

## Myzone Software as a Service Agreement – Version 13 March 2024

### Software as a Service Agreement

This Agreement governs the Customer's purchase and use of the Services and the Documentation. Capitalised terms have the definitions set out in Clause 1 below.

By ticking the "I agree to and accept the Terms of Service (including the Privacy Policy) and Facility Licence. I understand my contract is for a minimum term of 12 months" box or the "By continuing you are agreeing to Myzone's terms and conditions" box during the Registration Process, the Customer agrees to and accepts the terms and conditions of this Agreement. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such company or other entity to the terms and conditions of this Agreement. If the individual accepting this Agreement does not have such authority, or does not agree with the terms and conditions of this Agreement, such individual must not accept this Agreement, and the Customer and the individual shall not use the Services.

If the Customer is located in one of the countries or USA States referred to in Schedule 1, the additional terms and conditions relating to that country or USA State set out in Schedule 1 shall apply.

This Agreement is effective between the Customer and Myzone as of the Effective Date.

Myzone shall include a copy of this Agreement in the registration confirmation email the Customer receives from Myzone following completion of the Registration Process.

#### Agreed terms

#### 1. Interpretation

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

**Add-Ons:** means any additional features and benefits which Myzone may develop, provide or make available to the Customer from time to time as part of the Services, and which may require the payment of additional fees by the Customer to Myzone.

**Affiliate:** means any legal entity which is affiliated with the Customer, whether by way of common control, membership, or otherwise.

**Agreement:** means this Software as a Service Agreement, together with its Schedules, and such amendments in writing as may subsequently be agreed by the Parties.

**Authorised Users:** those employees, agents and independent contractors, who are aged at least 18 years old, of: (i) the Customer; and (ii) where set out in the Quotation, the Customer's Affiliates which are located in the same country as the Customer, who are authorised by Myzone and the Customer to use the Services and the Documentation, as further described in Clause 2.3(b).

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

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 10.1.

**Contract Year:** means a period of 12 months from either: (1) the Effective Date; or (2) an anniversary of the Effective Date.

**Customer:** means the Customer organisation identified in the Registration Process.

**Data Sharing Schedule:** means Schedule 2 to this Agreement.

**Documentation:** the document(s) made available to the Customer by Myzone online via [www.myzone.org/business](http://www.myzone.org/business) or such other web address notified by Myzone to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

**Effective Date:** means the date the Customer receives a registration confirmation email from Myzone following completion of the Registration Process.

**End Users:** means the clients of: (i) the Customer; and (ii) where set out in the Quotation, the Customer's Affiliates, who access and use the Software for their own personal and individual physical exercise activities.

**Fees:** means the SaaS Subscription Fee, the MZ-Open Subscription Fee and the Support Services Fee.

**Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance from regulatory and advisory bodies (whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User relating to security of network and information systems and security breach and incident reporting requirements, which may include, without limitation, the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

**Initial MZ-Open Subscription Period:** has the meaning given in Clause 2.9.

**Initial SaaS Subscription Term:** the initial term of this Agreement, which shall be 12 months from and including the date of expiry of the Trial Period.

**Intellectual Property Rights:** means any patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade

names and rights in domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights of whatever nature and howsoever arising, including all applications for (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 and including the right to sue or take any action for past infringements of any of the foregoing rights.

**Mandatory Policies:** Myzone's business policies and codes notified to the Customer from time to time, as amended by Myzone from time to time upon notice to the Customer.

**Myzone:** means Myzone Limited incorporated and registered in the Isle of Man with company number 006566V whose registered office is at Level 3, Gordon House, 10a Prospect Hill, Douglas, IM1 1EJ, Isle of Man.

**MZ-Open Subscription:** means, in respect of each End User, the annual subscription to access and use the Myzone Open mobile software application in conjunction with the Customer's SaaS Subscription, which is activated by the Customer or the Customer's Affiliates or any member of their respective personnel via the Myzone Owner portal.

**MZ-Open Subscription Fee:** means the annual fee payable by the Customer to Myzone in respect of each MZ-Open Subscription, as set out in the Quotation.

**MZ-Open Subscription Renewal Period:** has the meaning given in Clause 2.9.

**Normal Business Hours:** 9.00 am to 5.30 pm local UK time, each Business Day.

**Party:** means either Myzone or the Customer as the context so requires, and the term "**Parties**" means both Myzone and the Customer.

**Quotation:** means the quote for the Services which is generated by the subscription platform used by the Customer to purchase the Services.

**Registration Process:** means the online registration process followed by the Customer in order to register for access to and use of the Services (which, for the avoidance of doubt, includes the Customer indicating its acceptance of the terms and conditions of this Agreement by ticking the applicable box).

**SaaS Renewal Period:** the period described in Clause 13.1.

**SaaS Subscription:** means the subscription purchased by the Customer pursuant to Clause 8.1(a) which: (i) entitles Authorised Users to access and use the Services and the Documentation in accordance with this Agreement; and (ii) allows the End Users to interact with the relevant features of the Services which are intended to be used by such End Users.

**SaaS Subscription Fee:** the fees payable by the Customer to Myzone in respect of the SaaS Subscription, as set out in the Quotation.

**SaaS Subscription Term:** has the meaning given in Clause 13.1 (being the Trial Period, the Initial SaaS Subscription Term together with any subsequent SaaS Renewal Periods).

**Services:** the subscription services provided by Myzone to the Customer under this Agreement via [www.moves.myzone.org](http://www.moves.myzone.org) or any other website notified to the Customer by Myzone from time to time, as more particularly described in the Documentation.

**Software:** the online software applications and Add-Ons provided by Myzone as part of the Services.

**Support Services:** means Myzone's standard customer support services, as more particularly described in the Support Services Policy.

**Support Services Fee:** the fees (if any) payable by the Customer to Myzone for the Support Services, as set out in the Quotation.

**Support Services Policy:** Myzone's policy for providing support in relation to the Services as made available at [www.moves.myzone.org](http://www.moves.myzone.org) or such other website address as may be notified to the Customer from time to time.

**Trial Period:** means the trial period during which the Customer is entitled to use the Services free of charge, starting from and including the Effective Date and continuing for the duration set out in the Quotation (or such other duration agreed by the Parties in writing) unless terminated earlier by the Customer pursuant to Clause 13.3.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 The words and phrases 'includes' and 'in particular' (as well as any similar words or expressions) shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider interpretation of those words and phrases is possible, and shall be deemed to be followed by the words "without limitation" (where those words have not already been included in this Agreement).
- 1.10 A reference to **writing** or **written** includes email.
- 1.11 References to Clauses and Schedules are to the clauses and schedules of this Agreement; references to Paragraphs are to paragraphs of the relevant Schedule to this Agreement.

## **2. SaaS Subscription and MZ-Open Subscriptions**

- 2.1 During the Registration Process, the Customer shall, in respect of its access to and use of the Services, select one of the licence types offered by Myzone which is appropriate for the nature and structure of its organisation.
- 2.2 Subject to the Customer purchasing the SaaS Subscription in accordance with Clause 8.1, the restrictions set out in this Clause 2.2 and the other terms and conditions of this Agreement, Myzone hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to: (i) permit the Authorised Users to access and use the Services and the Documentation; and (ii) allow the End Users to interact with the relevant features of the Services which are intended to be used by such End Users, in each case during the SaaS Subscription Term solely for the Customer's internal business operations.
- 2.3 In relation to the Authorised Users, the Customer undertakes that:

- (a) each Authorised User shall keep a secure password for their use of the Services and Documentation and that each Authorised User shall keep their password confidential;
- (b) it shall maintain a written, up-to-date list of current Authorised Users and provide such list to Myzone within 5 Business Days of Myzone's written request at any time or times;
- (c) it shall permit Myzone or Myzone's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at Myzone's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and
- (d) if any of the audits referred to in Clause 2.3(c) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Myzone's other rights, the Customer shall promptly disable such passwords and Myzone shall not issue any new passwords to any such individual.

2.4 The Customer shall not introduce, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes any loss, damage or injury to any person or property,

and Myzone reserves the right, without liability or prejudice to its other rights in relation to the Customer, and/or this Agreement, to disable the Customer's access to the Services and/or any material that breaches the provisions of this Clause 2.4.

2.5 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the Parties and except to the extent expressly permitted under this Agreement:

- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or
  - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
  - (c) use the Services and/or Documentation to provide services to third parties;
  - (d) subject to Clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users and the End Users;
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 2;
  - (f) introduce or permit the introduction of, any Virus or Vulnerability into the Services or Myzone's network and information systems; or
  - (g) modify any of the data relating to the End Users which is submitted to the Services so that it becomes inaccurate or incomplete.
- 2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Myzone.
- 2.7 The rights provided under this Clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.8 The Customer and the Customer's Affiliates (or any member of their respective personnel) may from time to time during the SaaS Subscription Term activate MZ-Open Subscriptions in respect of End Users.
- 2.9 Each MZ-Open Subscription shall commence on the date during any month that such MZ-Open Subscription is activated and shall (unless this Agreement is terminated in accordance with Clause 13) continue for a period of 12 months thereafter ("**Initial MZ-Open Subscription Period**"), and, if the relevant End User continues using the Myzone Open mobile software application in conjunction with the Customer's SaaS Subscription and subject to the Customer paying the MZ-Open Subscription Fees, such MZ-Open Subscription

shall (unless otherwise terminated in accordance with Clause 2.10 or unless this Agreement is terminated in accordance with Clause 13) automatically renew for successive periods of 12 months thereafter (each a “**MZ-Open Subscription Renewal Period**”).

- 2.10 In respect of any End User, the Customer may notify Myzone in writing or electronically before the expiry of the Initial MZ-Open Subscription Period or the relevant MZ-Open Subscription Renewal Period (as applicable) that it wishes to terminate that End User’s ability to use the Myzone Open mobile software application in conjunction with the Customer’s SaaS Subscription. If the Customer notifies Myzone of such termination in accordance with this Clause 2.10, the relevant End User’s MZ-Open Subscription will terminate at the end of the Initial MZ-Open Subscription Period or the relevant MZ-Open Subscription Renewal Period (as applicable).

### **3. Services**

- 3.1 Myzone shall, during the SaaS Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms and conditions of this Agreement.
- 3.2 Myzone shall use reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 04.00 am to 06.00 am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that Myzone has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 3.3 Myzone will, as part of the Services and in consideration of the Support Services Fee (if any), provide the Customer with the Support Services during Normal Business Hours in accordance with Myzone's Support Services Policy in effect at the time that the Services are provided. Myzone may amend the Support Services Policy in its sole and absolute discretion from time to time. If Myzone offers enhanced support services to the Customer the Customer may purchase such enhanced support services separately at Myzone's then current rates.

### **4. Data protection**

- 4.1 Terms used in this Clause and the Data Sharing Schedule, unless otherwise defined, shall have the meaning given to them in the UK GDPR. For the purposes of this Clause, the UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.



- 4.2 The Parties acknowledge and agree that each Party is an independent controller of any personal data which is made available by the Services and the Parties shall, in respect of such personal data, comply with their respective obligations under applicable privacy and data protection laws. The Customer shall provide its own privacy notice (which does not conflict with the provisions of this Agreement), if required, to the End Users to fulfil its obligations under applicable privacy and data protection laws.
- 4.3 Furthermore, each Party agrees to comply with the obligations referred to in the Data Sharing Schedule.
- 4.4 Subject at all times to the End Users providing appropriate consent, Myzone shall share with the Customer, and the Customer shall have the right to access and use, any or all of the data submitted to the Services which relates to the End Users, as referred to at [www.myzone.org/legal](http://www.myzone.org/legal) (as updated by Myzone from time to time), in accordance with any restrictions in the Data Sharing Schedule.

## **5. Third party providers**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Myzone makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Myzone. Myzone recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Myzone does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **6. Myzone's obligations**

- 6.1 Myzone shall use reasonable endeavours to make the Services available substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2 Myzone's obligations at Clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Myzone's instructions, or modification or alteration of the Services by any party other than Myzone or Myzone's duly authorised contractors or agents. If the Services do not conform with the terms of Clause 6.1, Myzone will, at its expense, use reasonable endeavours to correct any such non-conformance promptly or provide the Customer with an alternative means of accomplishing the desired

performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of Clause 6.1.

### 6.3 Myzone:

(a) does not warrant that:

- (i) the Customer's use of the Services will be uninterrupted or error-free; or
- (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
- (iii) the Software or the Services will be free from Vulnerabilities or Viruses; or
- (iv) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications networks and facilities.

6.4 This Agreement shall not prevent Myzone 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.

6.5 Myzone warrants that the Services shall, in all material respects, provide the features and functionality set out at [www.myzone.org/package-options](http://www.myzone.org/package-options) (as updated by Myzone from time to time).

## 7. Customer's obligations

7.1 The Customer shall:

(a) provide Myzone with:

- (i) all necessary co-operation in relation to this Agreement; and
- (ii) all necessary access to such information as may be required by Myzone;

in order to provide the Services, including security access information and configuration services;

(b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Myzone may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Myzone, its contractors and agents to perform their obligations under this Agreement, including the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Myzone from time to time; and
- (g) be, to the extent permitted by applicable law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Myzone's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **8. Charges and payment**

8.1 Following the Trial Period, the Customer shall pay:

- (a) the SaaS Subscription Fees to Myzone for the SaaS Subscription in accordance with this Clause 8 and the Quotation; and
- (b) the Support Services Fee to Myzone in accordance with this Clause 8 and the Quotation.

8.2 The Subscription Fee and Support Services Fee shall be due on the first day of the Initial SaaS Subscription Term and thereafter at the billing frequency set out in the Quotation. The Customer shall pay such Fees in accordance with the payment terms set out in the Quotation.

8.3 The Customer shall, in respect of any MZ-Open Subscriptions which are activated or automatically renewed during any month pursuant to Clause 2.9, pay the relevant MZ-Open Subscription Fees for such MZ-Open Subscriptions on the first day of the immediately following month (or such other payment date agreed to by Myzone in writing).

8.4 For the avoidance of doubt, and except as otherwise specified in this Agreement: (i) the Subscription Fees payable are based on the number of MZ-Open Subscriptions activated and not actual usage; (ii) a MZ-Open

Subscription can only be terminated upon the expiry of the Initial MZ-Open Subscription Period or a MZ-Open Subscription Renewal Period; and (iii) the Customer's payment obligations for the MZ-Open Subscriptions are non-cancellable during the Initial MZ-Open Subscription Period or any subsequent MZ-Open Subscription Renewal Period.

- 8.5 The Customer shall pay the Fees by a direct debit, credit card or bank transfer at the billing frequency set out in the Quotation. The Customer is responsible for providing Myzone with valid, up-to-date, complete and accurate credit card details (if applicable) and contact and billing details, and for notifying Myzone of any changes to such information. If the Customer provides its credit card details to Myzone, the Customer hereby authorises Myzone to bill such credit card for the Fees on the dates and at the billing frequency set out in the Quotation.
- 8.6 If Myzone has not received payment within 7 days after the relevant due date, and without prejudice to any other rights and remedies of Myzone (including for the avoidance of doubt the right to receive payment of the Fees in full from the Customer):
- (a) Myzone may, on no less than 5 Business Days' notice to the Customer and without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Myzone shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) 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 Myzone's bankers in the Isle of Man from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.7 All amounts and fees stated or referred to in this Agreement:
- (a) shall be payable in the currency stipulated in the Quotation;
  - (b) are, subject to Clause 12.3(a), non-cancellable and non-refundable;
  - (c) are exclusive of value added tax and/or other similar taxes, duties or levies or other deductions or withholdings in countries or jurisdictions outside the United Kingdom, which shall be payable by the Customer at the appropriate rate.
- 8.8 In the event that the Customer charges the End Users any amounts in relation to the Services and/or the Myzone Open mobile software application, then the Customer shall be solely responsible for paying all applicable taxes associated with such amounts at the appropriate rate and shall promptly reimburse Myzone for any tax liability incurred by Myzone as a result of such charging activity by the Customer.

8.9 Myzone shall be entitled to increase the Fees at the start of each SaaS Renewal Period in line with the percentage increase in the UK Consumer Prices Index in the preceding 12 month period, plus 5%.

## 9. Proprietary rights

9.1 The Customer acknowledges and agrees that Myzone and/or its licensors own all Intellectual Property Rights in the Services (including any data and information submitted to the Services) and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights or any other rights or licences in respect of the Services or the Documentation. All Intellectual Property Rights not expressly granted are hereby reserved to Myzone.

## 10. Confidentiality and compliance with policies

10.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a Party or its Representatives (as defined below) to the other Party and that Party's Representatives whether before or after the date of this Agreement in connection with this Agreement, including:

- (a) the terms of this Agreement or any agreement entered into in connection with this Agreement;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing Party (or of any member of the group of companies to which the disclosing Party belongs); and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party (or of any member of the group of companies to which the disclosing Party belongs); and
- (c) any information developed by the Parties in the course of carrying out this Agreement and the Parties agree that details of the Services, and the results of any performance tests of the Services, shall constitute Myzone Confidential Information.

**Representatives** means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisers.

10.2 The provisions of this Clause shall not apply to any Confidential Information that the receiving Party can show:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this Clause);
  - (b) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
  - (c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
  - (d) the Parties agree in writing is not confidential or may be disclosed; or
  - (e) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 10.3 Each Party shall keep the other Party's Confidential Information secret and confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 10.
- 10.4 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause.
- 10.5 A receiving Party may disclose Confidential Information of the disclosing Party to the extent such Confidential Information is required to be disclosed by 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 disclosing 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 10.5, it takes into account the reasonable requests of the disclosing Party in relation to the content of such disclosure.
- 10.6 A Party may, provided that it has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other Party of such disclosure.

- 10.7 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Clause are granted to the other Party, or to be implied from this Agreement.
- 10.8 On termination or expiry of this Agreement, each Party shall:
- (a) destroy or return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
  - (b) erase all the other Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
  - (c) certify in writing to the other Party that it has complied with the requirements of this Clause, provided that a recipient Party may retain one set of documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Clause shall continue to apply to any such documents and materials retained by a recipient Party, subject to Clause 13.
- 10.9 No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.10 Except as expressly stated in this Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information.
- 10.11 The above provisions of this Clause 10 shall continue to apply after termination or expiry of this Agreement.
- 10.12 In performing its obligations under this Agreement the Customer shall comply with the Mandatory Policies.

## **11. Indemnity**

- 11.1 The Customer shall defend, indemnify and hold harmless Myzone against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;

- (b) Myzone provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

## **12. Limitation of liability**

12.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Myzone shall have no liability for any damage caused by errors or omissions in any data, information, instructions or scripts provided to Myzone by the Customer in connection with the Services, or any actions taken by Myzone at the Customer's direction;
- (b) all warranties, representations, statements, conditions and all other terms of any kind whatsoever, express or implied, statutory or otherwise are, to the maximum extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

12.2 Nothing in this Clause 12 or any other provisions of this Agreement limits or excludes Myzone's liability:

- (a) for death or personal injury caused by Myzone's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any matter in respect of which it would be unlawful for Myzone to exclude or restrict liability.

12.3 Subject to Clause 12.1, Clause 12.2 and Clause 12.4,

- (a) Myzone's maximum aggregate liability under or in connection with this Agreement for the totality of all claims in relation to this Agreement where the causes of the claim arise in a particular Contract Year shall be limited to the greater of:
  - (i) 100% of the total Fees (excluding any taxes in respect of those Fees) paid by the Customer to Myzone in the relevant Contract Year in which the causes of the claims arose; and
  - (ii) £500 GBP.

By way of illustration, if two different claims arose at different times, where the causes of both of those claims occurred in Year 1, and if the applicable Subscription Fees in Year 1 which have been paid by the Customer to Myzone were £4,000+VAT, then the maximum amount recoverable by the Customer against Myzone, for the totality of those



two claims, would be £4,000 (and not £4,000 per claim; and not £4,000+VAT).

- 12.4 Subject to Clause 12.1 and Clause 12.2, Myzone shall have no liability for any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill, wasted expenditure (including management time) and/or any similar losses or damage or loss or corruption of data or information, or pure economic loss, or for any type of special, indirect or consequential loss, costs, damages, charges or expenses.
- 12.5 References to liability in this Clause 12 include every kind of liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.6 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Myzone's Intellectual Property Rights.

### **13. Term and termination**

- 13.1 This Agreement shall, unless otherwise terminated as provided in this Clause 13, commence on the Effective Date and shall continue for the Trial Period, the Initial SaaS Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **SaaS Renewal Period**), unless:

- (a) either Party notifies the other Party of termination, in writing, at least 90 days before the end of the Initial SaaS Subscription Term or any SaaS Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial SaaS Subscription Term or SaaS Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

and the Trial Period, the Initial SaaS Subscription Term together with any subsequent SaaS Renewal Periods shall constitute the **SaaS Subscription Term**.

- 13.2 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:
- (a) 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 21 days after being notified in writing to make such payment;
  - (b) the other Party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;

- (c) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts, including without limitation within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, including without limitation, within the meaning of section 268 of the IA 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (d) 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;
- (e) the other Party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) 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;
- (g) 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);
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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 13.2(c) to Clause 13.2(j) (inclusive);

- (l) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - (m) 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.
- 13.3 The Customer may, at any time during the Trial Period, terminate this Agreement for convenience and no payments shall be payable by the Customer for the Services used during that Trial Period.
- 13.4 On termination of this Agreement for any reason:
- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all access to and use of the Services and/or the Documentation, and accordingly, the End Users shall no longer be able to use the Myzone Open mobile software application in conjunction with the Customer's SaaS Subscription;
  - (b) each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party;
  - (c) any rights for the Customer to access or use any of the data made available by the Services will terminate or end and the Customer shall have no rights to or in it; and
  - (d) 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.

#### **14. Force majeure**

Neither Party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 2 months, the Party not affected may terminate this Agreement by giving 21 days' written notice to the affected Party.

#### **15. Conflict**

To the extent of any conflict or ambiguity between any of the provisions referred to within this Agreement or the Schedules, the following decreasing order of precedence will apply (with the earlier provisions therefore prevailing over the latter to this extent): (1) Clause 12; (2) the Data Sharing Schedule; (3) the Clauses of the main body of the Agreement (other than Clause 12); (4) Schedule 1.

## **16. Variation**

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

## **17. Waiver**

17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **18. Rights and remedies**

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

## **19. Severance**

19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

19.2 If any provision or part-provision of this Agreement is deemed deleted under Clause 19.1 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **20. Entire agreement**

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

20.2 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.

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

20.4 Nothing in this Clause shall limit or exclude a Party's liability for fraud or fraudulent misrepresentation.

## **21. Assignment**

21.1 The Customer shall not, without the prior written consent of Myzone, assign, novate, transfer, charge, subcontract or deal in any other manner with any of its rights and obligations under this Agreement.

21.2 Myzone may at any time assign, novate, transfer, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement.

## **22. No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other Party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **23. Third party rights**

23.1 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), including without limitation, pursuant to the Contracts (Rights of Third Parties) Act 1999.

23.2 The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.

## **24. Notices**

24.1 All notices and other communications hereunder shall be in writing and sent by e-mail to the following addresses (or an address substituted in writing by the Party to be served):

(a) Myzone's contact email address: phil@myzone.org, with a copy to licenses@myzone.org, and

(b) The Customer's email address provided by the Customer during the Registration Process.

24.2 Any notice shall be deemed to have been received at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 24.2, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

**25. 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 interpreted in accordance with the law of England.

**26. Jurisdiction**

In the event of a dispute arising, the Parties agree that the dispute shall be referred to and finally resolved by arbitration (rather than court proceedings), under the UNCITRAL Arbitration Rules (2021), which rules are deemed to be incorporated by reference into this Clause 26. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London and the language of the arbitral proceedings shall be English. The governing law of the arbitration agreement shall be the substantive law of England. The appointing authority shall be the London Court of International Arbitration.

## **Schedule 1 – Additional territory specific provisions**

- 1.1 If you are a Customer located in the United States of America, the additional provisions set out in Part 1 of Schedule 1 shall apply.
- 1.2 If you are a Customer located in Australia, the additional provisions set out in Part 2 of Schedule 1 shall apply.

## Part 1 of Schedule 1 – United States of America

1. If the Customer is in New Jersey, Clause 12 (warranties and disclaimers and limitation of liability) are intended to be, and are, only as broad as is permitted under the laws of the state of New Jersey. If any provision of these Clauses is held to be invalid under the laws of the state of New Jersey, the invalidity of such provision shall not affect the validity of the remaining provisions of the applicable Clauses.

2. **Electronic Communications**

The Customer is communicating with Myzone electronically when the Customer uses the Services, the Myzone Open mobile software application, or sends an email to Myzone. The Customer agrees that all agreements, notices, disclosures and other communications that Myzone provides to the Customer electronically satisfy any legal requirement that such communications be in writing. When the Customer registers for the Services, Myzone collects and stores the Customer's email address. From that point forward, the Customer's email address is used to send the Customer information about Myzone's products and services unless the Customer opts-out of such emails.

3. **Notifications**

Myzone may provide notifications to the Customer as required by law or for marketing or other purposes via (at its option) email to the primary email associated with the Customer's account, hard copy, or posting of such notice on the Myzone website. Myzone is not responsible for any automatic filtering the Customer or its network provider may apply to email notifications. Myzone recommends that the Customer add @Myzone.com URLs to its email address book to help ensure the Customer receives email notifications from Myzone. For notifications made by e-mail, the date on which the message is sent will be deemed the date on which such notification is transmitted.

4. Clause 5 of this Agreement shall be deleted and replaced in its entirety with the following wording:

**"5 Third party providers or linked websites**

The Customer acknowledges that the Services may enable or assist it to access the website content or advertising of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Myzone makes no representation, warranty or commitment and shall have no liability or obligation for loss, damage or whatsoever in relation to the third party, including without limitation, the content, availability or use of, or correspondence with, any such third-party website, or any transactions completed, any third party products or services or any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Myzone. Myzone recommends that the



Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Myzone does not control, endorse or approve any third-party website nor the content of or products or services on any of the third-party websites, including any third party products and services made available via the Services.”

5. Clause 6.3 of this Agreement shall be deleted and replaced in its entirety with the following wording:

“6.3 Myzone:

(a) does not warrant that:

- (i) the Customer's use of the Services will operate continuously, be uninterrupted or error-free; or
- (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
- (iii) the Software or the Services will be free from Vulnerabilities or Viruses; or
- (iv) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.

(b) is not responsible for any delays, unavailability, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, unavailability, delays and other problems inherent in the use of such communications networks and facilities.”

6. Clauses 12.1 and 12.2 of this Agreement shall be deleted in its entirety and replaced with the following:

“12.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Myzone shall have no liability for any damage caused by errors or omissions in any data, information, instructions or scripts provided to Myzone by the Customer in connection with the Services, or any actions taken by Myzone at the Customer's direction;
- (b) all warranties, representations, statements, conditions and all other terms of any kind whatsoever, express or implied, statutory or otherwise, including without limitation, all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, are, to the maximum extent permitted by applicable law, excluded from this Agreement and disclaimed by Myzone; and

- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

12.2 Nothing in this Clause 12 or any other provisions of this Agreement limits or excludes Myzone's liability:

12.2.1 for death or personal injury to the extent caused by Myzone's negligence;

12.2.2 to the extent caused by fraud or fraudulent misrepresentation; or

12.2.3 to the extent such liability relates to any matter in respect of which it would be unlawful for Myzone to exclude or restrict liability."

- 7. Clauses 12.4 and 12.5 of this Agreement shall be deleted in its entirety and replaced with the following:

"12.4 Subject to Clause 12.1 and Clause 12.2, Myzone shall have no liability for any loss (whether direct or indirect) of profits, business, business opportunities, revenue, sales, turnover, reputation or goodwill, wasted expenditure (including management time) and/or any similar losses or damage or loss or corruption of data or information, or pure economic loss, or for any type of special, indirect, punitive, incidental or consequential loss, costs, damages, charges or expenses, arising out of or in any way connected with the subject matter of this Agreement.

12.5 References to liability in this Clause 12 include every kind of liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, strict liability, restitution or otherwise, even if the breaching Party has been advised of the possibility of damages."

- 8. Clause 13.2(e) of this Agreement shall be deleted in its entirety and replaced with the following:

"the other Party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986 or upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings;"

- 9. Clause 14 of this Agreement shall be deleted in its entirety and replaced with the following:

**"14. Force majeure**

Neither Party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations (other than the obligation to pay money) if such delay or failure results from events, circumstances or causes beyond its reasonable control, including without limitation, acts of God, civil commotion, riot, terrorist attack, war, fire, explosion, storm, flood, earthquake, epidemic or other natural disaster, failure or interruption of public or private telecommunications networks or impossibility of the use of any means of public or private transport. The time for performance of such obligations shall

be extended accordingly. If the period of delay or non-performance continues for 2 months, the Party not affected may terminate this Agreement by giving 21 days' written notice to the affected Party.”

## Part 2 of Schedule 1 - Australia

1. The Customer is only required to pay additional fees for any Add-Ons if the Customer wishes to access or use the relevant Add-On.
2. In respect of all personal data which is made available by the Services or which is collected or received by a Party or disclosed to them under this Agreement, each Party will handle all such information in accordance with their respective obligations under the applicable requirements of the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles),
3. Notwithstanding Clause 6.2 of this Agreement, Myzone's obligations at Clause 6.1 of this Agreement shall not apply only to the extent of any non-conformance which is caused by use of the Services by the Customer, an Authorised User or an End User contrary to Myzone's instructions, or modification or alteration of the Services by any party other than Myzone or Myzone's duly authorised contractors or agents.
4. Under Clause 7.1(e) of this Agreement, the Customer is only required to obtain and maintain a licence, consent, and permission which is necessary for the Customer to obtain in order for Myzone, its contractors and agents to be able to perform their obligations under this Agreement, including the Services.
5. Clause 7.1(g) of this Agreement shall be deleted and be of no force and effect and instead the Customer is, to the extent permitted by applicable law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Myzone's data centres, and all problems, conditions, delays, delivery failures arising from or relating to the Customer's network connections or telecommunications links.
6. Myzone will take reasonable steps to keep the Software and Services secure.
7. For the purposes of Clause 13.2(n), control also has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).
8. At any time during a SaaS Renewal Period or MZ-Open Subscription Renewal Period, the Customer may terminate this Agreement or notify Myzone of termination of the MZ-Open Subscription (as applicable) by providing Myzone with no less than 30 days' notice.
9. The Customer may terminate this Agreement by providing notice to Myzone if:
  - a. Myzone notifies the Customer of, or otherwise requires the Customer to comply with, any new Mandatory Policy, Support Services Policy or specifications for the Customer's network or systems;
  - b. Myzone makes any material amendment to any existing Mandatory Policy, Support Services Policy, specifications for the Customer's network or systems or description of the Services; or
  - c. Myzone removes any material features or functionality of the Services.
10. Upon the termination of this Agreement under Clause 14 of this Agreement, by the Customer under Clause 13 of this Agreement or Clause 8 or Clause 9 of this

Schedule 1, Myzone must refund to the Customer an amount equal to the Fees paid by the Customer to Myzone in advance for the Services not yet provided at the date of termination, calculated on a pro rata basis relating to the amount of the SaaS Subscription Term remaining as at the date of termination. Upon the termination of an MZ-Open Subscription under Clause 8 of this Schedule 1, Myzone must refund to the Customer an amount equal to the MZ-Open Subscription Fees paid by the Customer to Myzone in advance for the Services of the MZ-Open Subscription not yet provided at the date of termination, calculated on a pro rata basis relating to the amount of the MZ-Open Subscription Renewal Period remaining as at the date of termination.

11. If the Customer is a Consumer (as defined in section 3 of the Australian Consumer Law) and Myzone supply goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption (**PDH Goods or Services**) to the Customer, Myzone acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law (**Consumer Guarantees**) as they apply to the PDH Goods or Services supplied by Myzone and nothing in this Agreement should be interpreted as attempting to exclude, restrict or modify the application of those rights.

12. If the Customer is a Consumer and any goods or services supplied by Myzone to the Customer are non PDH Goods or Services, Myzone's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at Myzone's discretion) to:

a. in the case of goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and

b. in the case of services: (i) the supplying the services again; or (ii) the payment of the cost of having the services supplied again.

13. Subject to Clause 12.6 of this Agreement and Clauses 11 and 12 of this Schedule 1, the Customer's maximum aggregate liability under or in connection with this Agreement for the totality of all claims in relation to this Agreement where the causes of the claim arise in a particular Contract Year shall be limited to the greater of:

a. 100% of the total Fees (excluding any taxes in respect of those Fees) paid by the Customer to Myzone in the relevant Contract Year in which the causes of the claims arose; and

b. \$1,000.

By way of illustration, if two different claims arose at different times, where the causes of both of those claims occurred in Year 1, and if the applicable Subscription Fees in Year 1 which have been paid by the Customer to Myzone were \$8,000+GST, then the maximum amount recoverable by Myzone against the Customer, for the totality of those two claims, would be \$8,000 (and not \$8,000 per claim; and not \$8,000+GST).

14. Clause 13 of this Schedule 1 does not apply in relation to any claim which Myzone may make against the Customer in respect of the Customer's obligation to pay the Fees (including any amount under Clause 8.6(b) of this Agreement).

15. Subject to Clause 12.6 of this Agreement, the Customer shall have no liability for any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill, wasted expenditure (including management time) and/or any similar losses or damage or loss or corruption of data or information, or pure economic loss, or for any type of special, indirect or consequential loss, costs, damages, charges or expenses.

16. References to liability in Clauses 12 to 15 of this Schedule 1 include every kind of liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

17. In this Clause, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act. Unless otherwise expressly stated in writing in this Agreement or a Quotation, all amounts payable by the Customer in connection with this Agreement do not include an amount for GST. If GST is payable on any supply made by Myzone under this Agreement, the Customer must pay to Myzone, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply.

18. Clause 15 of this Agreement shall be deleted in its entirety and shall be replaced with the following wording:

**"15. Conflict**

To the extent of any conflict or ambiguity between any of the provisions referred to within this Agreement or the Schedules, the following decreasing order of precedence will apply (with the earlier provisions therefore prevailing over the latter to this extent): (1) Clause 4 and Clause 12 ((to the extent Clause 12 applies in relation to the UK or EU General Data Protection Regulations); (2) the Data Sharing Schedule; (3) Schedule 1; and (4) the Clauses of the main body of the Agreement (other than Clause 4 and Clause 12 (to the extent Clause 12 applies in relation to the UK or EU General Data Protection Regulations))."

19. Clauses 11, 20 and 26 of this Agreement are deleted and will have no force and effect.

20. Myzone may only assign, novate, transfer, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement without the consent of the Customer if the assignment, novation, transfer, charge, subcontract or dealing does not adversely affect the Customer's rights and Myzone remains responsible for the performance of its obligations under this Agreement.

## Schedule 2 – Data Sharing Schedule

For the purposes of this Schedule:

- (a) 'data exporter' shall mean Myzone and 'data importer' shall mean the Customer;
- (b) References to 'personal data' shall only be to 'personal data' transferred or made available to the Customer in respect of End Users by Myzone; and
- (c) References to a 'data subject' shall mean the applicable End User to whom the personal data relates.

### **Purpose limitation**

The data importer shall process the personal data only for the purpose of providing a service to End Users through the Services.

It may only process the personal data for another purpose:

- (a) where it has obtained the data subject's prior consent;
- (b) where necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (c) where necessary in order to protect the vital interests of the data subject or of another natural person.

### **Accuracy and data minimisation**

The data importer shall ensure that the personal data is accurate and, where necessary and possible, kept up to date. The data importer shall take every reasonable step to ensure that personal data that is inaccurate, having regard to the purpose(s) of processing, is erased or rectified without delay.

The data importer shall ensure that the personal data is adequate, relevant and limited to what is necessary in relation to the purpose(s) of processing. If it believes it does not need to receive, or obtain access to, any data for the purposes set out above, it shall immediately notify the data exporter.

### **Storage limitation**

The data importer shall, where the personal data is held by the data importer, and not merely accessed, retain the personal data for no longer than necessary for the purpose(s) for which it is processed. It shall put in place appropriate technical or organisational measures to ensure compliance with this obligation, including erasure or anonymisation of the data and all back-ups at the end of the retention period, as applicable.

### **Security of processing**

The data importer shall implement appropriate technical and organisational measures to ensure the security of the personal data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, it shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. It shall in particular consider having recourse to encryption or pseudonymisation, where the purpose of processing can be fulfilled in that manner.

The data importer shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

In the event of a personal data breach concerning personal data processed by the data importer under this Agreement, the data importer shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects.

In case of a personal data breach that is likely to result in a risk to the rights and freedoms of natural persons, the data importer shall without undue delay notify the data exporter. Such notification shall contain i) a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), ii) its likely consequences, iii) the measures taken or proposed to address the breach, and iv) the details of a contact point from whom more information can be obtained. To the extent it is not possible for the data importer to provide all the information at the same time, it may do so in phases without undue further delay.

In case of a personal data breach that is likely to result in a high risk to the rights and freedoms of natural persons, the data importer shall also notify without undue delay the data subjects concerned of the personal data breach and its nature together with the information referred to in the paragraph above, points ii) to iv), unless the data importer has implemented measures to significantly reduce the risk to the rights or freedoms of natural persons, or notification would involve disproportionate efforts. In the latter case, the data importer shall instead issue a public communication or take a similar measure to inform the public of the personal data breach.

The data importer shall document all relevant facts relating to the personal data breach, including its effects and any remedial action taken, and keep a record thereof.

Where required by applicable law, the data importer shall also inform applicable regulators within any timescales prescribed by applicable law, about the personal data breach.

#### **Sensitive data**

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences (hereinafter 'sensitive data'), the data importer shall apply specific restrictions and/or additional safeguards adapted to the specific nature of the data and the risks involved. This may include restricting the personnel permitted to access the personal data, additional security measures (such as pseudonymisation) and/or additional restrictions with respect to further disclosure.

#### **Onward transfers**

The data importer shall not disclose the personal data to a third party unless the third party agrees to be bound by the clauses set out in this Schedule, unless such transfer is to an entity in a country which has been deemed adequate by the Isle of Man for the purposes of data protection.

#### **Processing under the authority of the data importer**

The data importer shall ensure that any person acting under its authority, including a processor, processes the data only on its instructions.

#### **Documentation and compliance**

The importer shall be able to demonstrate compliance with its obligations under this Schedule. In particular, the data importer shall keep appropriate documentation of the processing activities carried out under its responsibility.