

Terms & Conditions

Last updated: 17 January 2023

This agreement (“Agreement”) is between

1. Wellington Consulting S.R.L. (a company registered in Romania with registration number RO34646201, J40/7158/2015, Str. Traian Vasile Nr. 67, camera 1, etaj 2, ap 3, sector 1, Bucharest, România

(“we”, “us” or “our”)

2. and the client organisation (being a company, registered charity, public or local authority or otherwise) registering to set up and purchase Challenges through its setting up an account on CorporateChallenges.ro (all as defined below) (the “Client”, “you” or “your”).

IMPORTANT: BY ELECTING TO USE OR ACCESS CORPORATE CHALLENGES, THE CLIENT AGREES TO BE BOUND BY THE THEN CURRENT TERMS OF THIS AGREEMENT, TOGETHER WITH ANY ADDITIONAL TERMS REFERENCED IN, AND DEEMED INCORPORATED AS PART OF, THIS AGREEMENT, AND AS MAY BE AMENDED FROM TIME TO TIME BY WELLINGTON CONSULTING S.R.L. IN ACCORDANCE WITH ITS TERMS. IF THE CLIENT DOES NOT WISH TO ACCEPT THE TERMS OF THIS AGREEMENT, THEN WE ARE UNWILLING TO PROVIDE WELLINGTON CONSULTING S.R.L. TO YOU AND THE CLIENT MUST NOT USE IT. If you are entering into this Agreement on behalf of the Client, you warrant and represent to WELLINGTON CONSULTING S.R.L. that you have the Client’s authority to do so. If you are not so authorised, you assume sole personal liability for the Client’s obligations and compliance with the terms of this Agreement.

Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

- Account Holder: the User which holds the administrative account on Coportate Challenges for and on behalf of the Client and is the main point of contact for us.
- Coporate Challenges: the Wellington Consulting S.R.L. website(s) and device application(s) made available by us to you, including their underlying software, data and services.
- Business Day: a day other than a Saturday, Sunday or public holiday in România.

- Challenge: A step and/or activity challenge initiative which is created, published, launched, run and managed online via Corporate Challenges by you for your Users to participate in.
- Challenge Order: has the meaning given to it in clause 8
- Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, professional advisers or subcontractors (“Representatives”) to the other party and that other party's Representatives in connection with this Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.
- Client Data: the data (including, but not limited to, data about Users, images and logos) inputted or uploaded by you or your Users, or us on your behalf, for the purpose of using the Services or facilitating your use of the Services.
- Data Processing Addendum: has the meaning given in clause 6.1.
- Effective Date: the date on which your registration on Corporate Challenges has been confirmed.
- Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- Participants: those of your Users participating in one of your Challenges.
- Permitted Purpose: has the meaning given to it in clause 2.1.
- Services: the services provided by us to you under this Agreement, namely making Corporate Challenges available to you for the Permitted Purpose.
- Term: has the meaning given in 13.1.
- Unauthorised Use: any breach of any of the provisions in clause 3.
- Users: those individuals listed as registered users in your administrative account on Corporate Challenges

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality). A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders. A reference to a statute, legislation, statutory provision or legislative

provision is a reference to it as amended, extended or re-enacted from time to time and shall include any subordinate legislation made under that statute, legislation, statutory provision or legislative provision. Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. A reference to “writing” or “written” includes email.

2. Your Use of Coporate Challenges

2.1 Subject to your compliance with the terms and conditions of this Agreement, we hereby grant to you a limited, non-exclusive, non-transferable right and licence, without the right to grant sub-licences, to Coporate Challenges during the Term solely for the purpose of purchasing the ability to set up and publish Challenges for your Users in accordance with the functionality made available to you and for your internal business operations (the “Permitted Purpose”).

2.2 The Services provided to you under this Agreement are on a non-exclusive basis. This Agreement shall not prevent us from entering into similar agreements with, or granting the ability to create step/exercise challenges to, third parties (including clients similar to you), or from independently developing, using, selling or licensing documentation, software, products and/or services which are similar to those provided under this Agreement.

2.3 Whilst we provide you with the infrastructure from which to set up, launch and manage Challenges, you and the Account Holder are ultimately responsible for the general management of your Challenge and ensuring that Users are appropriately informed about the Challenge and are given sufficient time to register, organise their teams (where applicable) and participate in the Challenge prior to its commencement.

3. Your Commitment to Us and Unauthorised Use

3.1 You warrant, represent and undertake that:

- a) you, the Client, are an individual or corporate entity within the RO, or a VAT-registered business in the EU (and are in a position to provide to us, upon request, your VAT registration number) or a business in another territory;
- b) you will provide us with all necessary co-operation in relation to this Agreement in order for us to provide the Services;
- c) you will not allow any User account to be used by more than one individual User unless it has been reassigned, with our prior written permission, to another individual User, in which case the prior User shall no longer have any right to access or use Corporate Challenges;
- d) the Users will use the Services and Corporate Challenges platform, and participate in Challenges, in accordance with the terms and conditions of this Agreement and you shall be responsible for any User's (including Account Holder's) breach of this Agreement;

- e) your Account Holder and each of your Users will comply with our Terms of Use (example at: <https://corporatechallenges.ro/terms>) as may be amended by us from time to time;
- f) you will not use, or permit any third party to use, Corporate Challenges other than in accordance with the Permitted Purpose. You shall use all commercially reasonable endeavours to prevent any unauthorised access to, or use of, Corporate Challenges and, in the event of any such unauthorised access or use, notify us as soon as possible;
- g) you shall not access, store, distribute, transmit, introduce or permit the introduction of any Viruses, or any material during the course of your use of Corporate Challenges that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; or is otherwise illegal or causes damage or injury to any person, software, network, information or property. We reserve the right, without liability or prejudice to our other rights, to disable your access to any material that breaches the provisions of this clause;
- h) you shall not, except to the extent expressly permitted by us or under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of, or distribute all or any portion of, Corporate Challenges in any form or media or by any means;
- i) you shall not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or commercially exploit Corporate Challenges, or otherwise make Corporate Challenges available to any third party, except that you may use Corporate Challenges for the Permitted Purpose, and make Corporate Challenges available to your Users, in accordance with its functionality; and
- j) you shall not access all or any part of Corporate Challenges in order to build a product or service which competes with any challenge published on Corporate Challenges.

3.2 You acknowledge that you are responsible for the legality, reliability, integrity, accuracy and quality of all Client Data and warrant that inputting the Client Data into Corporate Challenges, and our use of the Client Data pursuant to this Agreement, shall not infringe a third party's Intellectual Property Rights. All Client Data inputted must adhere to our Terms of Use (link above).

4. Our Commitment to You

4.1 We warrant to you that we shall, during the Term, provide the Services to you on and subject to the terms of this Agreement and with reasonable skill and care and we shall use commercially reasonable endeavours to make Corporate Challenges available 24/7, except

for planned or emergency maintenance (and we will try to give you as much reasonable notice in advance as we can of such maintenance) except that:

- a) the above-mentioned warranty does not apply to the extent of any non-conformance which is caused by breach of this Agreement or use of Corporate Challenges and the Services contrary to our instructions, or modification or alteration of Corporate Challenges or the Services by any party other than us or our duly authorised contractors or agents;
- b) we do not warrant or guarantee that any part of Corporate Challenges will completely:
 - i) meet your exact requirements;
 - ii) be free from error or uninterrupted; or
- c) we do not warrant or guarantee that Corporate Challenges will be accessible over the Internet in your territory, particularly as it may be blocked by your IT department, Internet service provider or a government firewall; and
- d) we accept no liability for delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and you acknowledge that the Services and use of Corporate Challenges may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4.2 If the Services do not conform with the warranty in clause 4.1, we will use commercially reasonable endeavours to correct any such non-conformance as soon as reasonably practicable. Such correction or substitution constitutes your sole and exclusive remedy for any breach of that warranty.

4.3 We offer technical support for your Account Holder and Users each Business Day via email only and during regular business hours based on Romania time. Any non-technical support (including queries in relation to your Challenge) is the responsibility of you and/or your Account Holder.

4.4 We warrant that we have all necessary right, title and/or licence to Corporate Challenges and your use of the Services in accordance with this Agreement shall not infringe a third party's Intellectual Property Rights. However, we are not liable for any Intellectual Property Rights infringement claim or allegation made by a third party where: (a) the claim or allegation is in relation to a modification of Corporate Challenges not made by us; (b) the alleged infringement relates to an Unauthorised Use; (c) Corporate Challenges and/or the Services have been combined with other products, materials, data or services where, but for such combination, no infringement would have occurred; or (d) the claim or allegation is in relation to Client Data.

5. Mutual Obligations

5.1 Each party shall comply with all applicable laws and regulations with respect to its activities under this Agreement

6. Data protection

6.1 An example of our Privacy Policy addressed to you and your company Users can be found at <https://corporatechallenges.ro/privacy.pdf>

7. Third Party Providers

7.1 You acknowledge that the Services will from time to time enable or assist you and your Users to connect to services from third parties (for example, Google Maps, Google Fit or Fitbit) and that such connection is carried out solely at your own risk. We make 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 provider, or any transactions completed, and any contract or terms of use entered into by you or your User, with any such third-party provider. Any contract entered into and any transaction completed via any third-party provider, which may be required in order for you to receive the Services, is between you (or the relevant User as the case may be) and the relevant third-party, and not us. We recommend that you refer to the third-party's terms and conditions (including any terms around acceptable use) and privacy policy prior to using their services. For further information about what personal data we may collect via such third-party providers, please visit our privacy policies (link in clause 6).

8. Fees

8.1 In consideration of the Services provided to you under this Agreement, you agree to pay the Fees to us in accordance with clause 8. For the avoidance of doubt, you, the Client, are responsible for payment of the Fees, not your Users.

8.2 To publish a Challenge, and make it available for your Participants, you will be required to complete the Challenge order within Corporate Challenges (the "Challenge Order"). You are required to pay the fee according to the Challenge that you publish. The Base Fee covers a specified number of Participants in respect of that Challenge (the "Base Participant Number") and such number is set out in the Challenge Order. A Challenge will not be able to go live, and Participants will not be able to participate in that Challenge, until you have paid to us the corresponding Fee in full. When paid, the Fee shall be non-refundable irrespective of whether the Challenge continues or completes or the number of Participants who end up participating in it.

8.3 Any discount granted by us in relation to a Challenge does not guarantee that any such or similar discounts will be available for any subsequent Challenges.

9. Intellectual Property Rights

9.1 You acknowledge and agree that all Intellectual Property Rights in and to the Services and Corporate Challenges belong, and shall continue to belong, to Wellington Consulting S.R.L. and/or its licensors.

9.2 We acknowledge that all Intellectual Property Rights in and to the Client Data belong, and shall continue to belong to, you and/or your licensors. You grant to us the following rights in relation to the Client Data:

- a) a non-exclusive, royalty-free, non-transferable right to process the Client Data for the purposes of our fulfilling our obligations under this Agreement (including the provision of Services to you); and
- b) a non-exclusive, royalty-free, worldwide, transferable, sub-licensable, perpetual right to derive wholly anonymised, aggregated and/or statistical data from the Client Data for our commercial and internal use.

9.3 Other than the licences expressly granted under this Agreement, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights. In particular, except as expressly provided in this Agreement, you shall have no rights in respect of Corporate Challenges, the Services or their associated goodwill, and you acknowledge that all such rights and goodwill shall inure for the benefit of and are (and shall remain) vested in us.

10. Confidentiality

10.1 The term Confidential Information does not include any information that: (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 10); (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) was known to the receiving party before the information was disclosed to it by the disclosing party; or (e) the parties agree in writing is not confidential or may be disclosed.

10.2 Each party shall keep the other party's Confidential Information confidential and shall not: (a) use any Confidential Information for any purpose other than to perform its obligations under the Agreement; or (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 10.

10.3 A party may disclose the other party's Confidential Information:

- a) to those of its Representatives who need to know that Confidential Information for the purposes of that party to perform its obligations under this Agreement, provided that: (i) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and (ii) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 10; and
- b) to the extent required 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 other party as much notice of the disclosure as possible.

10.4 Provided we do not use Confidential Information other than in accordance with the aforementioned provisions in this clause, unless otherwise agreed, we can mention you in our marketing materials in order to demonstrate our relationship with you. Otherwise, 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 applicable law.

10.5 The provisions of this clause 10 shall continue to apply after termination of this Agreement.

11. Liability

11.1 Notwithstanding any other provision of this Agreement, neither party excludes or limits liability to the other party for: (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by its negligence; or (c) any matter for which it would be unlawful for the parties to exclude liability.

11.2 Except as expressly and specifically provided in this Agreement:

- a) you and your Users assume sole responsibility for the results and insights obtained from your use of Corporate Challenges, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to you or your Users by us in connection with the Services, or any actions taken by us at your direction;
- b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- c) the Services and Corporate Challenges are provided to you and your Users on an "as is" basis.

11.3 We shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- b) any loss or corruption (whether direct or indirect) of data or information;
- c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time) or business interruption;
- d) any loss or liability (whether direct or indirect) under or in relation to any other contract (including, without limitation, contracts you may have with your Users or contracts with any third party providers); or
- e) any other indirect or consequential loss.

11.4 Our total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement any collateral contract shall in all circumstances be limited to

the total amount of the Fees paid by you to us for your Challenges that was most recently active during the time the cause of action first arose.

12. Suspension of Service

12.1 Without effecting any other right or remedy available to us, we have the right, at any time, to suspend provision of the Services or availability of Corporate Challenges to you and/or your Users (including the right to disable your and/or your Users' passwords and accounts) without liability if:

- a) you fail to pay the Fees (in part or in whole) in accordance with this Agreement;
- b) we reasonably believe that you or one or more of your Users are using any part of Corporate Challenges other than in accordance with this Agreement or are otherwise engaged in Unauthorised Use;

and a suspension may continue until such time as the relevant issue is remedied to our reasonable satisfaction.