

LEVEL 2 DATA SHARING AGREEMENT

The detail below is a copy of the full Data Shared Agreement. By reading this it does not commit you to this level. In order to officially agree to a Shared Data Agreement you will need to visit the [Myzone Owner 2.0 Dashboard](#) where you can select and sign your identified Level. It is important that you take action before May 25th 2018.

LEVEL 2 DATA SHARING AGREEMENT BETWEEN MYZONE LIMITED AND THE FACILITY

1. Interpretation

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

1.2. Definitions:

Agreed Policies	means a privacy policy, subject access request policy, breach report policy, complaint handling and ICO audit/investigation policy, each compliant with the Data Protection Laws;
API	means an Application Programming Interface for the Facility's version of the Myzone Data Platform;
Aggregator Entity	means a third party entity operating in the role of a Data Processor on behalf of the Facility subject to an appropriate agreement with the Facility. The Facility will provide the Aggregator Entity with an API which will enable them to access the Personal Data via its own version of the Myzone Data Platform for the purpose of analysing the Personal Data in accordance with the terms of the agreement between the Facility and the Aggregator Entity.
Applicable Law	means: <ul style="list-style-type: none">(a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the services are provided to or in respect of;(b) the common law and laws of equity as applicable to the parties from time to time;(c) any binding court order, judgment or decree;(d) any applicable industry code, policy or standard; or(e) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
Bribery Laws	means the Bribery Act 2010 and any similar or equivalent laws in any other relevant jurisdiction;
Business Day	means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London;
Complaint	means a complaint or request relating to either party's obligations under Data Protection Laws relevant to this Agreement, including any compensation claim from a Data Subject or any notice, investigation or other action from a Supervisory Authority;
Confidential Information	means information disclosed by or on behalf of a party (the discloser) to the other party (the recipient) under or in connection with this Agreement which is marked as confidential, or which the discloser has indicated to the recipient is confidential, or which would be regarded as confidential by a reasonable business person, including the Shared Data;
Contact Person	means for each party the contact points identified at clause 5.1;
Control	has the meaning given in the Corporation Tax Act 2010, s 1124;
Data Controller	has the meaning given to that term (or to the term ' controller ') in Data Protection Laws;
Data Processor	has the meaning given to that term (or to the term ' processor ') in Data Protection Laws;

Data Protection Laws	<p>means any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to Myzone and/or the services, including:</p> <p>(a) in the United Kingdom and in the Isle of Man:</p> <p style="padding-left: 40px;">(i) the Data Protection Act 1998 (UK) and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC (ePrivacy Directive); and/or</p> <p style="padding-left: 40px;">(ii) the General Data Protection Regulation (EU) 2016/679 (GDPR), and/or any corresponding or equivalent national laws or regulations (Revised National DP Law);</p> <p>(b) in the Isle of Man:</p> <p style="padding-left: 40px;">(i) the Data Protection Act (Isle of Man) 2002; and/or</p> <p style="padding-left: 40px;">(ii) the revised Data Protection Act (Isle of Man) 2002;</p> <p>(c) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and the ePrivacy Directive, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and</p> <p>(d) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority;</p>
Data Subject	has the meaning given to that term in Data Protection Laws;
Data Subject Request	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
Derivative Works	has the meaning given in clause 9.2;
End Users	means the individual user of the Myzone Belt and recipient of the Myzone Services who records their Personal Data via the Myzone Belt and uploads said Personal Data in accordance with the terms and conditions of their user agreement with Myzone;
Facilities Data Sharing Agreement	means the data sharing agreements (of which there are 4 levels) entered into between Myzone and its various Facilities. The different levels of agreement reflect the degree of the Facilities' access and sharing of the Shared Personal Data;
Facility	means any commercial fitness centre, corporate facility, educational facility, retailer or other concern using the Myzone System and receiving the Shared Data including the Shared Personal Data;
Intellectual Property Rights	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights and, in each case: whether registered or not; including any applications (and the right to apply) to protect or register such rights; including all renewals and extensions of such rights or applications; whether vested, contingent or future; and wherever existing;
International Organisation	means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;
Myzone	means Myzone Ltd, incorporated in the Isle of Man, British Isles with company number 006566V, whose registered office is at Falcon House, Ridgeway Street, Douglas, Isle of Man IM1 1EL, British Isles;
Myzone Belt	means the End User operated belt device purchased by or for an End User which that End User registers to its relevant facility and then uses as an interface to the Myzone System to record Personal Data;

Myzone Data Platform	means the platform on the Myzone System used to store personal data relating to an End User;
Myzone Group	means Myzone and its associated companies: Myzone (UK) Ltd, incorporated in the Isle of Man British Isles with company number 006610V, whose business address and registered office is at Falcon House, Ridgeway Street, Douglas, Isle of Man IM1 1EL, British Isles; Myzone (Worldwide) Ltd, incorporated in the Isle of Man British Isles with company number 006611V, whose business address and registered office is at Falcon House, Ridgeway Street, Douglas, Isle of Man IM1 1EL, British Isles; Myzone Inc, incorporated in Illinois, USA, number 70161892, whose business and registered address at 180 North Wabash Avenue, Suite 625, Chicago, IL 60601, USA; Myzone Group Ltd, incorporated in England and Wales, number 9634208, whose business address is at 5th Floor, Market Square House, St James Street, Nottingham, NG1 6FG, UK and registered office is at European House, 93 Wellington Road, Leeds, West Yorkshire, England, LS12 1DZ; Myzone (APAC) Pty Ltd, ACN 606 655 887, whose business address and registered address is at Unit 3, 17 Foley St, Balcatta, WA 6021, Australia;
Myzone System	means the Myzone personal monitoring system supplied by Myzone Group or an authorised distributor known as Myzonemoves, comprising the Myzone equipment supplied to the Facility, the Myzone Belt purchased by or for the User, the myzonemoves.com site and all related sites, the Myzone System Software and the user manuals and other documentation supplied, and related information systems;
Myzone System Software	means the personal monitoring and display software operated on the equipment, being the Myzone System equipment, as part of the Myzone System and any variations, modifications, copies, releases or enhancements thereof from time to time;
Permitted Purpose	in respect of Myzone's activity, this means the collection, recording and analysis of the Personal Data generated by the Myzone System and storage of said Personal Data in the Myzone Data Platform. In respect of the Facility's activity, this means accessing the Myzone Data Platform, downloading the Shared Data and processing the Shared Personal Data in connection with the End Users' exercise and other activities (as described in more detail at Schedule 1);
Personal Data	has the meaning given to that term in Data Protection Laws;
Personal Data Breach	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Shared Data;
processing	has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);
Shared Data	means data received from or on behalf of Myzone, or otherwise made available to the Facility for the Permitted Purpose, including the data described in Schedule 1 and including the Shared Personal Data;
Shared Personal Data	means Personal Data received from or on behalf of Myzone, or otherwise made available to the Facility for the Permitted Purpose, including the data described in Schedule 1;
Staff	means all persons employed by a party to perform its obligations under this Agreement together with that party's officers, staff, other workers, agents, Subcontractors engaged in the performance of its obligations under this Agreement;

Subcontractor	means each of: (a) each of the subcontractors, agents, representatives and consultants of a party engaged in the performance of that party's obligations under this Agreement or who provides or is involved in the use by that party of the Shared Data from time to time; and (b) each of the subcontractors, agents, representatives and consultants of a party's Subcontractor engaged in the performance of that party's obligations under this Agreement or who provides or is involved in the use by that party of the Shared Data from time to time (and so on);
Supervisory Authority	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws;
Technical and Organisational Measures	means the technical and organisational measures to protect the Shared Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected and which are set out in Schedule 3;

2. Term

This Agreement shall commence on the date it is signed electronically by the Facility and shall continue until terminated in accordance with clause 13 below.

3. Basis for sharing

- 3.1. The Facility undertakes to Myzone that it is not subject to the Data Protection Laws and in particular that it:
 - 3.1.1. is not established in the European Union (establishment to be defined as under the GDPR or any Revised National DP Law); and
 - 3.1.2. does not process Personal Data of data subjects who are in the European Union where the processing activities are related to:
 - (a) the offering of goods or services to such data subjects irrespective of whether a payment of any kind is required of the data subject; or
 - (b) the monitoring of the behaviour of such data subjects, as far as their behaviour takes place within the European Union.
 - 3.2. Myzone shall collect the Shared Data from the End Users through the Myzone Belts.
 - 3.3. Myzone shall share and shall grant the Facility access to the Shared Data via the Myzone Data Platform to such of the Shared Data as the End-User has given its explicit consent.
 - 3.4. The Facility shall be permitted to download the Shared Data (csv) from the Myzone Data Platform, also referred to as Myzone 2.0 and shall be provided with an API which will enable the Facility to maintain access to its own version of the Myzone Data Platform and to such of the Shared Data as the End-User has given its explicit consent, following termination of this Agreement.
 - 3.5. Myzone shall comply with all Data Protection Laws in respect of the performance of its obligations under this Agreement.
 - 3.6. The parties agree that:
 - 3.6.1. they shall each comply with all Applicable Laws in respect of the performance of their obligations under this Agreement;
 - 3.6.2. for the Shared Personal Data, Myzone and the Facility shall be Data Controllers;
 - 3.6.3. this Agreement relates to ongoing and routine data sharing; and
 - 3.6.4. it is necessary to share the Shared Data including the Shared Personal Data to achieve the Permitted Purpose.
 - 3.7. In consideration of the sharing of the Shared Data, the parties have agreed the terms set out in this Agreement.
 - 3.8. The parties shall comply with Schedule 2.
- ## 4. Status of the Data Controllers
- 4.1. Notwithstanding that the Facility is not subject to the Data Protection Laws, each of the parties agree that the other party is free to determine the purpose and means for which

the Shared Data is used and that as such, the Data Subjects may enforce their rights under the Revised Data Protection Laws as relevant and as applicable, against either party.

- 4.2. The parties:
 - 4.2.1. will not jointly determine the purpose and means of their own processing of the Shared Data;
 - 4.2.2. will act as data controllers who in common with the other, determine the purposes for which and the manner in which the Shared Data are processed; and
 - 4.2.3. shall at all times ensure that the independently determined purposes and means of their own processing shall be fully compliant with the Data Protection Laws.

5. Facility Data Protection Obligations

- 5.1. The Facility shall not by any act or omission cause Myzone (or any other person) to be in breach of any Data Protection Laws.
- 5.2. Data transfers - The Facility shall not transfer the Shared Data to any country outside the country in which the Facility is established or to any International Organisation unless such transfer complies with the requirements of Data Protection Laws, the Agreed Policies and Applicable laws.
- 5.3. Technical and Organisational Measures - When processing the Shared Data, the Facility shall comply with the Technical and Organisational Measures, and other terms set out at Schedule 3.
- 5.4. Personal Data Breaches - If a Personal Data Breach occurs in relation to the Shared Data or any Derivative Works processed by the Facility, the Facility shall:
 - (a) notify Myzone of the Personal Data Breach without undue delay, (but in no event later than 12 hours after becoming aware of the Personal Data Breach); and
 - (b) provide Myzone without undue delay (wherever possible, no later than 24 hours after becoming aware of the Personal Data Breach) with such details as Myzone reasonably requires regarding:
 - (i) the nature of the Personal Data Breach, including the categories and approximate numbers of Data Subjects and Shared Personal Data records concerned;
 - (ii) any investigations into such Personal Data Breach;
 - (iii) the likely consequences of the Personal Data Breach; and
 - (iv) any measures taken, or that the Facility recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects;provided that, (without prejudice to the above obligations) if the Facility cannot provide all these details within the timeframes set out in this clause 5.4, it shall (before the end of such timeframes) provide Myzone with reasons for the delay and when it expects to be able to provide the relevant details (which may be phased), and give Myzone regular updates on these matters.
- 5.5. The Facility's obligations under clause 5.4 shall be performed at the Facility's cost.
- 5.6. The Facility warrants and undertakes that it will:
 - 5.6.1. implement the Technical and Organisational Measures;
 - 5.6.2. implement procedures so that any third party it authorises to have access to the Shared Personal Data, including data processors, will respect and maintain the confidentiality and security of the Shared Personal Data. Any person acting under the authority of the Facility, including a data processor, shall be obligated to process the Shared Personal Data only on instructions from the Facility. This provision does not apply to persons authorised or required by law or regulation to have access to the Shared Personal Data;
 - 5.6.3. process the Shared Personal Data solely for the Permitted Purpose; and
 - 5.6.4. at the request of Myzone, supply Myzone with evidence of financial resources sufficient to fulfil its responsibilities under this Agreement, including liability for a breach of a third party's rights under this Agreement (which may include insurance coverage for such liability).
- 5.7. Restrictions on use and sharing of the API - The Facility must not share or disclose the API with an Aggregator Entity unless the following conditions are met prior to any such sharing or disclosure:

- 5.7.1. the Facility has notified Myzone in writing of its intention to share the API with an Aggregator entity. (Any sharing of the API, or access of the Myzone Data Platform via the API provided to the Facility by any entity other than the Facility, will be recorded by the Facility on the Facility's account);
- 5.7.2. the Facility and the Aggregator Entity have entered into an appropriate data processing agreement which governs the analysis services;
- 5.7.3. the Facility has informed the End Users of its use of data processors for the purposes of analysing their Personal Data (specifically the Aggregator Entity);
- 5.7.4. the Facility has informed the End Users of its data subject rights in respect of the processing of their Personal Data by the Aggregator Entity; and
- 5.7.5. the Facility has obtained the explicit consent of the relevant End Users to the Aggregator Entity's processing of their Personal Data, and specifically in respect to:
 - (a) the Facility providing the Aggregator entity with the API and thereby enabling the Aggregator Entity to access the End Users' Personal Data (as recorded and uploaded to the Myzone Data Platform via the Myzone Belt) via its own version of the Myzone Data Platform; and
 - (b) the Aggregator Entity's processing of their Personal Data.

6. Myzone Obligations

- 6.1. If a Personal Data Breach occurs in relation to the Shared Data accessible via the Myzone Data Platform, Myzone shall notify the Facility of the Personal Data Breach without undue delay and on the Facility's reasonable request, shall provide the Facility with such details as the Facility reasonably requires regarding; (a) the nature of the Personal Data Breach, (b) any investigations into such Personal Data Breach, (c) the likely consequences of the Personal Data Breach, and (d) any measures taken, or that Myzone recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects.
- 6.2. Without prejudice to any other rights or remedies of the Facility under this Agreement, or at law or otherwise, Myzone shall restore to the last available backup any of the Shared Data available via the Myzone Data Platform that has been lost, damaged or destroyed by the Personal Data Breach.
- 6.3. Myzone warrants that:
 - 6.3.1. the Shared Personal Data has been collected, processed and transferred in accordance with the Data Protection Laws as applicable to that Shared Personal Data;
 - 6.3.2. where the Facility seeks to rely on the consent of a Data Subject in order to process the Shared Personal Data, such consents have been recorded accurately, and evidence of such consents, and the applicable privacy notice and fair processing information, have been provided to the Facility as part of the Shared Data; and
 - 6.3.3. where the Shared Personal Data includes data that has been received by Myzone from a third party, or has been processed by a third party on behalf of Myzone, it has in place arrangements with those third parties which are adequate to permit Myzone to share the Shared Personal Data with the Facility, and for the Facility to process such data for the Permitted Purpose and otherwise in accordance with this Agreement.

7. General Data Protection Obligations

- 7.1. Data Subject Request and Complaint handling
- 7.2. In the event that either party, in their capacity as data controllers in common in respect of the Shared Personal Data (for the purposes of this clause called a **Recipient**) receives from a Data Subject or from the applicable Supervisory Authority:
 - 7.2.1. a Data Subject Request or Complaint; or
 - 7.2.2. an audit or an investigation,the Recipient shall notify the other party (for the purposes of this clause called a **Non-Recipient**) promptly and in any event within 2 (two) Business Days.
- 7.3. When receiving and responding to a Data Subject Request, a Complaint, an audit or an investigation, the Recipient shall:
 - 7.3.1. promptly respond, complying with the requirements of the Revised Data Protection Laws and the Agreed Policies at all times; and

7.3.2. ensure the Non-Recipient is aware of any notifications, and any responses provided to the relevant Data Subject.

7.4. Fair and transparent processing

So far as possible and as far as it is within that party's control, each party shall ensure that:

- (a) the Shared Personal Data is collected, processed and transferred in accordance with the Data Protection Laws as applicable to that Shared Personal Data;
- (b) all appropriate privacy notices comply with the Data Protection Laws and provide to each Data Subject sufficient information so as to enable fair processing of the Shared Personal Data;
- (c) all appropriate privacy notices have been made available to each relevant Data Subject as necessary to permit the sharing for the Permitted Purpose; and
- (d) if a Data Subject has withdrawn their consent, or a Data Subject has requested that their personal data is no longer processed by either party, for the relevant processing, then their personal data must not be included in the Shared Personal Data.

7.5. Accuracy of data

7.5.1. End Users will ultimately have control over the Personal Data that they manually or electronically input into the Myzone Data Platform and upload via their activities using the Myzone Belt. The End Users will manage the Personal Data that they consent to being processed by Myzone and by the Facility via their Myzone Belt Log-in. The parties shall ensure that this Personal Data is accurately reflected in the Shared Personal Data.

7.5.2. The Facility shall have the ability to make amendments and entries to the Shared Personal Data via access to the Myzone Data Platform and to the Facility's own version of the Myzone Data Platform. The Facility undertakes that at all times it shall ensure that any such amendments and/or entries are accurately reflected the Shared Personal Data.

7.5.3. The parties shall each conduct a periodic test of a sample of data which it holds in respect of the Shared Personal Data to test accuracy. Such test shall be conducted at least once per year of this Agreement. The parties may rely on a test of the same or substantially similar data set which it may have conducted in the previous 12 months, including under other data sharing arrangements with third parties.

8. Confidentiality

8.1. Each party undertakes that it shall not at any time during this Agreement and for a period of 5 years after termination, disclose to any other person Confidential Information disclosed to it by or on behalf of the other party, except as expressly permitted under this Agreement or with the prior written approval of the other party.

8.2. Each party may disclose the other party's Confidential Information to its Staff on a need-to-know basis and only to the extent necessary for the purposes of this Agreement; and its professional advisors and auditors, under conditions of confidentiality substantially the same as in this clause 8.

8.3. Clause 8.1 shall not apply to information which:

- 8.3.1. is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
- 8.3.2. is or comes into the public domain through no fault of the recipient or its Staff;
- 8.3.3. is independently developed by the recipient, without access to or use of such information; or
- 8.3.4. is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.

9. Intellectual Property Rights

9.1. All Intellectual Property Rights in the Shared Data are owned by and shall continue to be owned by Myzone and its licensors.

- 9.2. All Intellectual Property Rights in any works or materials created by the Facility and that are derived from the Shared Data or that comprise such Shared Data, (together, **Derivative Works**), shall be owned by the Facility, provided that at all times the Facility complies with clause 9.3 below.
- 9.3. The Facility may combine the Shared Data with the Facility's own data provided that the Facility shall ensure that the Shared Data:
 - 9.3.1. remains identifiable as the proprietary data of Myzone; and
 - 9.3.2. is only used for the Permitted Purpose.
- 9.4. Subject to the terms and conditions of this Agreement, Myzone hereby grants to the Facility a perpetual, non-exclusive, non-transferable, non-sublicensable, royalty-free, revocable licence to use (including edit, copy, modify or otherwise use in accordance with the terms of this Agreement) the Shared Data, downloaded (csv) by the Facility, solely for the Permitted Purpose.

10. Indemnity

- 10.1. The Facility shall indemnify and keep indemnified Myzone from and against all losses, damages claims, penalties, fines, costs (including legal costs) and judgments arising, suffered or incurred by Myzone as a result of any third-party claim that the Facility's use of the Shared Data, any modifications or Derivative Works gives rise to any third party claim or regulatory penalty imposed including by any relevant Supervisory Authority.
- 10.2. Myzone shall indemnify and keep indemnified the Facility from and against all losses, damages, claims, penalties fines, costs (including legal costs) and judgments arising, suffered or incurred by the Facility as a result of any third-party claim that the Facility's use of the Shared Data provided that it is in accordance with this Agreement and the requirements of the Data Protection Laws, gives rise to any third party claim or regulatory penalty imposed including by any relevant Supervisory Authority.
- 10.3. Each party (the **indemnifying party**) shall indemnify and keep indemnified the other party (the **indemnified party**) from and against all losses, damages claims, penalties, fines, costs (including legal costs, calculated on a full indemnity basis) and judgments arising, suffered or incurred by the indemnified party as a result of any third party claim that the indemnified party's use in accordance with this Agreement:
 - 10.3.1. in the case of Myzone, of the Shared Data; and
 - 10.3.2. in the case of the Facility, the Shared Personal Data, any modifications or Derivative Works provided to Myzone pursuant to clause 9.4 and 9.2;gives rise to any third-party claim or regulatory penalty imposed, including by any relevant Supervisory Authority.
- 10.4. The Facility (the indemnifying party) shall indemnify Myzone (the indemnified party) against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Myzone arising out of or in connection with any breach of the undertaking given at clause 3.1. This indemnity shall apply whether or not Myzone has been negligent or at fault.
- 10.5. The indemnified party shall:
 - 10.5.1. notify the indemnifying party in writing as soon as reasonably practicable after becoming aware of any matter in respect of which the indemnifying party indemnifies the indemnified party pursuant to clauses 10.1 and 10.2;
 - 10.5.2. use its reasonable endeavours to avoid and mitigate the losses which are subject to the indemnity at clauses 10.1 and 10.2;
 - 10.5.3. allow the indemnifying party full conduct of the defence of any such third party claim provided that the indemnified party may take over conduct of the defence, any judgement arising from which will be deemed binding on the indemnifying party, where the indemnified party reasonably believes that the indemnifying party's failure to conduct the third party claim diligently would be prejudicial to the indemnifying party in any respect; and
 - 10.5.4. not, without the indemnifying party's consent, (such consent not to be unreasonably conditioned, withheld or delayed) make any admission of liability, or enter into any agreement or compromise in relation to the matter in respect of

which the indemnifying party indemnifies the indemnified party pursuant to clauses 10.1 and 10.2, provided that the indemnified party may settle the third party claim (after giving prior written notice of the terms of settlement to the extent legally possible to the indemnifying party, but without obtaining the indemnifying party's consent) if the indemnified party reasonably believes that failure to settle the third party claim would be prejudicial to it in any material respect.

11. General warranties

- 11.1. Each party warrants and undertakes to the other party that:
- 11.1.1. it shall provide a copy of this Agreement to the applicable Supervisory Authority where required;
 - 11.1.2. it shall maintain an applicable registration with the Supervisory Authority as necessary to process the Shared Personal Data for the Permitted Purpose;
 - 11.1.3. it has the right, power and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - 11.1.4. to its knowledge there are no threatened or pending or actual court or regulatory actions, suits or proceedings against or affecting that party that might affect the ability of that party to meet and carry out its obligations under this Agreement;
 - 11.1.5. it is solvent and able to perform all of its obligations under this Agreement; and
 - 11.1.6. entering this Agreement will not cause that party to be in breach of any other contract to which it is a party or to be in breach of any statutory or other legal requirement.
- 11.2. The Facility warrants and undertakes to Myzone that it has the right, power and authority to give the undertaking given at clause 3.1.

12. Limitation of liability

- 12.1. The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause.
- 12.2. Subject to clause 12.8, in no event shall the liability of one party to the other (whether in contract, tort (including negligence) or otherwise) in respect any single claim or series of related claims arising under or in connection with this Agreement exceed £1,000,000.
- 12.3. Subject to clause 12.8, in no event shall the aggregate liability of one party to the other (whether in contract, tort (including negligence) or otherwise) in respect of all claims, losses and damages arising under or in connection with this Agreement exceed £1,000,000
- 12.4. Subject to clause 12.8, neither party shall be liable (whether in contract, tort (including negligence or otherwise) for consequential, indirect or special losses.
- 12.5. Subject to clause 12.8, neither party shall be liable (whether in contract, tort (including negligence) or otherwise) under or in connection with this Agreement for any of the following (whether direct or indirect); loss of profit; account of profit loss of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill.
- 12.6. The limitations of liability set out in clauses 12.1 and 12.3 shall not apply in respect of the Facility's obligations to pay Fees under this Agreement (if any).
- 12.7. Except as expressly stated in this Agreement, and subject to clause 12.8, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 12.8. Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
- 12.8.1. A breach of the warranty given at clause 11.2 or the related undertaking given at clause 3.1;
 - 12.8.2. death or personal injury caused by negligence;
 - 12.8.3. fraud or fraudulent misrepresentation;
 - 12.8.4. any other losses which cannot be excluded or limited by Applicable Law; and / or
 - 12.8.5. any losses caused by wilful misconduct.

13. Termination

- 13.1. This Agreement will terminate in the event of:
 - 13.1.1. termination of the Level 1 Facility Licence Agreement, in which event this Agreement will terminate simultaneously;
 - 13.1.2. the Facility electing to change its data sharing arrangement with Myzone by entering into a Level 3 or 4 Facilities Data Sharing Agreement, in which event, the Level 1 Facility Licence Agreement will continue in force and this Agreement will terminate immediately on execution, by application of the Facility's electronic signature, of the Level 3 or 4 Facilities Data Sharing Agreement; or
 - 13.1.3. the Facility electing to end any and all data sharing arrangements with Myzone in which event, the Level 1 Facility Licence Agreement will continue in force and this Agreement, and all data sharing provisions as relevant, will terminate immediately on the Facility's giving notice of termination to Myzone.
- 13.2. Myzone may at its sole discretion, terminate this Agreement with immediate effect in the event of:
 - 13.2.1. Myzone's discovery of any failure by the Facility to comply with the Data Protection Laws breach or threatened breach or suspected breach of the Data Protection Laws; or
 - 13.2.2. any Personal Data breach by convenience on not less than 15 Business Days prior written notice to the other, at any time.
- 13.3. Either party may terminate this Agreement by terminating, in accordance with its terms, the Facility Licence Agreement.
- 13.4. Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

14. Consequences of termination and exit

- 14.1. On termination of the Facility Licence Agreement and therefore of this Agreement, the Facility:
 - 14.1.1. shall have the right to retain the downloaded Shared Data (csv) and the API and so will continue to be a Data Controller in respect of the Personal Data generated and uploaded by the End-Users via the its own version of the Myzone Data Platform; and
 - 14.1.2. must comply with all of the obligations and requirements of the Data Protection Laws in respect of such Personal Data described at 14.1.1 above.
- 14.2. Any clauses in this Agreement that are expressly stated, or by implication intended, to apply after expiry or termination of this Agreement shall continue in full force and effect after such expiry or termination.

15. General

- 15.1. **Assignment** - No party may assign any of its rights under this Agreement, in whole or in part, without the other's prior written consent.
- 15.2. **Subcontracting** - The Facility shall not subcontract any of its obligations under this Agreement without Myzone's prior written consent.
- 15.3. **Anti-bribery** - For the purposes of this clause 15.3 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and guidance published under it.
 - 15.3.1. Each party shall ensure that it and each person referred to in clauses 15.3.2 to 15.3.4 (inclusive) does not, by any act or omission, place the other party in breach of any Bribery Laws. Each party shall comply with all applicable Bribery Laws in connection with the performance of this Agreement, ensure that it has in place adequate procedures to prevent any breach of this clause 15.3 and ensure that:
 - (a) all of its personnel and all direct and indirect Subcontractors of that party;
 - (b) all others associated with that party; and
 - (c) each person employed by or acting for or on behalf of any of those persons referred to in clauses (a) and/or (b);
involved in performing services for or on behalf of that party or with this Agreement so comply.

15.3.2. Without limitation to clause 15.3.1, neither party shall in connection with the performance of this Agreement make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

15.3.3. Each party shall immediately notify the other party as soon as it becomes aware of a breach of any of the requirements in this clause 15.3.

15.4. Entire agreement - The parties agree that this Agreement and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

15.5. Notices - Notices under this Agreement shall be in writing and sent to a party's address as set out below.

Myzone	Facility
phil@myzone.org	

Notices may be given, and shall be deemed received, when delivery has been acknowledged on the electronic document platform by email to the address above.

This clause does not apply to notices given in legal proceedings or arbitration.

15.6. Severance - If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

15.7. Governing law and Jurisdiction - This Agreement and any dispute or claim arising out of, or in connection with it shall be governed by, and construed in accordance with, the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

SIGNED for and on behalf of the

FACILITY by a duly
authorised representative:

Facility Details (This Agreement relates to the following Facility IDs)

1.

THE SHARED DATA AND DATA SUBJECTS

Description	Details
Permitted Purpose	<p>The Facility may view, download and extract the Personal Data generated by the Myzone System on the Myzone Data Platform and may edit or modify the Shared Personal Data, marked as editable below, on that platform in connection with an End User.</p> <p>The Facility may use the Shared Personal Data for using the features available on the Myzone System Software, which includes organising classes and group challenges.</p> <p>The Facility may also use the Shared Personal Data for the purpose of compiling reports to analyse the performance and data relating to its members/customers to improve its operational efficiency.</p> <p>For the avoidance of doubt, the Facility is not permitted to adapt or alter any of the Shared Personal Data that is marked as not editable below.</p>
Shared Data (including Shared Personal Data)	<p><u>Not editable</u></p> <p>First Name; Last Name; Nickname; Belt ID; Phone; Email; Additional Email; Date of Birth; Gender; Resting Heart Rate; Weight; Height; Waist.</p> <p>Data contained in the Myzone API from time to time, available upon request.</p> <p><u>Editable</u></p> <p>Limit Heart Rate; Maximum Heart Rate.</p>
Categories of Data Subject	End Users.
Retention period	The Facility must not retain the Shared Data for longer than it is permitted to do so under the Data Protection Laws.

2.

BASIS FOR SHARING - JUSTIFICATION FOR SHARING

1. Data sharing objectives

The parties have determined the following aims and objectives of sharing the Shared Personal Data for the Permitted Purpose:

- 1.1.1. The aim of this agreement is to permit a Facility to have access to certain data relating to its members where those members are also users of a Myzone Belt so that the Facility can assist in providing an effective and efficient experience to such users.
- 1.1.2. The Facility is permitted to have access to certain data so that it can compile reports to analyse the performance and data relating to its members/customers, to improve its operational efficiency.

2. Conditions for processing the Shared Personal Data

Myzone considers that it may share the Shared Personal Data with the Facility on the legal basis of - Consent being received from users of a Myzone Belt.

3. Benefits of data sharing

The parties have determined the following benefits will be derived by Data Subjects from sharing the Shared Personal Data:

- 3.1.1. The Facility will be able to enhance the workout experience of Myzone Belt users and make obvious corrections to their and maximum heart rate and apply a limit to their heart rate.
- 3.1.2. The Facility will be able to extend the range of services it provides to its members/customers and improve the manner in which services are delivered.

4. Registration details

- 4.1. Myzone's registration with the Information Commissioner (registered number N002814) is up to date and reflects the Permitted Purpose and the scope of the Shared Personal Data to be transferred.
- 4.2. Where relevant, the Facility's registration with the Information Commissioner is up to date and reflects the Permitted Purpose and the scope of the Shared Personal Data to be transferred.

Facility registered number:

5. Contact points

The contact point for each party is (or as notified to the other party in writing):

5.1.1. Myzone's contact point: Phil Whittam - phil@myzone.org

5.1.2. The Facility's contact point:

each of the above being a **Contact Person**.

- 5.2. The parties have designated the contact points identified above, as the contact points for individual Data Subjects of each respective party.

6. Risks of data sharing and mitigation measures

The parties have conducted a data protection impact assessment in respect of the sharing arrangements set out in this Agreement.

3.

TECHNICAL AND ORGANISATIONAL MEASURES

1. The agreed measures

- 1.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Facility shall implement appropriate Technical and Organisational Measures to ensure a level of security appropriate to the risk, which shall include the measures set out in this Schedule 3.
- 1.2. In assessing the appropriate level of security, the parties have taken account in particular of the risks that are presented by processing in the manner anticipated by this Agreement, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

2. Governance

- 2.1. The parties shall establish and maintain their own internal governance committee which shall assess on an ongoing basis, the overall effectiveness of the sharing arrangements set out in this Agreement including whether the:
 - 2.1.1. objectives as set out at Schedule 2 are being met;
 - 2.1.2. conditions for processing identified at Schedule 2 remain valid and are appropriate for the Permitted Purpose;
 - 2.1.3. benefits as set out at Schedule 2 are being delivered;
 - 2.1.4. technical and organisational measures as set out at Schedule 3 are adequate;
 - 2.1.5. arrangements reflect current practice and objectives of the parties;
 - 2.1.6. scope of the Permitted Purpose is still relevant and the scope for which the Shared Data is being used by the Facility has not been expanded without agreement of the parties;
 - 2.1.7. benefits to the Data Subjects, as stated at Schedule 2 are being realised; and
 - 2.1.8. Data Subjects are still the focus of the sharing arrangement.
- 2.2. This assessment shall be carried out on an ongoing basis and in the event that either party identifies a failing in the above, the Contact Person from that party shall notify the Contact Person from the other party and the parties will, within 30 days of the notification, create a combined governance committee which will meet promptly following creation, to address the identified failing.

3. Training

- 3.1. The Facility shall ensure each member of Staff completes appropriate mandatory training prior to handling any Personal Data. Such training shall include familiarising such Staff with the Facility's responsibilities with regard to data protection, information sharing, confidentiality, technical and organisational measures, and governance arrangements required under this Agreement. Such training shall be refreshed at least annually.
- 3.2. The Facility shall maintain written records of completion of such training by each member of Staff.

4. Security management

- 4.1. Myzone shall ensure the Shared Data is made available to the Facility via the Myzone Data Platform and shall be subject to the following security measures:
 - 4.1.1. the Facility will require Staff with Myzone Belt account to access the Myzone Data Platform.
 - 4.1.2. the Facility must advise to Myzone the Staff that they have vetted and that they wish Myzone to grant permission to in order that they can access the Myzone Data Platform.
- 4.2. Any Derivative Works shall be kept by the Facility securely and in an encrypted form, and they shall use all reasonable security practices and systems applicable to the use of the Personal Data to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution

of the Shared Data, including the following security measures, where relevant and/or feasible:

4.2.1. such as pseudonymisation; and/or

4.2.2. specific encryption methods as set out in Article 32(1) of the GDPR.

4.3. Any Shared Data downloaded by the Facility shall be kept by the Facility securely and in an encrypted form, and it shall use all reasonable security practices and systems applicable to the use of the Personal Data to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Shared Data.

5. Access management

5.1. The Facility shall only permit access to the Shared Data received from Myzone by such Staff as have a need to know (such need to know shall be determined as them being familiar and trained to use the Myzone System by the Facility) and have been subject to appropriate vetting.

5.2. The Facility shall take reasonable steps to ensure the reliability of its Staff who may have access to the Shared Data.

5.3. The Facility shall ensure that its Staff and anyone acting under its authority who has access to the Shared Personal Data is subject to a contract which prohibits processing the Shared Personal Data except on the instructions of that party unless required to do so under Applicable Law. That party shall have in place reasonable monitoring procedures to ensure compliance with such prohibition.

6. Data retention and disposal

6.1. All data forming part of the Shared Data which is held electronically will be stored in a secure network area with password protected entry and appropriate back-up functionality.

6.2. The Facility's system will be auditable so that it is possible for any auditor to establish who has accessed the system.

6.3. All laptops, computers, and any other portable devices used in relation to processing, storing or transferring the Shared Data will be encrypted.

6.4. The parties shall retain the Shared Data in accordance with the retention periods identified for the specific element of the Shared Data, and in accordance a compliant data retention and disposal policy and procedure.