

# TERMS OF SERVICE

**1. DEFINITIONS.** Capitalized terms used but not otherwise defined in these Terms of Service will have the meaning ascribed to such terms in the Services Agreement, Sub-Merchant Agreement, or other applicable Addenda.

**“Addendum”** or **“Addenda”** means a document added to the Agreement containing new or supplemental terms.

**“Agreement”** means the Services Agreement, Terms of Service, Privacy Policy, Sub-Merchant Agreement (as applicable), and any other Addenda signed by the parties.

**“Billing Period”** means the period of time covered by a single recurring dues fee for Services. Unless otherwise noted, a Billing Period is billed in advance and covers a three-month period (one fiscal quarter) beginning on the Effective Date for the Agreement.

**“Cardholder Data”** is a subset of Client Data, and usually includes an End User’s name, billing address, credit card number, expiration date and CVV code.

**“Client”** is a Clubessential customer. The Client is the individual or business entity contracting with us to receive certain Services. Client may also be referred to in the Agreement as “you” or “your.”

**“Client Content”** is the content related to your business which you or your agent enter into the System(s). Client Content includes, but is not limited to, End User Data.

**“Clubessential”** means Clubessential, LLC, its subsidiaries, successors and assigns. Clubessential’s business address is 4600 McAuley Place, Ste. 350, Cincinnati, Ohio 45242. Clubessential may also be referred to in the Agreement as “Company,” “we,” “our,” or “us.”

**“Effective Date”** shall have the meaning as set forth in the Services Agreement.

**“End Users”** are your members, customers or clients. These are the people that buy your products or services, and who interact with our System(s) as authorized users.

**“End User Agreements”** are the contracts that your members, customers or clients sign with you for your products or services.

**“End User Data”** is information about your members, customers or clients entered into the System(s). End User Data may include Cardholder Data.

**“Fees”** mean any one-time and/or recurring fees for Services as described in the Services Agreement. Fees include, but may not be limited to, set-up fees; hosting fees; Initial Fees; fees for Payment Services; and any other charges permitted by the Agreement.

**“Initial Term”** is the initial term for Services, as described in the Services Agreement.

**“Initial Fees”** are fees associated with initial site setup, site redesign, install of Office Software, or other services related to launch of the Subscription Services.

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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, rights in computer software, 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.

**“Office Software”** means Clubessential’s proprietary accounting and point-of-sale software as fully integrated with the System(s).

**“Payment Services”** means the payment and billing-related services that we may provide you in accordance with the terms and conditions of a Sub-Merchant Agreement. We offer Payment Services through our CE Payments™ System.

**“Professional Services”** means those services outside of an initial site set-up that are of a one-time or consultative nature. Professional Services may include, but are not limited to, targeted training, a redesign of one portion of the site, or logo and branding changes.

**“SSL”** or **“Secure Socket Layer”** is a standard security protocol for establishing encrypted links between a web server and a browser in an online communication.

**“Services”** means our Professional Services, Payment Services and/or Subscription Services as set forth in the Services Agreement.

**“Services Agreement”** means the contract, together with any schedules or attachments, that describes the Services you are purchasing from us, including any System(s) to which you have access and may use in exchange for the payment of Fees.

**“System(s)”** means our proprietary technology and automated systems, as identified in the Services Agreement, plus any Clubessential mobile apps, APIs, website(s), and associated documentation.

**“Sub-Merchant Agreement”** means our Sub-Merchant Application and Agreement, including Payment Service Terms and Conditions, which govern the terms and conditions under which we have agreed to provide Payment Services to you.

**“Subscription Services”** are the specific System(s) to which you have access and may use in exchange for your payment of Fees, as more specifically described in the Services Agreement.

**“Renewal Term”** means the period, as described in the Services Agreement, which immediately follows the expiration of the Initial Term.

**“Team”** includes Clubessential’s employees, officers, directors, owners, attorneys, affiliates or representatives.

**“Term”** means the term for Services and includes both the Initial Term and any Renewal Terms as applicable.

**“WCAG 2.0”** means “Web Content Accessibility Guidelines 2.0” and has often been cited by the U.S. Department of Justice (DOJ) as an acceptable metric for determining a website’s accessibility to those with disabilities under the Americans with Disabilities Act (ADA). For purposes of the Agreement, WCAG 2.0 may also be referred to as “Website Accessibility Guidelines.”

**2. ACCEPTANCE.** You accept the terms of the Agreement when you (a) click-sign your acceptance to an on-line version of the Services Agreement; (b) sign a hardcopy of the Services Agreement; or (c) access the System(s) or accept the benefits of Services. You expressly acknowledge that the person accepting the Agreement on your behalf has the proper legal authority to bind the Client.

**3. GRANT OF RIGHTS.** Subject to your timely payment of Fees and remaining in compliance with the terms and condition of the Agreement, we agree to provide the Services as described in the Agreement, and grant to you a non-exclusive, non-transferable right to permit your End Users to access and use the System(s); and permit authorized members of your staff to use the Services during the Term solely for the operation of your business. The Agreement is not a sale and does not convey to you any rights of ownership in or to our System(s) or Services, or any of our Intellectual Property Rights. Upon termination of the Agreement, any rights granted by us will automatically, without notice, terminate. Any rights not specifically granted under the Agreement are expressly reserved. Notwithstanding the foregoing, you grant us a non-exclusive, non-transferable license to use your Client Content, inclusive of End User Data, to deliver and monitor the Services in accordance with the Agreement.

**4. TERM.** You will be obligated to the Term described in the Services Agreement.

**5. TERMINATION FOR CAUSE.** Prior to expiration of the Initial Term, either you or we may terminate the Agreement for cause (a) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or (c) if the other party dissolves or ceases to do business in the ordinary course. Upon any termination for cause by us, you shall remain liable for any Fees covering the remainder of the Initial Term, or a Renewal Term, as applicable, after the effective date of termination. Termination for cause will not preclude the non-breaching party from exercising any other rights or remedies permitted by law.

**6. TERMINATION FOR CONVENIENCE.** The Agreement cannot be terminated for convenience during the Initial Term. Once in a Renewal Term, you may terminate the Agreement at the end of any applicable Renewal Term with a 90-day advance written notice. To be deemed effective, termination notice must be sent to Clubessential, LLC at [accounting@clubessential.com](mailto:accounting@clubessential.com) (if by email) or 4600 McAuley Place, Suite 350, Cincinnati, OH 45242 (if by U.S. mail). Please write "Termination Notice" in the email's subject line, or as the title to a written letter, as applicable.

**7. MODIFICATION.** We reserve the right to modify these Terms of Service by posting a revised Terms of Service on our website and sending you notice that they have changed to your email address on record. Modifications will not apply retroactively. You are responsible for reviewing and becoming familiar with any modifications. We may sometimes ask you to review and to explicitly agree to (or reject) a revised version of the Terms of Service. In such cases, modifications will be effective at the time you sign your consent to the modified Terms of Service. In cases where we do not ask for your explicit consent to a modified version of the Terms of Service, but otherwise provide notice as set forth above, the modified version of the Terms of Service will become effective 14 days after we have posted the modified Terms of Service and provided you with notification. Your continued use of the Subscription Services following that period constitutes your acceptance of the Terms of Service as modified.

**8. FEES.** You agree to pay us all Fees permitted under the Agreement, including those specifically listed in your Services Agreement. Fees are due within 30 days from your receipt of our invoice. A late fee will apply to any Service Fees not received by the scheduled due date. After the Initial Term for a particular System, Clubessential shall have the right to increase the prices shown in the Service Agreement by at most four percent (4%), or the increase in the Consumer Price Index, specifically the index for All Urban Consumers (or CPI-U), whichever is greater, in any given year. We will provide you with a 60-day notice prior to any such increase.

**9. INITIAL FEES.** We reserve the right to provide an estimate for Initial Fees based on the approximate number of hours we think will be reasonably necessary to complete an engagement, multiplied by a fixed hourly rate. If we underestimate Initial Fees based on work actually performed, you will be responsible any cost overruns at the same hourly rate. We will invoice you separately for any cost overruns. To help you track and plan for any cost overruns, we will track our actual implementation hours (inclusive of any website design and customization, among other services) and, upon written request, provide you with a weekly time report. Payment for Initial Fees is due upon Agreement signing, or, as we

determine and permit, some agreed upon installment of such fees. We cannot and will not commence work on your engagement until we have received payment in full for all Initial Fees, or, as we determine and permit. Initial Fees are non-refundable.

**10. FEES FOR PROFESSIONAL SERVICES.** We reserve the right to provide an estimate of fees for Professional Services based on the approximate number of hours we think will be reasonably necessary to complete an engagement, multiplied by a fixed hourly rate. If we underestimate the fees for Professional Services based on work actually performed, you will be responsible any cost overruns at the same hourly rate. We will invoice you separately for any cost overruns. To help you track and plan for any cost overruns, we will track our actual professional service hours and, upon written request, provide you with a weekly time report. Payment of our fees for Professional Services is due upon Agreement signing. We cannot and will not commence work on your engagement until we have received payment in full for all Professional Services, or, as we determine and permit. All fees for Professional Services are non-refundable. If, at the completion of our engagement, a balance of fees for Professional Services remains, the remaining fees can be used for a period of up to 12 months from the original contract date for future Professional Services. Unused Professional Service fees remaining after 12 months will be refunded.

**11. OTHER PAYMENT TERMS.** All Fees are quoted and payable in U.S. dollars. Fees are based on Services provided, not your actual usage. Past due amounts will accrue interest at a rate of 1.5% per month, or, if lower, the maximum rate permitted by applicable law. All paid Fees are non-refundable. If there is a mistake on your invoice, you must bring it to our attention within 30 days to be eligible for an adjustment or a credit; any billing errors not reported within the 30-day review period will be deemed waived. We reserve the right to change our fees and/or introduce new charges at any time with at least 30 days prior notice to you, which notice may be provided by email.

**12. TAXES.** We have no obligation to pay your taxes under any circumstances. Taxes could be a value-added tax (VAT), a goods and service tax (GST), a sales tax, or use or withholding taxes assessed by a local, state, federal, provincial or foreign government entity (collectively, "Taxes"). Please make sure that you have taken appropriate steps to pay your Taxes. We are obligated to comply with all valid tax liens and levies associated with your business. If we must pay Taxes on your behalf, you must indemnify us for such payments within 30 days from your receipt of our tax-related invoice.

**13. BREACH; CURE; DEFAULT.** Fees for Subscription Services are due on a scheduled due date each month ("Due Date"). Payment not made within 5 days of the Due Date will result in an automatic breach of the Agreement and start the clock on a 10-day period in which to cure. If payment is still not received by the 16th day after the scheduled Due Date, we reserve the right to suspend Services until all outstanding Fees are paid. Continued non-payment of Fees more than 30 days after the Due Date will result in a default under the Agreement. In the event of default, all payments otherwise due to us under the Agreement will be accelerated and will be considered due and payable by you immediately, as of the date of default. We shall have no obligation to release any of your Client Content until all outstanding Fees are paid in full.

**14. PROHIBITED USES.** You shall not use the Services in violation of the law whether local, state or federal (including but not limited to the CAN-SPAM Act, the Telephone Consumer Protection Act, the Do-Not-Call Implementation Act, the Americans with

Disabilities Act, or any consumer protection statute); to intentionally bypass a security mechanism in the System(s); to reverse-engineer the System(s), or any component thereof, regardless of the reason why; in a way that adversely impacts the availability, reliability or stability of the System(s), or any component thereof; to intentionally transmit material using the System(s) which contains viruses, Trojan horses, worms or some other harmful computer program; to send unsolicited advertising, marketing or promotional materials, whether by email or text, without the recipient's legally-valid consent; to commit fraud; to transmit material that infringes on the intellectual property right of others; to transmit material that is harassing, discriminatory, defamatory, vulgar, pornographic, or harmful to others; or in violation of this Agreement. Violation of this Prohibited User policy may result in immediate suspension or discontinuation of Services, or legal action which could result in civil damages or criminal punishment.

## 15. OWNERSHIP RIGHTS.

**(a) What's Ours.** We reserve all title and interest to our Intellectual Property Rights. We alone own our Intellectual Property Rights, in addition to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by you or any other party relating to our Services. In addition, we retain all rights, title and interest in and to our System(s) and any site design(s) we may create and/or maintain on your behalf and license to you. The Clubessential™ and CE Payments™ names and logos are registered trademarks of Clubessential, LLC, and no right or license is granted to use them without our express written permission.

**(b) What's Yours.** With the exception of End User Data, which is the property of individual End Users, you reserve all rights, title and interest to your Client Content. You represent and warrant that you own or have appropriate rights to all of your Client Content. You shall have sole responsibility for the accuracy, quality, integrity, legality, security, reliability, appropriateness, and intellectual property ownership or rights to use of all Client Content, and, except as specifically provided for in the Agreement, we shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of your Client Content. You own all rights, title and interest to Client trademarks, service marks and other intellectual property. Unless you have ordered our "Initial Content Loading" product, you will be solely responsible for loading and formatting your Client Content into the System(s) framework. We reserve the right to withhold, remove and/or discard your Client Content without notice for any breach, including without limitation, your non-payment of Fees. Upon termination of the Agreement for any reason, your right to access or use Client Content in the System(s) shall cease and we shall have no obligation to maintain or keep your Client Content except as required by the Agreement or by law.

**16. CONFIDENTIALITY.** A party (the "Receiving Party") shall keep in strict confidence and ensure its employees, agents and representatives shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by the other party (the "Disclosing Party"), to the Receiving Party, or to its employees, agents, consultants or subcontractors and any other confidential information concerning the other party's business or its product which the Receiving Party may obtain ("Confidential Information"). The Receiving Party may disclose such Confidential Information: (a) to its employees, officers, representatives, advisers, agents or subcontractors (and in the case of the Supplier, to its parent company or subsidiaries) who need to know such Confidential Information for the purposes of carrying out their obligations under this Agreement; or (b) if the

Disclosing Party gives its prior, written, informed consent to this disclosure. The Receiving Party's obligations under this Section 16 shall not apply to particular Confidential Information: (i) if the Confidential Information is already public knowledge; (ii) if the Confidential Information subsequently becomes public knowledge, without restrictions and other than by breach of this Agreement; (iii) if the Confidential Information is already known without restrictions, to the Receiving Party at the time of disclosure; (iv) if the Confidential Information subsequently comes lawfully into the possession of the Receiving Party from another party; (v) if the information is independently developed by the Receiving Party without use or reference to the Confidential Information of the Disclosing Party; or (vi) to the extent that it is required to be disclosed by any law, court order or any governmental or regulatory authority provided that the Receiving Party gives the Disclosing Party written notice of such requirement as soon as reasonably possible after learning of such requirement and, to the extent reasonably possible, an opportunity to take such steps as may be available to avoid disclosure. Each party shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such Confidential Information comply with the substance of this Section 16. Neither party shall use any such Confidential Information for any purpose other than to perform its obligations under this Agreement. At the Disclosing Party's written request, the Receiving Party will immediately destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession and shall make no further use of such Confidential Information and confirm to the Disclosing Party in writing that it has done so.

**17. WARRANTIES.** We represent and warrant that we own the appropriate rights to license and/or sublicense our System(s) and Services. We do not warrant that the System(s) and Services will be entirely free from defect or error. EXCEPT AS SPECIFICALLY STATED HEREIN, THE SYSTEM(S) AND SERVICES ARE BEING PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND. EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. No advice or information, whether written or oral, obtained from us, or any member of our team, will create any warranty not expressly made. If you are a California resident, you waive California Civil Code § 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

**18. LIMITATIONS OF LIABILITY. YOUR EXCLUSIVE REMEDY FOR ANY FAILURE OF CLUBESSENTIAL'S OBLIGATIONS UNDER THE AGREEMENT SHALL BE THE REMEDIES SET FORTH IN SECTION 5 ABOVE AND ANY CREDIT DUE PURSUANT TO AN APPLICABLE SERVICE LEVEL AGREEMENT (WHERE A SERVICE LEVEL AGREEMENT IS OFFERED). IN NO EVENT SHALL CLUBESSENTIAL BE LIABLE OR RESPONSIBLE TO YOU FOR ANY TYPE OF INCIDENTAL, PUNITIVE, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICES OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL CLUBESSENTIAL'S LIABILITY TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCES EXCEED THE AMOUNT OF FEES YOU ACTUALLY PAID TO CLUBESSENTIAL FOR SERVICES IN THE ONE (1) MONTH**

**PERIOD DIRECTLY PRIOR TO THE ACTION GIVING RISE TO ALLEGED LIABILITY. YOU FURTHER AGREE THAT ANY CLAIM WHICH YOU MAY HAVE AGAINST CLUBESSENTIAL MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM AROSE, OTHERWISE THE CLAIM SHALL BE PERMANENTLY BARRED.**

**19. INDEMNIFICATION.** You shall indemnify and defend us (including any member of our Team) and hold us harmless against any claim, suit, demand or proceeding (“Claim”) that arises from your actions, your use or misuse, of the System(s) or Services; your breach of the Agreement or these Terms of Service; or your infringement on someone else’s rights, including but not limited to, third party intellectual property rights. We reserve the right to handle our own legal defense however we see fit, even if you are indemnifying us, in which case you agree to cooperate with us so we can execute our strategy. Our indemnity rights shall include all costs associated with the Claim or Claims, including attorneys’ fees, court costs, dispute resolution costs, and/or fees associated with collection.

**20. GRAPHIC AND WEB DESIGN.** If we create designs on your behalf (including graphical and architectural frameworks) as part of our Professional Services, you shall have the right to review the design and request any number of changes before acceptance of a final design; provided, however, that after two rounds of revisions at no additional charge, we shall have a right to charge \$250 for each additional round of revisions. For engagements involving web design and build, your timely participation and collaboration is required. After you have provided final written approval to an agreed-upon web design (email is acceptable), we reserve the right to charge for subsequent design changes at our standard hourly rates.

**21. TRAINING.** We offer access to online education materials, including instructional videos, as part of your Subscription Fees. Initial training for each System, provided via telephone, is included as part of your Subscription Fees. You may request “custom education classes” at then-current hourly rates, and subject to scheduling availability. You may also request “custom education onsite” at then-current daily rate for such training, plus the cost of travel and lodging, and subject to scheduling availability.

**22. CUSTOMER SUPPORT.** We will provide you with customer support via toll-free phone lines from 8:30 am EST to 8:00 pm EST, Monday through Friday and Saturday 10 am EST to 5 pm EST (our “Core Support Hours”). Customer support during Core Support Hours includes: answering questions regarding the use of the System(s); assistance changing the configuration of the System(s); and occasional one-on-one System(s) training. Customer support during Core Support Hours does not include conducting custom education classes; conducting custom education onsite; providing remote or onsite consultation; creating new design or artwork; performing front-end development or programming; or troubleshooting issues related to your IT infrastructure, networks, servers, third-party internet service, or related services. Outside of Core Support Hours, we will provide you with emergency support which you can access by calling our hotline at (800) 448-1475. The hotline is staffed outside Core Support Hours (“Hotline Support”). Hotline Support should be used for emergencies only, such as any malfunction of the System(s) that materially prevents you from performing normal business functions; any outage of the System(s); or a need for support information, the lack of which would materially prevent you from performing normal business functions before regular business hours resume.

**23. CE LINK.** A “CE Link” is a “powered by Clubessential™” hyperlink to [www.clubessential.com](http://www.clubessential.com). By using our Subscription

Services, you agree that we shall have the right to place a CE Link on any site pages that are part of a System. The appearance of the CE Link will be unobtrusive and in conformance with the same general artistic standards used in creating the System.

**24. URL REGISTRATION.** If we register or maintain URL/domain names on your behalf, you agree to pay the annual cost of registration, estimated to be approximately \$35 per year. Regardless of whether we register or maintain URL/domain names on your behalf, you will own and retain all rights and title in and to your own URL/domain names.

**25. SSL CERTIFICATE.** For your protection and ours, we require that you purchase a SSL certificate prior to receiving our Services. You shall be required to maintain the SSL certificate for the duration of the Term.

**26. AUTHORIZATION FOR REMOTE ACCESS.** We will provide you with on-going support or updates for the proper functioning of the System(s), which we can only provide or make available through remote access to your technology systems. By using our Services or accessing our System(s), you expressly authorize us to access your technology systems remotely for the limited purpose of providing you with any support or updates relevant to our System(s) or Services. You shall be solely liability for the cost, interoperability, proper functioning, and security of any remote access facilities or methods used by you, and we shall not be deemed to be in violation of our obligations to you, nor in breach of the Agreement, as the result of our inability to remotely access your technology systems. Our right of remote access as described herein shall be deemed a continuing right until such time as the Agreement terminates, for any reason. We agree to use commercially reasonable efforts to comply with any of your published security-related protocols when remotely accessing your technology systems.

**27. OFFICE™ SOFTWARE.** You acknowledge that the loss of connectivity may cause the Office Software to become inoperable. We reserve the right to only provide support for the latest two versions of the Office Software; older versions of the Office Software may become inoperable. The Office Accounting Software is subject to the maximum number of users or devices, as applicable.

**28. CE PAYMENTS™.** Our Payment Services are provided through the CE Payments™ System. To be eligible for our Payment Services, you must complete our Sub-Merchant Application and submit to underwriting with our payment processor. A Sub-Merchant Agreement is required for all Payment Services. If applicable, you agree to comply with all Payment Service Terms and Conditions, as described in the Sub-Merchant Agreement.

**29. WEBSITE ACCESSIBILITY NOTICE.** We are committed to providing Subscription Services that are accessible to all End Users, including those with disabilities. To these ends, we strive to ensure that the Site and our Subscription Services are in substantial conformance with prevailing WCAG 2.0 website accessibility standards. A criteria will “support” WCAG 2.0 when the functionality of a product has at least one method that meets the criteria without known defects or meets with equivalent facilitation. A criteria “supports with exceptions” when some functionality of the product does not meet the criteria. You acknowledge that implementation of functionalities which support WCAG 2.0 may require some additional action by you; for example, it is your responsibility to make sure any upload Client Content is accessible to all End Users (we cannot control, nor will we be responsible, for the content that is uploaded and/or modified by you on the Site). Where you pay for a Site re-design, we will use

commercially reasonable efforts to implement website accessibility criteria in accordance with an Accessibility Conformance Report. If you believe we have not met a WCAG 2.0 accessibility standard, we will work with you to correct any perceived defects upon a mutually agreed-upon timeline; please note that additional fees may apply. Your only recourse for our failure to achieve an agreed-upon requisite level of website accessibility shall be your right to terminate the Agreement for cause. **Notwithstanding the foregoing, under no circumstances shall we be liable for any losses or damages to you, a third party, or an End User of the Site as a result of website accessibility violation(s) associated with our Services.**

**30. CUSTOM DEVELOPMENT WORK.** While we welcome any suggestions or comments you might have about how we can improve our products and services, we do not custom develop our System(s) or Services to suit the business needs of any particular customer. We will consider all suggested improvements to the System(s) and Services, and, as we determine, will incorporate any approved items to our development roadmap. If there is a feature or functionality that you would like to see added to our System(s) or Services, and you would like the project completed on a certain timeline, you can make a custom development request and, based on our staffing and other considerations, we will scope the project and provide you with a written quote which you can accept or reject. Custom development work will be considered a separate engagement, and will be billed outside of the Agreement. Custom development work shall not be considered work-for-hire. We will own and control any product outcome of the engagement and we reserve the right to incorporate any new feature or functionality into our larger product or service offerings.

**31. DELETION OF CLIENT DATA.** Upon proper termination of the Agreement, we will keep a copy of your Client Data for a minimum of 30 days. On the 31st day after termination, if you have not made arrangements with us to transfer your Client Data somewhere else, it shall be our choice about whether to continue storing the data at our cost or deleting it. Deletion of Client Data will be subject to any applicable federal, state or local laws.

**32. DISPUTE RESOLUTION.** Many concerns can be resolved by calling us at (800) 448-1475. If a dispute cannot be resolved informally, this Dispute Resolution provision explains how claims (whether by you against us, or by us against you) will be resolved.

(a) Definition. "Claim" means any current or future claim, dispute or controversy relating in any way to our Agreement. Claim includes (i) initial claims, counterclaims, cross-claims and third-party claims; (ii) claims based upon contract, tort, fraud, statute, regulation, common law and equity; and (iii) claims by or against any third party using or providing any product, service or benefit in connection with our Agreement or the Systems or Subscription Services.

(b) Claim Notice. Before beginning a lawsuit, mediation or arbitration, you and we agree to send a notice (a "Claim Notice") to each party against whom a Claim is asserted. The Claim Notice will give you and us a chance to resolve our dispute informally or in mediation. The Claim Notice must describe the Claim and state the specific relief demanded. Notice to you may be sent to your current mailing address or email address on file. You must provide your name, address and phone number in your Claim Notice. Your Claim Notice must be sent to Clubessential, LLC, ATTN: Legal, 4600 McAuley Place, Ste. 350, Cincinnati, Ohio 45242.

(c) Mediation. Before beginning mediation, you or we must first send a Claim Notice. Within 30 days after sending or receiving a Claim Notice, you or we may submit the Claim for mediation.

Mediation fees will be split equally, and the location for mediation shall be mutually decided between you and us. All mediation-related communications are confidential, inadmissible in court and not subject to discovery. All applicable statutes of limitations will be tolled until termination of the mediation. Either you or we may terminate the mediation at any time. The submission or failure to submit a Claim to mediation will not affect your or our rights to elect arbitration.

(d) Arbitration. You or we may elect to resolve any Claim by individual binding arbitration. This election may be made by the party asserting the Claim or the party defending the Claim. Claims will be decided by one neutral arbitrator who will be a retired judicial officer or an attorney with at least 10 years of experience; however, if we both agree, we may select another person with different qualifications. If arbitration is chosen by any party, neither you nor we will have the right to litigate that claim in court or have a jury trial on that claim. Further, you and we will not have the right to participate in a representative capacity or as a member of any class pertaining to that claim. The arbitrator's decisions are enforceable as any court order and are subject to very limited review by a court. The arbitrator's decision will be final and binding. Before beginning arbitration, you or we must first send a Claim Notice. The party electing arbitration must choose to arbitrate either before JAMS or AAA. This arbitration provision is governed by the FAA. You will be responsible for paying your share of any arbitration fees (including filing, administrative, hearing or other fees). We will be responsible for our arbitration fees.

### **33. NOTICES; GOVERNING LAW; JURISDICTION.**

(a) General. Who you are contracting with under this Agreement, who you should direct notice to under this Agreement, what law will apply in any lawsuit arising out of this Agreement, and which court can adjudicate any such lawsuit to this Agreement are as follows:

Who you are contracting with:	Clubessential, LLC
Legal notices should be sent to:	Subject Line: Legal Notice General Counsel legal@clubessential.com
The governing law is:	Ohio
The courts having exclusive jurisdiction are:	State courts of Hamilton County, Ohio, or the U.S. District Court for the Southern District of Ohio, as applicable.

(b) Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to you shall be addressed to the designated contact person identified in the Services Agreement at the email address or physical address listed.

(c) Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

(d) Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

### **34. GENERAL PROVISIONS.**



**(a) Data Security and Privacy.** You are required to comply with our [Privacy Policy](#), which may be revised from time to time, and which are expressly incorporated into the Agreement.

**(b) Minimum System Requirements / Interoperability.** It is your responsibility to ensure your computer systems, internet connections, IT infrastructure, peripherals, systems, servers, mobile devices and/or work stations comply with the minimum system requirements necessary to receive all Subscription Services. We shall not be responsible for any internet speed or connectivity issues at your location, or other problems related to your technology equipment, including third party internet service or your IT infrastructure. You shall be required to comply with our technical specifications, available [here](#).

**(c) Reference.** You agree that, within 30 days of the Effective Date, we may issue a new business press release about our business association and post your logo and a brief description of your business on our website.

**(d) Independent Contractor Relationship.** Our legal relationship to you is that of an independent contractor. The Agreement does not form a partnership, franchise, joint venture, employment, agency and/or fiduciary relationship between you and us.

**(e) Export Controls.** The Services and any derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on the United States' government denied-party list. Additionally, you shall not permit End Users to access or use the Subscription Services while located in a United States embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea), or in violation of any United States' export law or regulation.

**(f) Anti-Bribery.** You agree that neither your employees, agents or representatives have received or been offered any illegal or improper bribe, kickback, gift, or thing of value from Clubessential, or any member of its Team, in connection with the Agreement. If you learn of any violation of the above restrictions, you agree to promptly notify us in accordance with the notice provision in Section 33(a).

**(g) Professional Advice.** All Professional Services and other information provided to you in the normal course of our business relationship should be considered for informational purposes only and is not to be taken as professional legal advice.

**(h) Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any rights under the Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided in the Terms of Service are in addition to, and not exclusive, of any other remedies of a party at law or in equity.

**(i) Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety without consent of the other party, to our affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**(j) Force Majeure.** We shall not be in default under any provision of the Agreement or be liable for any delay, failure of performance or interruption in System(s) or Services resulting, directly or

indirectly, from causes beyond our reasonable control, including but not limited to any of the following: earthquake, lightning or other acts of God; fire or explosion; electrical faults; vandalism; cable cut; water; hurricanes; fire; flooding; severe weather conditions; actions of governmental or military authorities; national emergency; insurrection, riots or war; terrorism or civil disturbance; strikes, lock-outs, work stoppages or other labor difficulties; supplier failure; shortage; or telecommunication or other internet provider failure.

**(k) Survivability.** Even if you terminate the Agreement with us, the following sections of this Terms of Service will still apply: Section 16 (Confidentiality); Section 17 (Warranties); Section 18 (Limitations of Liability); Section 19 (Indemnification); Section 29 (Website Accessibility Notice), Section 32 (Dispute Resolution), Section 33 (Notice; Governing Law; Jurisdiction); and Section 34(o) (Entire Agreement).

**(l) Severability.** If it turns out that a section of these Terms of Service, or the Agreement, is not enforceable, then that section will be removed or edited as little as necessary, and the rest of the Terms of Service, or the Agreement, as applicable, will still be valid.

**(m) Headings.** The bolded headings contained in the Agreement are for convenience of reference only, shall not be deemed to be a part of the Agreement and shall not be referred to in connection with the construction or interpretation of the Agreement.

**(n) Construction.** For purposes of the Agreement, wherever the context requires, the singular shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter gender, and vice versa; and "and" shall include "or," and vice versa. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of the Agreement.

**(o) Entire Agreement.** The Agreement (including these Terms of Service) and any additional terms or Addenda, as applicable, make up the entire Agreement and supersede all prior agreements, representations, and understandings. All additional terms and/or Addenda will be considered incorporated into the Agreement when you agree to them. If there is a conflict between these Terms of Service and any applicable Addenda, the Addenda will be deemed to control and will govern the Agreement.

**(p) Electronic Signature.** The Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but such counterparts together shall constitute one and the same instrument. Delivery of executed counterparts by email, .PDF, or other electronic delivery method shall be effective as delivery. Electronic signatures, including any click-sign process, will be deemed as original.

**(q) Consent to Do Business Electronically.** By signing the Services Agreement, you consent to do business electronically, which means that you agree that all Clubessential agreements and policies, including amendments thereto and documents referenced therein, as well as any notices, instructions, or any other communications regarding transactions and your agreements with Clubessential may be presented, delivered, stored, retrieved, and transmitted electronically. You must keep Clubessential informed of any change in your electronic or mailing address or other contact information. Your electronic signature, including, without limitation clicking "Agree and Continue" or "I Accept" or an action of similar meaning or significance, shall be the legal equivalent of your manual signature. You may withdraw your consent to doing business electronically at any time by contacting us and withdrawing your consent. However, any communications or

transactions between us before your withdrawal of such consent, will be valid and binding.

**(r) Questions.** Please feel free to direct any questions you might have about these Terms of Service, or the Agreement, to [legal@clubessential.com](mailto:legal@clubessential.com).