we reserve the right to raise further invoices to capture income received after the end of the Challenge Term



- 7.2. Unless otherwise stated in this Agreement, you will pay each invoice within 30 days of the date of invoice. You will also provide to us and maintain during the Challenge Term:
- 7.2.1. valid, up-to-date and complete credit card details which you authorise us to charge in accordance with the terms of this Agreement; or
- 7.2.2. where requested by us in writing, approved purchase order information acceptable to us; and
- 7.2.3. any other relevant valid, up-to-date and complete contact and billing details reasonably requested by us.
- 7.3. If we have not received payment within 20 Business Days after the due date, and without prejudice to any other rights and remedies of ours:
- 7.3.1. while the invoice(s) concerned remain unpaid, we may, without liability to you, disable your (and any Authorised User's) passwords, accounts and access to all or part of the Platform(s) and Services and shall be under no obligation to provide any or all of the Services, Platform(s) and/or Deliverables; and
- 7.3.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of our bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.4. All amounts and charges stated or referred to in this Agreement:
- 7.4.1. shall be payable in pounds sterling;
- 7.4.2. are non-cancellable and non-refundable;
- 7.4.3. are exclusive of VAT, which shall be added to our invoice(s) at the appropriate rate; and
- 7.4.4. shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Applicable Law).
- 7.5. If, at any time whilst using the Services, you exceed any amount of disk storage space as may be specified in the Deliverables, we will charge you, and you shall pay, us the relevant excess storage charges listed in the Deliverables.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1.1. You acknowledge and agree that we and/or our licensors own all Intellectual Property Rights in the Services, Platform(s) and/or Deliverables and this Agreement does not grant you any rights to, under or in, any Intellectual Property Rights, or any other rights or licences in respect of the Services, Platform(s) and/or Deliverables.
- 8.2. We confirm that we have all the rights in relation to the Services, Platform(s) and/or Deliverables that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of this Agreement.

9. CONFIDENTIALITY

- 9.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 9.1.1. was, is or becomes publicly known other than through any act or omission of the receiving party in breach of this Agreement;
- 9.1.2. was available to the receiving party on a non-confidential basis before the disclosure;
- 9.1.3. was in the other party's lawful possession before the disclosure;
- 9.1.4. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 9.1.5. is independently developed by the receiving party.
- 9.2. Save as expressly set out in this Agreement, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 9.3. Each party shall take all reasonable steps to ensure that each other's Confidential Information to which it has access is not disclosed or distributed by its employees, officers, subcontractors or agents in violation of the terms of this Agreement.
- 9.4. Each party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by Applicable Law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 9.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.5. Notwithstanding Clause 3 (Customer Data) and Clauses 9.1 to 9.4 above, you agree that we may:
- 9.5.1. publicise our relationship with you, including by reference in any marketing materials, tenders, company statements, so long as such publicity does not divulge any Customer Data or details of the Charges; and
- 9.5.2. where the relevant Customer Data has been aggregated and anonymised in accordance with good industry practice, review, collect, process, disclose and sell all or any part of it both:
- (a) internally and to members of our group (whether for training purposes, to improve our customer support, for the completion of improvements to the Services, Platform(s) and/or Deliverables or otherwise); and
- (b) to third parties.



- 9.6. You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute our Confidential Information.
- 9.7. We acknowledge that the Customer Data is your Confidential Information.
- 9.8. The above provisions of this Clause 9 shall survive termination of this Agreement, however arising.

10. INDEMNITY

- 10.1. You shall defend, indemnify and hold us harmless 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 your use of the Services, Platform(s) and/or Deliverables, provided that:
 - 10.1.1. you are given prompt notice of any such claim;
 - 10.1.2. we provide reasonable co-operation to you in the defence and settlement of such claim, at your expense; and
 - 10.1.3. you are given sole authority to defend or settle the claim.
- 10.2. We shall defend you, your officers, directors and employees against any claim that the Services, Platform(s) and/or Deliverables infringes any Intellectual Property Rights effective in the United Kingdom as of the Effective Date or right of confidentiality, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
 - 10.2.1. We are given prompt notice of any such claim;
 - 10.2.2. We are given sole authority to defend or settle the claim; and
 - 10.2.3. you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense.
- 10.3. In the defence or settlement of any claim, we may procure the right for you to continue using the relevant Services, Platform(s) and/or Deliverables, replace or modify the relevant Services, Platform(s) and/or Deliverables so that they become non-infringing, or if such remedies are not reasonably available, terminate this Agreement on 2 Business Days notice to you without any additional liability or obligation to pay liquidated damages or other additional costs to you.
- 10.4. In no event shall we, our employees, officers, sub-contractors or agents be liable to you to the extent that the alleged infringement is based on:
 - 10.4.1. a modification of the Services, Platform(s) and/or Deliverables by anyone other than us;
 - 10.4.2. your (and any Authorised User's) use of the Services, Platform(s) and/or Deliverables in a manner contrary to this Agreement or the instructions given to you by us; or
 - 10.4.3. your (and any Authorised User) use of the Services, Platform(s) and/or Deliverables after notice of the alleged or actual infringement from us or any appropriate authority.
- 10.5. This Clause 10, subject to Clause 11.3 (Limitation of Liability), states your sole and exclusive rights and remedies, and our (including our employees, officers, sub-contractors and agents) entire obligations and liability, for infringement of any Intellectual Property Rights or right of confidentiality.

11. LIMITATION OF LIABILITY

- 11.1. Except as expressly and specifically provided in this Agreement:
 - 11.1.1. you assume sole responsibility for results obtained from the use of the Services, Platform(s) and/or Deliverables by you, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts you provide to us in connection with the Services, Platform(s) and/or Deliverables, or any actions taken by us at your direction;
 - 11.1.2. 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
 - 11.1.3. the Services, Platform(s) and/or Deliverables are provided to you on an "as is" basis
- 11.2. Nothing in this Agreement excludes our liability:
 - 11.2.1. for death or personal injury caused by our negligence; or
 - 11.2.2. for fraud or fraudulent misrepresentation.
- 11.3. Subject to Clause 11.1 and Clause 11.2 above:
 - 11.3.1. We 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, sales, business, anticipated savings or agreements, loss of or depletion of goodwill and/or similar losses, loss or corruption of software, data or information, pure economic loss or any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - 11.3.2. Our total aggregate liability in contract (including in respect of 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 Charges paid to us by you during the 12 months immediately preceding the date on which the claim arose.

12. TERM AND TERMINATION

- 12.1. Unless:
 - 12.1.1. stated otherwise in the "Renewal Period" section of the Order Form; or
 - 12.1.2. terminated earlier in accordance this Clause 12, this Agreement shall commence on the Effective Date and shall continue for the Challenge Term except:
 - (a) to the extent either party gives the other party not less than 60 days' written notice to expire on the date of the expiry of the Initial Term or then current Renewal Period, in which case this entire Agreement shall terminate upon that expiry date; or
 - (b) if otherwise terminated in accordance with this Agreement; or



- (c) to the extent that provisions of this Agreement are expressly or by implication required to survive the termination or expiry of this Agreement.
- 12.2. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 12.2.1. the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment;
- 12.2.2. the other party 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 20 Business Days after being notified in writing to do so;
- 12.2.3. the other party suspends payment of its debts, 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;
- 12.2.4. the other party 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;
- 12.2.5. the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 12.2.6. 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 that other party 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;
- 12.2.7. 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 other party (being a company, partnership or limited liability partnership);
- 12.2.8. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 12.2.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 12.2.10. 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 other party's assets and such attachment or process is not discharged within 14 days;
- 12.2.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 12.2.3 to Clause 12.2.10 (inclusive);
- 12.2.12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 12.2.13. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
- 12.2.14. there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 12.3. Without affecting any other right or remedy available to us, we may terminate this Agreement with immediate effect by giving written notice to you, if you:
- 12.3.1. fail (on any single or continuing basis) to process any or all Challenge donations, or provide us with evidence of the same in accordance with your obligations at Clause 6.1.1;
- 12.3.2. fail to comply with your obligations under Clause 6.1.9.
- 12.4. On termination of this Agreement for any reason:
- 12.4.1. all licences granted under this Agreement shall immediately terminate;
- 12.4.2. you shall immediately cease all use of the Services, Platform(s) and/or Deliverables;
- 12.4.3. each party shall return to the other party at its own expense and make no further use of, any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- 12.4.4. We may destroy or otherwise dispose of any of the Customer Data and / or the Deliverables in our possession, unless we receive, no later than 10 days after the date of termination, a written request for the delivery to you of the then most recent back-up of the Customer Data and/or any applicable Deliverables. We shall use reasonable commercial endeavours to deliver the back-up to you within 30 days of our receipt of such a written request, provided that you have, at that time paid all sums outstanding at and resulting from termination (whether or not due at the date of termination), agreed to pay such sums as we may specify in respect of any reasonable expenses incurred by us in returning or disposing of Customer Data and/or any applicable Deliverables.
- 12.4.5. any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect; and
- 12.4.6. any rights, remedies, obligations or liabilities of either party 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.
- 13. GENERAL**
- 13.1. Force Majeure:**
- 13.1.1. We shall have no liability to you under this Agreement if we are prevented from or hindered or delayed in performing our obligations under this Agreement (in whole or in part), or if



performing our obligations under this Agreement is rendered more onerous (in whole or in part), or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control (a "**Force Majeure Event**").

13.1.2. Force Majeure Events shall include:

- (a) strikes or other industrial disputes (whether involving our workforce or the workforce of any other party);
- (b) failure of a utility service, transport network or communications network or facility;
- (c) failure of one or more data centres;
- (d) acts of God;
- (e) government actions;
- (f) pandemic, epidemic or other notifiable disease or public health emergency;
- (g) the imposition of travel restrictions;
- (h) terrorism, war, riot, civil commotion, malicious damage;
- (i) compliance with Applicable Law or any governmental order, rule, regulation or direction (including those caused directly or indirectly by the coronavirus (COVID-19) outbreak);
- (j) accident;
- (k) breakdown of equipment (electronic or otherwise);
- (l) fire, flood, storm or other natural disaster;
- (m) default of suppliers or sub-contractors; or
- (n) import or export regulations or embargoes.

13.1.3. The occurrence of a Force Majeure Event shall not release you from your obligation to pay any sum due under the terms of this Agreement.

13.2. **Conflict:** If there is an inconsistency between any parts of this Agreement they shall prevail in the following order:

13.2.1. Order Form; and

13.2.2. Terms and Conditions.

13.3. **Notices:**

13.3.1. Any notice required to be given under this Agreement shall be in writing and shall be:

- (a) 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
- (b) sent by e-mail to any e-mail address provided for the purpose by the other party (which includes any e-mail address used or provided by you when negotiating this Agreement).

13.3.2. A notice:

- (a) delivered by hand shall be deemed to have been received when delivered (or if delivery is not in

business hours, at 9.00 am on the first Business Day following delivery);

- (b) 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; and
- (c) sent by e-mail shall be deemed to have been received at the time of transmission.

13.3.3. This Clause 13.3 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13.4. **Variation:** No variation of this Agreement shall be effective unless it is agreed by the parties in writing.

13.5. **Waiver:**

13.5.1. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by Applicable 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.

13.6. **Entire Agreement:**

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

13.6.2. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

13.6.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

13.7. **Assignment And Sub-Contracting:**

13.7.1. You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Agreement.

13.7.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under this Agreement.

13.8. **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.

13.9. **Governing Law and Jurisdiction:** 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. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.