



THIS AGREEMENT is made between:

- (1) **ActiveXchange PTY LTD** incorporated and registered in Australia with company number 627 386 127 whose office is at 233 Castlereagh Street, Sydney, Australia (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 data relating to member records, bookings, attendance, purchases and from time to time other business operations (such as programming, memberships, clubs and facilities) 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 take steps to anonymise all such data that it receives from the Client; will store that data securely, and will never contact individual customers/members of the Client without the Client's prior authorisation to do so.

These terms do not regulate the provision by the Company of Services using data processing. The parties recognise that provision of the Services shall be governed by a separate agreement (scope document or email specification).

IT IS HEREBY AGREED:

1. INTERPRETATION

The definitions and rules of interpretation set out in Schedule 1 shall apply to this Agreement.

2. TERM

- 2.1 The Term of this agreement shall commence on the Effective Date and it shall endure for the full duration of the Service Agreement (separate document).

3. USE OF DATA

- 3.1 In consideration of receipt of the full functionality of the Services the Client shall provide the Company with the Client Data described in the Background section of this Agreement and any supporting data transfer documentation provided.

- 3.2 The Client specifically authorises the Company to use the Client Data described in clause 3.1 such data in order to provide the Services and as set out in this Agreement and any other related Client Service Agreements.
- 3.3 The parties agree that the Client shall retain ownership of all right, title and interest in and to all of the Client Data which it transfers to the Company.
- 3.4 The Client warrants that it has and will maintain all necessary rights, licences, consents and authorisations to transmit the Client Data to the Company and to permit it to be processed for the purposes contemplated by this Agreement.
- 3.5 The Client warrants that all Client 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.
- 3.6 The Client hereby grants to the Company an exclusive, non-transferable perpetual, irrevocable, fully paid-up right and licence to use the Client Data for:
- 3.6.1 the provision of the Services contemplated by this Agreement and any other Service agreement agreed to with the Client.
- 3.7 The Client recognises that in providing the Services the Company will anonymise Client Data with which it is provided, but makes no guarantee that any Client Data will be anonymised to a degree which makes it impossible for a determined individual to identify an individual from it, as for profiling activity, and appending of other data sets, this level of identification is required. The Client agrees that the Company shall have the right to combine the Client Data with similar data received from third parties and to create combined aggregated (anonymised) data products using it.
- 3.8 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).
- 3.9 The parties agree that it is their intention that the Client is, and shall continue to be, the data controller and the Company shall be a data processor in respect of all Personal Data transferred pursuant to the terms of this Agreement and:
- 3.9.1 the Client warrants that it shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 3.9.2 the Company shall process the Client Data only in accordance with the terms of this Agreement; and

3.9.3 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Client Data or its accidental loss, destruction or damage.

3.10 The Client recognises that the Company may anonymise and use Client Data supplied pursuant to this Agreement, in an aggregated non-identifiable and non-commercially sensitive format, to provide goods and/or services to third parties. Such services may include without limitation consultancy services, or the provision of aggregated data insights into a particular industry or sector trend.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

4.1.1 provide the Company with:

4.1.1.1 all necessary co-operation in relation to this agreement;
and

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

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

4.1.2 comply with all local and federal applicable laws and regulations with respect to its activities under this agreement;

4.1.3 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;

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

4.1.5 where relevant, 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.

4.2 The Client recognises that, in order to perform its obligations hereunder, the Company may collect Client Data directly from Linked Member Management 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 Member Management Software Providers to make such transfers of Client Data to the Company.

- 4.3 Where the Client uses Linked Member Management Software it may be easier for the Company to use that Linked Member Management 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 Member Management Software Provider collecting such Client Data and transferring it to the Company pursuant to clause 4.2.
- 4.4 The Client acknowledges that in the circumstances described in clause 4.2 and 4.3. that the Linked Member Management Software Provider shall be a mere conduit of the Client Data acting on the instructions of the Company. Accordingly the Client releases the Linked Member Management 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 Member Management Software Provider from any liability that may arise as a result of it doing so.

5. INDEMNITY

- 5.1 Subject to the Company's compliance with the provisos set out in clause 5.3 the Client shall defend, indemnify and hold harmless the Company 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 (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.
- 5.2 Subject to the Client's compliance with the provisos set out in clause 5.3 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 data privacy acts 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).
- 5.3 For a party indemnified by the terms of this Agreement (an "Indemnified Party") to be eligible to receive the benefit of an indemnity offered by the other (the "Indemnifying Party"), the Indemnified Party must:
 - 5.3.1 give the Indemnifying Party immediate notice of any claim that it reasonably considers might engage the relevant indemnity;

- 5.3.2 make no admission of liability or offer to settle in respect of any such claim without first receiving written permission from the Indemnifying Party;
- 5.3.3 give to the Indemnifying Party all reasonably requested co-operation and assistance in the defence and settlement of such claim; and
- 5.3.4 give the Indemnifying Party sole authority to defend or settle the relevant claim.

6. TERM AND TERMINATION

- 6.1 This agreement shall commence on the Effective Date and shall continue for the duration of the Client's receipt of Services from the Company pursuant to the terms of the Service Agreement. On the termination or expiry of Services for any reason, this Agreement shall automatically terminate.
- 6.2 On termination of this agreement for any reason:
 - 6.2.1 The Client shall cease to provide Client Data to the Company and the Company shall cease collecting the same from the Client;
 - 6.2.2 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
 - 6.2.3 the parties recognise that the termination of this Agreement shall not oblige the Company to delete, destroy or return any Client 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 Client Data (and anonymised data products created using that Client Data) for the purpose of providing services to third parties as envisaged by this Agreement.

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

9. 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).

10. NOTICES

- 10.1 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.

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.

11. 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 the state or country related to the where Services are provided to the Client

12. JURISDICTION

Each party irrevocably agrees that the courts of the location whereby Services are provided to the Client 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 the date that it is accepted by the Client.



Schedule 1 – Interpretation and Definitions

The definitions and rules of interpretation set out in this Schedule 1 shall apply to 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.

"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.

“Privacy Act”: the Privacy Act 1988, as amended or updated, and/or or such legislation as may replace or supplement it from time to time.

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

“Linked Member Management 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 Member Management Software Provider”: a provider of member and activity data capture software installed at venues or used within programs.

“Personal Data”: shall have the meaning set out in the Privacy Act 1988 or, in the event of its implementation in the UK, the General Data Protection Regulation. In this Agreement the Personal Data that will be collected in relation to the Client’s customers/members is their email address, gender, postcode, age and/or date of birth.

“Quarter”: one of the quarter periods of 3 months ending on 31 March, 30 June, 30 September and 31 December in each calendar year.

“Service Agreement”: means the agreement(s) 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 Company.

"Services": the services to be provided by the Company pursuant to the Service Agreement.

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

Other definitions:

- Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 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.
- A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 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.
- 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.
- A reference to writing or written includes faxes but not e-mail.
- 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.